
Louisiana Housing Finance Agency



Legal

Christine Bratkowski, Keith Cunningham

June 6, 2007

Table of Contents

Memorandum to Commissioners	3
Preliminary Agenda	4
Katrina Cottages Cooperative Endeavor Agreement and FEMA AHPP Agreement	5
Update on Willowbrook and Gaslight	46
Year 15 Policy and Procedures (Qualified Contracts) IRS Code Section 42 (h)(6)(E)(i)(II)	47
Requests for Proposals - RFP's	48
Minutes.....	49

M E M O R A N D U M

To: Commissioner Allison Jones, Chairman
Commissioner Mark Madderra
Commissioner Lisa Woodruff-White
Commissioner Adell Brown, Jr.
Commissioner Guy Williams

From: Christine Bratkowski and Keith Cunningham, Legal Department

Date: June 6, 2007

Re: Legal Committee Meeting

There will be a Legal Committee meeting at 9:00 a.m., Wednesday, June 13, 2007, in Committee Room 1, at Louisiana Housing Finance Agency, 2415 Quail Drive.

If you have any questions or concerns, please contact us.

June 6, 2007

LEGAL COMMITTEE MEETING

A regular meeting of the Louisiana Housing Finance Agency Legal Committee will be held on Wednesday, June 13, 2007, at 9:00 a.m., Louisiana Housing Finance Agency, Committee Room 1 located at 2415 Quail Drive, Baton Rouge, LA, by order of the Chairman.

Preliminary Agenda

1. Call to order, roll call and introduction of guests
2. Approval of the minutes of May 9, 2007 Committee Meeting
3. Update on Katrina Cottages Cooperative Endeavor Agreement and FEMA AHPