

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Shirley Taylor-Prakelt, Housing and Community Dev. Director
(954) 797-1199

PREPARED BY: Shirley Taylor-Prakelt, Housing and Community Development
Director

SUBJECT: A Resolution authorizing the Mayor to execute a Sub-Recipient Grant Agreement with the Adopt a Hurricane Family Inc., to administer the Town's Mobile Home Repair/Replacement Program to assist Davie Hurricane Wilma Victims under the 2005 CDBG Disaster Recovery Initiative (DRI) .

AFFECTED DISTRICT: Town-Wide Based on Income Levels and DRI Eligibility
Criteria

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SUB-RECIPIENT GRANT AGREEMENT WITH ADOPT A HURRICANE FAMILY INC., TO ADMINISTER THE TOWN'S MOBILE HOME REPAIR/REPLACEMENT PROGRAM TO ASSIST DAVIE HURRICANE WILMA VICTIMS UNDER THE 2005 CDBG DISASTER RECOVERY INITIATIVE (DRI).

REPORT IN BRIEF: Public Law 109-148, approved on December 30, 2005 allocated funds for the "2005 CDBG Disaster Recovery Initiative" as a result of Hurricane Wilma. The Florida Department of Community Affairs (DCA) is administering this program on behalf of the State of Florida; and, Broward County received \$22,163,887. DCA requires that each County serve as the lead agency in distributing the CDBG Disaster Recovery Funds to those municipalities within their jurisdiction that sustained damage as a result of Hurricane Wilma.

On July 26, 2007, by Resolution No. R-2007-197, the Town Council approved the CDBG Consolidated Plan for Federal Funds 2007-2012, which included the descriptions and budgets for Davie's 2005 Disaster Recovery Initiative (DRI) Programs and Activities totaling \$3,309,741.

On September 19, 2007 the Town Council approved the DRI Agreement between Broward County and the Town, to utilize the 2005 CDBG DRI funds, which included \$1,275,000 for the Mobile Home Repair/Replacement Program.

The program must be administered through FEMA's Modified Sales Program which allows a non-profit organization with a 501 (C) 3 status to purchase new or refurbished FEMA mobile home units for \$500 to subsequently be transferred to eligible Hurricane Wilma Victims. These FEMA mobiles are valued at \$50,000+.

Adopt a Hurricane Family, Inc., has been recognized by FEMA, the Florida Department of Community Affairs (DCA), and Broward County, as the "sole source provider" for the Modified Sales Program; and, they have been allotted FEMA mobile homes under the Modified Sales Program exclusively for income-eligible Davie Hurricane Wilma residents.

According to FEMA, Adopt a Hurricane Family, Inc., has a successful track record of outstanding performance under the Modified Sales Program. In addition, Adopt a Hurricane Family, Inc., provides financial assistance, job placement, food, clothing, referrals, and other necessities for Disaster Victims.

Under the terms of this Agreement, Adopt a Hurricane Family, Inc., will administer the Town's "Mobile Home Repair/Replacement Program" on a Town-wide basis. This program permits the repair of wind-storm rated mobile home units manufactured after 1994. It also permits the replacement of any mobile home that can not be brought up to code, with a new or refurbished FEMA mobile home.

A minimum of 66 Davie households will be assisted during the term of this Agreement. Adopt a Hurricane Family, Inc., in cooperation with the the Town's Housing and Community Development Director, will develop programs guidelines in accordance with the provisions outlined in the attached Sub-Recipient Agreement. The attached Grant Agreement conforms to the requirements for both HUD and DCA, and formalizes the type of services to be provided by the Adopt a Hurricane Family, Inc., to Davie's Hurricane Wilma Victims.

PREVIOUS ACTIONS: 2005 CDBG DRI Project Budget/Narratives approved as part of the Consolidated Plan for Federal Funds 2007-2012 by Resolution R-2007-197 on July 26, 2007 and the Agreement between Broward County and Town of Davie was approved by Resolution R-2007-263 on September 19, 2007.

CONCURRENCES: Consolidated Plan and Annual Action Plan

FISCAL IMPACT: Yes

Has request been budgeted? Yes

If yes, expected cost: \$1,275,000 in CDBG DRI funds budgeted

RECOMMENDATION(S): Approve Resolution

Attachment(s): Resolution, Agreement, DCA Exhibit 4, and Sole Source Provider Letter

RESOLUTION _____

RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SUB-RECIPIENT GRANT AGREEMENT WITH ADOPT A HURRICANE FAMILY, INC., TO ADMINISTER THE TOWN'S MOBILE HOME REPAIR/ REPLACEMENT PROGRAM TO ASSIST DAVIE HURRICANE WILMA VICTIMS UNDER THE 2005 CDBG DISASTER RECOVERY INITIATIVE (DRI)

WHEREAS, Public Law 109-148, approved on December 30, 2005 allocated funds for the "2005 CDBG Disaster Recovery Initiative" as a result of Hurricane Wilma; and

WHEREAS, on July 26, 2007, by Resolution No. R-2007-197, the Town Council approved the CDBG Consolidated Plan for Federal Funds 2007-2012, which included the descriptions and budgets for Davie's 2005 Disaster Recovery Initiative (DRI) Programs and Activities totaling \$3,309,741; and,

WHEREAS, on September 19, 2007 the Town Council approved the DRI Agreement between Broward County and the Town, to utilize the 2005 CDBG DRI funds, which included \$1,275,000 for the Mobile Home Repair/Replacement Program; and

WHEREAS, Adopt a Hurricane, Family Inc., has been recognized by FEMA, DCA, and Broward County as the "sole source provider" under FEMA's Modified Sales Program; and

WHEREAS, Adopt a Hurricane, Family Inc., has been allotted FEMA mobile homes under the Modified Sales Program exclusively for income-eligible Davie Hurricane Wilma residents; and

WHEREAS, the CDBG DRI Grant Program requires that a Sub-Recipient Grant Agreement be executed with Adopt a Hurricane, Family Inc., which complies with all DRI requirements; and

WHEREAS, Adopt a Hurricane Family Inc., will administer the Town's "Mobile Home Repair/Replacement Program" on a Town-wide basis, to repair wind-storm rated mobile home units manufactured after 1994, or replace any unit that can not be brought up to code with a new or refurbished FEMA mobile unit to those eligible Davie Disaster Victims.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie hereby authorizes the Mayor to execute the attached CDBG DRI Sub-Recipient Grant Agreement with Adopt

a Hurricane Family, Inc., to operate the Town's Mobile Home Repair/Replacement Program for Davie's Hurricane Wilma Victims.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007.

MAYOR/COUNCILMEMBER
ATTEST:

TOWN CLERK

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007.

AGREEMENT

between

TOWN OF DAVIE

and

ADOPT A HURRICANE FAMILY, INC.

for

**2005 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) DISASTER
RECOVERY INITIATIVE (DRI) FUNDS TO ADMINISTER
THE TOWN'S MOBILE HOME REPAIR/REPLACEMENT PROGRAM
IN THE AMOUNT \$1,275,000**

AGREEMENT

between

TOWN OF DAVIE

and

ADOPT A HURRICANE FAMILY, INC.

for

**2005 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
DISASTER RECOVERY INITIATIVE (DRI) FUNDS TO ADMINISTER
THE TOWN'S MOBILE HOME REPAIR/REPLACEMENT PROGRAM
IN THE AMOUNT \$1,275,000**

This Agreement is entered into by and between the TOWN OF DAVIE ("TOWN"), a municipal corporation of the State of Florida, and ADOPT A HURRICANE FAMILY, INC., a non-profit organization.

WITNESSETH, that, for and in consideration of the mutual terms and conditions, promises, covenants and payments, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the Parties.

- 1.1 **American Disability Act (ADA):** The ADA policy and procedures promulgated by Federal Law, Section 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 adopted by Broward County.
- 1.2 **Broward County Community Development Block Grant Program:** The Community Development Program applied for by Broward County and awarded by the United States Department of Housing and Urban Development as authorized pursuant to Title 1, Housing and Community Development Act of 1974, Public Law 93-383 as amended.
- 1.3 **CDBG DRI Funds:** Community Development Block Grant Disaster Recovery Initiative (DRI) Funds; the monies provided by Broward County.
- 1.4 **Consolidated Plan:** Document submitted to HUD for the CDBG, ESGP, DRI,

etc. Programs that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs, which is prepared in accordance with the process prescribed in 24 CFR Part 91.

- 1.5 **Contract Administrator:** Whenever the term contract administrator is used herein it is intended to mean the Housing and Community Development Director or her designee. In the administration of this contract as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.6 **County:** Broward County, Florida, a political subdivision of the State of Florida
- 1.7 **DCA:** Florida Department of Community Affairs
- 1.8 **HUD:** United States Department of Housing and Urban Development
- 1.9 **Income Eligible Families:** Very low income and low income families.
- 1.10 **Low Income:** one (1) or more natural persons or a family (including students) that have a total Annual Anticipated Gross Income for the household that does not exceed eighty percent (80%) of the median annual income adjusted for family size for households within the metropolitan statistical area (MSA), Broward County, or the non-metropolitan median for the State, whichever is greater.
- 1.11 **Project:** the project set forth in Article 3 hereof, and Attachment “A” Scope of Work/Project Description.
- 1.12 **Rule of DCA, Division of Housing and Community Development:** Rule No: 9BER06-1 F.A.C. Community Development Block Grant Disaster Recovery Funding.
- 1.13 **Rule and Regulations of HUD:** 24 CFR Part 570, “Community Development Block Grant Regulations”, 24 CFR Part 85, “Administrative Requirement for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Government”; OMB Circular A-133, “Audits of State and Local Government,” copies of which are incorporated herein by reference
- 1.14 **Rules and Regulations of HUD Involving Waivers and Alternative Requirements:** waiver and alternative requirements applicable to the CDBG Disaster Recovery Grant to the State of Florida, as published in the Federal Register, Vol. 71, No. 168 (August 30, 2006)
- 1.15 **Project:** Community Development Services for 2005 Disaster Recovery Initiative (DRI) funds for Davie’s Mobile Home Repair or Replacement Program.
- 1.16 **Contractor/Sub-Recipient:** ADOPT A HURRICANE FAMILY, INC.

- 1.17 **Very Low-Income:** one (1) or more natural persons or a family, (including students), that have a total Annual Anticipated Gross Income for the household that does not exceed Fifty percent (50%) of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

ARTICLE 2 - PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective Parties, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Title I of the Housing and Community Development Act of 1974, P.L. 93-383, consolidated several existing categorical programs for community development into a single program of Community Development Block Grant (CDBG) for the purpose of allowing local discretion as to the determination of needs and priorities for a community development program. The needs and priorities of community development in Broward County were determined through consultation with representatives of the community participating in the Broward County CDBG Program.
- 2.2 The State of Florida is prioritizing housing recovery with the Disaster Recovery Initiative (DRI) funds, and the allocation methodology was based on a scoring process using FEMA housing damage estimates, and targets funding to the “hardest hit” areas. The DCA coordinated with the Housing Finance Corporation and the Governor’s Office to compile damage assessment data relating to Hurricane Wilma.

Directing funding to the “hardest hit” areas ensures that counties with the greatest disaster recovery housing needs are targeted for funding in amounts adequate to make a significant impact in the severity of local circumstances. The scoring mechanism has taken four (4) indicators into consideration: Percentage of units damaged in each County (based on verified FEMA inspections); Percentage of the State total destroyed units in each County (again, based on verified FEMA inspections); Percentage of a County damaged units attributed to households with income up to \$30,000, to measure level of low income needs; and Percentage of the State’s total temporary units that were placed in each County.

- 2.3 Pursuant to Rule No. 9BER06-1 F.A.C. “Community Development Block Grant Disaster Recovery Initiative (DRI) Funding and, 24 C.F.R. 570.200 (a) and 570.301 of the Rules and Regulations of HUD including the Waivers and Alternative Requirements as stated in Section 1.13 of this Agreement, the Project was included in the Broward County Community Development submission to DCA, as amended. It was determined that the Town of

Davie's Mobile Home Repair or Replacement Program, funded under this project, will address one (1) or more of the following (3) national objectives:

2.3.1 Activities benefiting low and moderate (L/M) Income Persons are the following:

- a. L/M Income Area Benefit Activities;
- b. L/M Income Limited Clientele Activities;
- c. L/M Income Housing Activities; and
- d. L/M Income Creation or Retention Activities

2.4 The TOWN desires to disburse funds to ADOPT A HURRICANE FAMILY, INC., However, TOWN must obtain assurances from ADOPT A HURRICANE FAMILY, INC., so assures TOWN, that ADOPT A HURRICANE FAMILY INC., will comply with Florida statutes, rules and regulations and applicable TOWN codes and regulations to the work and services to be provided under this Agreement and the Consolidated Plan, as a condition precedent to the release of such funds.

ARTICLE 3 – PROJECT: MOBILE HOME REPAIR OR REPLACEMENT PROGRAM

3.1 ADOPT A HURRICANE FAMILY INC., agrees to provide services for the implementation of the Disaster Recovery Initiative (DRI) Project consistent with the General Scope of Services specifically set forth in Exhibit "A," and Exhibit "B" attached and by this reference made a part of this Agreement. Additionally, the ADOPT A HURRICANE FAMILY, INC., shall abide by, and comply with the requirements contained in the DCA Exhibit 4 entitled "Florida Department of Community Affairs 2005 Disaster Relief Construction Contracts Supplemental Conditions" herein made a part of this Agreement by Reference.

ADOPT A HURRICANE FAMILY INC., agrees to implement the General Scope of Services immediately upon TOWN'S notice, and shall provide the agreed services for the duration of this Agreement's term.

3.2 ADOPT A HURRICANE FAMILY INC., agrees that funds received will only be used to assist in the repair of wind-storm rated mobile homes; or, in the event an existing mobile home in need of repair is not wind-storm rated, or can not be brought up to Code, a new and/or refurbished mobile/manufactured home will be used to replace the existing unit. The funds to be expended by ADOPT A HURRICANE FAMILY INC., shall cover the cost of removal of the existing sub-standard unit, purchase and transport (delivery) of a new and/or refurbished unit, and installation.

3.3 ADOPT A HURRICANE FAMILY INC., agrees that the TOWN will carry out

periodic monitoring and evaluation activities as determined necessary by the TOWN. Such evaluation will be based on the terms of this Agreement, comparisons of planned versus actual progress relating to Project(s) scheduling, budget, in-kind contributions and output measures. Upon request ADOPT A HURRICANE FAMILY INC., agrees to furnish to the TOWN or its designee, such records and information, including ADOPT A HURRICANE FAMILY INC., shall submit quarterly and final reports, and at other times upon the request of the TOWN.

ARTICLE 4 - TERM OF AGREEMENT

This Agreement shall commence upon full execution by both Parties and shall end on March 31, 2009, unless terminated earlier as provided for herein.

ARTICLE 5 - FUNDING AND METHOD OF PAYMENT AND PROVISION RELATING TO THE USE OF THE FUNDS

- 5.1 The maximum amount payable by TOWN under this agreement shall be One Million Two Hundred Seventy-Five Thousand and 00/100 dollars (\$1,275,000). ADOPT A HURRICANE FAMILY INC., shall be permitted to utilize not more than One Hundred Fifty-Three Thousand and 00/100 (\$153,000) for service delivery costs. Such service delivery costs shall be deducted from the \$1,275,000 maximum amount payable as hereinabove provided.
- 5.2 ADOPT A HURRICANE FAMILY INC., shall provide TOWN with an executed original of any contracts authorizing the work to be done on the Project.
- 5.3 ADOPT A HURRICANE FAMILY INC., shall submit a certified copy of the purchase order authorizing the services for which it is invoicing.
- 5.4 ADOPT A HURRICANE FAMILY INC., shall submit a certified copy of the contractor's invoice stating the services rendered and the date the services were rendered.
- 5.5 ADOPT A HURRICANE FAMILY INC., or the authorized representative shall certify that the work that is being invoiced has been completed.
- 5.6 ADOPT A HURRICANE FMAILY INC., shall disclose to TOWN any and all third party funding, whether public or private, for the Project. No TOWN funding shall be used to supplant existing third party funding.
- 5.7 Upon receipt of invoices, reports and other materials, the TOWN shall review such bid awards, contract, reports and invoices to determine whether the items invoiced have been completed and that the invoiced items are sufficient for payment.
- 5.8 ADOPT A HURRICANE FAMILY INC., agrees to complete installation of all

units within the term of this Agreement as provided in Article 4. All funds not expended within the term of this Agreement shall remain in the custody and control of the TOWN or BROWARD COUNTY.

ARTICLE 6 - ASSURANCE

- 6.1 ADOPT A HURRICANE FAMILY INC., agrees to comply with all applicable Federal, State, County and Local laws, ordinances, and codes and regulations, including but not limited to 24 CFR 24 Part 92, as may be amended from time to time. Any conflict or inconsistency between the above Federal, State, or County guidelines or regulations, this Agreement shall be resolved in favor of the more restrictive guidelines or regulations.
- 6.2 ADOPT A HURRICANE FAMILY, INC., agrees to act in accordance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which states that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives State financial assistance and will immediately take any measures necessary to effectuate this Agreement.
- 6.3 ADOPT A HURRICANE FAMILY INC., agrees, if applicable, to inform affected persons of the benefits, policies, and procedures provided for under CDBG regulations.
- 6.4 ADOPT A HURRICANE FAMILY INC., agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
- 6.5 ADOPT A HURRICANE FAMILY INC., agrees further that it shall be bound by these standard terms and conditions contained in this Agreement and such other rules, regulations or requirements as TOWN may reasonably impose, in addition to the aforementioned assurances provided at, or subsequent, to the execution of this Agreement by the Parties.
- 6.6 ADOPT A HURRICANE FAMILY INC., agrees to act in accordance with Section 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 in addressing the problem of discrimination against individuals with disabilities in such areas as employment, housing, public accommodations, education, and transportation.
- 6.7 ADOPT A HURRICANE FAMILY INC., shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in State and local government services, in the course of providing any services funded in whole or in part by TOWN.

ARTICLE 7 - FINANCIAL RESPONSIBILITY

- 7.1 ADOPT A HURRICANE FAMILY INC., gives TOWN or their authorized representative, access to and the right to examine all records, books, papers, or documents relating to the performance of this Agreement.
- 7.2 ADOPT A HURRICANE FAMILY INC., agrees that if it or its subcontractors have caused any funds to be expended in violation of this Agreement, ADOPT A HURRICANE FAMILY INC., shall be responsible to refund such money in full to TOWN, and if this Agreement is still in force, any subsequent request for payment shall be withheld by TOWN until paid.
- 7.3 ADOPT A HURRICANE FAMILY INC., agrees and understands that all funding authorization through CDBG DRI FUNDS shall be used only for eligible activities specifically outlined in this Agreement. ADOPT A HURRICANE FAMILY INC., shall demonstrate significant material progress within the timetable in Exhibit "B", attached and by reference made a part of this Agreement.
- 7.4 In the event ADOPT A HURRICANE FAMILY INC., does not materially progress to accomplish the General Scope of Services under this Agreement, failing to evidence or commence within this Agreement's term, the remaining balance of funds established for ADOPT A HURRICANE FAMILY INC., shall revert to TOWN as provided in this Agreement.
- 7.5 ADOPT A HURRICANE FAMILY INC., agrees to submit all Invoices for CDBG DRI funds in accordance with the terms and conditions of this Agreement and any rules and regulations incorporated herein.
- 7.6 ADOPT A HURRICANE FAMILY INC., shall have an adequate financial system and internal fiscal controls in accordance with TOWN requirements.

ARTICLE 8 - INDEMNIFICATION AND INSURANCE

- 8.1 ADOPT A HURRICANE FAMILY INC., shall indemnify and hold the TOWN harmless against any and all liability arising from ADOPT A HURRICANE FAMILY INC., activities related to providing services as defined by this Agreement in Exhibit "A" attached hereto.
- 8.2 ADOPT A HURRICANE FAMILY INC., shall maintain throughout the term of this Agreement any and all applicable insurance required by Florida law and shall furnish to the TOWN written verification of such insurance upon request by the TOWN.

ARTICLE 9 - TERMINATION

- 9.3 This Agreement shall commence upon execution by all parties, and shall end on

March 31, 2009 unless terminated earlier pursuant to the terms of this Agreement.

ARTICLE 10 - SUSPENSION OF PAYMENTS

The Parties agree that the following events are sufficient cause for suspension of payments. Such events include, but are not limited to:

- 10.1 Ineligible use of CDBG Disaster Recovery Initiative (DRI) Funds; or
- 10.2 Submittal of incorrect, incomplete or fraudulent reports in any material respect.

ARTICLE 10a – NOTICE

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR TOWN:

Shirley Taylor-Prakelt, Director
Housing and Community Development
4700 Southwest 64th Avenue, Suite D
Davie, Florida 33314

FOR ADOPT A HURRICANE FAMILY INC.:

Craig Vanderlaan, Executive Director
Adopt a Hurricane Family, Inc.
8730 NW 18th Street
Pembroke Pines, Florida 33024

ARTICLE 11 - MISCELLANEOUS

- 11.1 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT. ADOPT A HURRICANE FAMILY INC., shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. SUB-RECIPIENT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by TOWN, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable

regulations, guidelines, and standards. In addition, ADOPT A HURRRICANE FAMILY INC., shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility. ADOPT A HURRICANE FAMILY INC.'S decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

- 11.2 INDEPENDENT CONTRACTOR. ADOPT A HURRICANE FAMJILY INC., is an independent contractor under this Agreement. Services provided by ADOPT A HURRICANE FAMILY INC., shall be performed by employees of ADOPT A HURRICANE FAMILY INC., subject to supervision by ADOPT A HURRICANE FAMILY INC.,, and shall not be deemed officers, employees, or agents of TOWN Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of ADOPT A HURRICANE FAMILY INC., which policies of ADOPT A HURRICANE FAMILY INC., shall not conflict with TOWN or State of Florida policies, rules or regulations relating to the use of these funds provided for under this Agreement.
- 11.3 PRIOR AGREEMENTS SUPERSEDED. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to these matters; and, the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicated upon any prior representations or agreements whether oral or written.
- 11.4 AMENDMENTS. TOWN may, in its discretion, amend this Agreement to conform to changes in Federal, State, Local, County and/or CDBG DRI guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Town Council, that change the term of the Agreement, reduce the funding, or change the Project, so long as the Project consists of eligible activities under 24 CFR Part 92. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 11.5 ASSIGNMENT. ADOPT A HURRICANE FAMILY INC., shall not transfer or assign the performance of services called for in this Agreement.

- 11.6 REPORTS, PLANS AND OTHER AGREEMENTS. All reports, plans, surveys, Information, documents, maps and other data procedures developed, prepared, assembled, or completed by ADOPT A HURRICANE FAMILY INC., for the purposes of this Agreement shall become the property of TOWN without restriction, reservation or limitation of their use and shall be made available by ADOPT A HURRICANE FAMILY INC., at any time upon request by TOWN. Upon completion of all work contemplated under this Agreement, copies of all of the above data shall be delivered to the Contract Administrator.
- 11.7 CONFLICT OF INTEREST. ADOPT A HURRICANE FAMILY INC., covenants that no person who presently exercises any functions or responsibilities in connection with the Agreement or any individual has any personal financial interest, and for one (1) year following Project completion or Agreement's term, whichever is later. Any possible conflicting interest on the part of ADOPT A HURRICANE FAMILY INC., its employees, or agents, shall be disclosed in writing to TOWN.
- 11.8 CONFLICTS. Neither ADOPT A HURRICANE FAMILY, INC., nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with the ADOPT A HURRICANE FAMILY INC., loyal and conscientious exercise of judgment related to its performance under this Agreement. ADOPT A HURRICANE FAMILY INC., agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of TOWN in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event ADOPT A HURRICANE FAMILY INC., is permitted to utilize subcontractors to perform any services required by this Agreement, ADOPT A HURRICANE FAMILY INC., agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.
- 11.9 EXECUTION. This document shall be executed in three (3) counterparts, each of which shall be deemed to be an original.
- 11.10 CHOICE OF LAW; WAIVER OF JURY TRIAL. Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise, each Party waives any rights it may have to a trial by jury of any such litigation.

11.11 **THIRD PARTY BENEFICIARIES.** Neither ADOPT A HURRICANE FAMILY INC., nor TOWN intends to directly or substantially benefit a third party by this Agreement, except the Hurricane Victim, whose property is being improved. Notwithstanding that exception, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement, except as provided herein.

IN WITNESS WHEREOF, the TOWN OF DAVIE and ADOPT A HURRICANE FAMILY, INC., have executed this agreement the day and year first above written.

TOWN OF DAVIE

ATTEST:

BY: _____
Mayor/Council Member

Russell Muniz, CRM, City Clerk

APPROVED AS TO FORM:

Town Attorney

State of Florida
County of Broward

The Foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the ____ day of _____, 2007 by Russell Muniz, CRM, City Clerk and Tom Truex, Mayor, respectively.

Notary Public, State of Florida

NOTARY PUBLIC
SEAL OF OFFICE

Printed, typed or stamped name of Notary Public exactly as commissioned

Individuals who signed are personally known: no identification produced.

Adopt a Hurricane Family, Inc.

Witness

By: _____

Print Name:

Title: _____

State of _____

County of _____

On this, the ____ day of _____, 2007, before me, the undersigned Notary Public of State of _____, the foregoing instrument was acknowledged by _____ (name of corporate officer), _____ (title), of _____ (name of corporation), a _____ (state of corporation) corporation, on behalf of the corporation.

WITNESS my hand

And official seal

Notary Public, State of Florida

Printed, typed or stamped name of Notary Public exactly as commissioned

Personally known to me or produced identification

EXHIBIT A
General Scope of Services

Mobile Home Repair or Replacement Program: Repair mobile homes, or, if mobile home can not be brought up to code (i.e., wind-storm rated) a new or refurbished mobile home will be purchased to replace the existing unit. The DRI Grant will cover the cost of removal of the sub-standard unit, purchase of new unit, and installation.

Justification: After Hurricane Wilma in 2005, 832 mobile homes were completely destroyed or severely damaged. Many Davie residents were uninsured or did not receive sufficient assistance to repair damages. Many of these mobile home residents have been displaced, are living in over-crowded or sub-standard situations, and many are in peril of becoming homeless. This program will provide much needed affordable, safe, secure and, sustainable housing to these displaced mobile home residents.

Scope of Services: A minimum of 44 Davie residents will be assisted during the term of this Agreement. Adopt a Hurricane Family, Inc., in cooperation with the Town's Housing and Community Development Director, will develop program guidelines; and, will, at a minimum, be responsible for the following items:

- Verification that clients are Davie Hurricane Wilma Victims
- Third-party income-verification (banks statements, employment, etc.)
- Case management of eligible clients
- Contracting for the repair of eligible mobile homes
- Contracting for the demolition and removal of mobile homes determined to be not suitable for repair
- Contracting the complete transport and set-up of the FEMA mobile homes
- Verification of mobile home park approval for placement of FEMA mobile homes for eligible Davie Hurricane Wilma Victims

Budget: Service Delivery Fee - \$153,000. Sample Per Unit Cost Analysis follows:

| Description | Est. Cost | Comments |
|-----------------------------|-------------|--|
| Mobile Home Cost | \$ 500 | FEMA MSP Cost - New fully furnished units |
| Demolition of Unsafe Unit | \$ 2,500 | Assumed for all units |
| Permitting Process | \$ 0 | Standard \$575 fee to be waived by Town of Davie |
| Set-up of new unit | \$ 4,800 | Includes block, level, tie-down, plumbing hook-up & running gear |
| Base Pad installation | \$ 1,000 | Rock or shale as required by Code |
| A/C Installation/Connection | \$ 1,200 | Reconnection of existing units - New mobiles have interior coils |
| A/C Slab | \$ | Outside units still boxed. |

| | | |
|----------------------|---------------|---|
| | 150 | |
| | \$ | |
| Electrical Hook-Up | 2,000 | Assumes no pedestal needed - existing site to be used |
| | \$ | |
| Skirting | 1,000 | As required for all units |
| | \$ | |
| Stairs/Railings | 950 | 2 Sets per mobile |
| | \$ | |
| Stair Pads/Slabs | 450 | 2 Sets per mobile |
| | \$ | |
| Exterminator | 250 | Spray site before installation |
| | \$ | |
| Local Transportation | 1,000 | Transfer from drop-point to final mobile home park |
| | \$ | All units delivered to date are single-wide 64' models with 3 |
| Furniture Included | 0 | Bdrm/1 Bath |
| | | Sofa, chair, coffee/side table, 7-pc dinettes, F/S beds, dresser, night |
| | | stds |
| | \$ | |
| Formaldehyde Testing | 165 | Likely unnecessary but precautionary |
| | \$ | |
| Miscellaneous | 1,000 | Contingency |
| | \$ | |
| TOTAL | 16,965 | Per Unit Cost x 66 units = \$1,122,000 |

Exhibit B

Project Schedule/Timeline Table

The table below lists the main work tasks required to complete project objectives before the term of the agreement expires.

| Work Task | Start-Up Date | Date of Completion |
|--|----------------------|---------------------------|
| Secure Contract Services and Costs | December 19, 2007 | February 29, 2008 |
| Advertisement | January 6, 2008 | January 20, 2008 |
| Client Intake and Qualification (3 rd Party Income Verification) | January 7, 2008 | April 7, 2008 |
| Complete Placement: (Transport and Complete Set-up of Units) | February 4, 2008 | March 31, 2009 |

**FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
2005 DISASTER RELIEF
CONSTRUCTION CONTRACTS SUPPLEMENTAL CONDITIONS**

The supplemental conditions contained in this section are intended to cooperate with, to supplement, and to modify the general conditions and other specifications. In case of disagreement with any other section of this contract, the Supplemental Conditions shall govern unless noted otherwise in that section.

1. Termination (Cause and Convenience)
2. Access to Records
3. Retention of Records
4. Remedies
5. Environmental Compliance (Clean Air Act and Clean Water Act)
6. Energy Efficiency
7. Special Equal Opportunity Provisions
8. Conflict of Interest
9. Federal Labor Standards Provisions (Davis-Bacon, Copeland, and Contract Work Hours Act)
10. Guidance to Contractor for Compliance with Labor Standards Provisions

1. Termination (Cause and/or Convenience)

(a) This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

(1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and

(2) an opportunity for consultation with the terminating party prior to termination.

(b) This contract may be terminated in whole or in part in writing by the local government for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in 1 (a) above.

(c) If termination for default is effected by the local government, an equitable adjustment in the price for this contract shall be made, but

(1) no amount shall be allowed for anticipated profit on unperformed services or other work, and

(2) any payment due to the contractor at the time of termination may be adjusted to cover any additional costs to the local government because of the contractor's default.

If termination for convenience is effected by the local government, the equitable adjustment shall include a reasonable profit for services or other work performed for which profit has not already been included in an invoice.

For any termination, the equitable adjustment shall provide for payment to the contractor for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the contractor relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate. (d) Upon receipt of a termination action under paragraphs (a) or (b) above, the contractor shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the local government all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the contractor in performing this contract, whether completed or in process.

(e) Upon termination, the local government may take over the work and may award another party a contract to complete the work described in this contract.

(f) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the local government. In such event, adjustment of the contract price shall be made as provided in paragraph (c) above.

2. Access to Records

The local government, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

3. Retention of Records

The contractor shall retain all records relating to this contract for five years after the local government makes final payment and all other pending matters are closed.

4. Remedies

Unless otherwise provided in this contract, all claims, counter-claims, disputes and other matters in question between the local government and the contractor, arising out of or relating to this contract, or the breach of it, will be decided by arbitration, if the parties mutually agree, or in a Florida court of competent jurisdiction.

5. Environmental Compliance

If this contract exceeds \$100,000, the contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The contractor shall include this clause in any subcontracts over \$100,000.

6. Energy Efficiency

The contractor shall comply with any mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

7. SPECIAL EQUAL OPPORTUNITY PROVISIONS

A. Activities and Contracts Not Subject to Executive Order 11246, as Amended

(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under.)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer seeking forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex or national origin.

(3) Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (contracts/subcontracts above \$10,000)

(1) Section 202 Equal Opportunity Clause

During the performance of this contract, the contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the Rules, Regulations, and Relevant Orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the Provisions of the sentence immediately preceding Paragraph (a) and the provisions of Paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sections of noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(2) Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000.)

(a) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The Contractor's compliance with Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3.

(b) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(c) As used in this Notice, and in the contract resulting from the solicitation, the "covered area" is the county in which the contract work is being undertaken.

(3) Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

(a) As used in these specifications:

1. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
2. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
3. "Employer identification number" means the Federal Social Security number used on the Employer's quarterly Federal Tax Return, U. S. Treasury Department Form 941.

(4) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(5) In order for the nonworking training hours of apprentices and trainees to be counted such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

(6) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensively as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel carry out the Contractor's obligation to maintain a working environment.

2. Maintain a current file of the names, addresses, and telephone numbers of each walk-up applicant indicating a recruitment source, or community organization and of what action was taken with respect to such individuals. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
3. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement any person sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
4. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include upgrading apprenticeship, trainee and other programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
5. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- 6.. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
7. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
8. Direct its recruitment efforts, both oral and written to community organizations, and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

9. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3.
10. Conduct, at least annually, an inventory and evaluation for promotional opportunities and encourage employees to seek or to prepare for, through appropriate training, etc., such opportunities.
11. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
12. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
13. Document and maintain a record of all solicitations of offers from subcontractors, construction contractors and suppliers, including circulation of solicitations to associations and other business associations.
16. Conduct a review, at least annually, of all supervisors adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(7) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7) 1 through 16). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7) 1 through 16 of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's noncompliance.

(8) The Contractor shall not use affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(9) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(10) The Contractor shall carry out sections and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(11) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensively as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its effort to ensure equal employment opportunity. If the Contractor fails to comply with the requirement of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(12) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(13) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance and upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. Certification of Nonsegregated Facilities (over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/She certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work eating areas, time clocks, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, or otherwise. He/She further agrees that (except where he/she has obtained identical certifications from proposed subcontractors prior to the award of subcontractors have submitted identical certifications for specific time periods).

D. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

E. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

(1) The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S. C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(2) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 134, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

(3) The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(4) The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(5) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors or subcontractors, its successors and assigned to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

G. Section 503 Handicapped (Contracts \$2,500 or Over)

(1) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for

employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(5) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or their contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(6) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

H. Age Discrimination Act of 1975

No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program, or activity receiving Federal Financial assistance.

8. CONFLICT OF INTEREST OF OFFICERS OR EMPLOYEES OF THE LOCAL JURISDICTION, MEMBERS OF THE LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS

No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this contract, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.

9. FEDERAL LABOR STANDARDS PROVISIONS

(Davis-Bacon Act, Copeland Act, and Contract Works Hours & Safety Standards Act)

The Project to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A.1.(I) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor, Washington, D. C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event that the Contractor, the laborers or mechanics to be employed in the Classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designed for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that the additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the

construction or development of the project), all or part of the wages required by the contract, HUD, or its designee may, after written notice to the contractor, sponsor, applicant, or owners, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3.(i) Payrolls and Basic Records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owners, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U. S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without

rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Option Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A. 3(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3(I) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4.(i) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship

program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program the contract will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contract shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination, Debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by referenced in this contract.

9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.

10.(i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of . . .influencing in any way the action of such Administration. . .makes, utters or publishes any statement, knowing the same to be false. . .shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in the paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a

territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54.83 State 96).

(3) The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

11. Guidance to Contractor for Compliance with Labor Standards Provisions

a) Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification **must** be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same

classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

b) Complying with Minimum Hourly Amounts

1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the "Rates" and "Fringe Benefits" (if any) columns of the applicable wage decision.

2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the "Rates" and "Fringe Benefits" columns.

3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

c) Overtime

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime; the Contract Work Hours Act contains the overtime requirement and uses "basic rate of pay" as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)

d) Deductions

Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

e) Classifications Not Included in the Wage Decision

If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the State agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

f) Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

g) Sole Proprietorships / Independent Contractors / Leased Workers

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as "owner" is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions

of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

h) Apprentices / Helpers

A worker may be classified as an apprentice **only if participating in a federal or state program**. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the "trade" depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a "helper". As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

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FEMA

U.S. Department of Homeland Security
FL Long Term Recovery Office
36 Skyline Drive
Lake Mary, FL 32746

November 15, 2007

Shirley Taylor-Prakelt, Director
Housing and Community Development
Town of Davie
4700 SW 64th Avenue,
Davie, FL 33314

Subject: Confirmation-Adopt-a-Hurricane Family Inc., "Sole Source Provider" for the FEMA Modified Sales Program in Broward County

The purpose of this letter is to clarify FEMA's Florida Long Term Recovery Office in regards to our conversation in my June 6, 2007 e-mail correspondence, and your e-mail of November 15, 2007, which is self explanatory. The organization Adopt-a-Hurricane Family Inc., (AHF) is the only organization that has operated the "Modified Sales Program" in Broward County; thus, they are the "sole-source provider" in regard to the provision of these services.

Under FEMA's Modified Sales Program, only a qualified non-profit organization with a 501(c) 3 status can accept possession of FEMA mobile homes, and subsequently transfer them to qualified Hurricane Wilma Victims. AHF was selected by FEMA based on their meeting the required 501(c) 3, the experience in disaster recovery; and they have successfully administered this program.

If you have any further questions regarding this letter or if I can provide any further assistance, please feel free to contact me at (407) 268-8802.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Serrano".

Waldemar Serrano
Community Action Specialist

cc. Scott Morris, Director of FEMA Long-Term Recovery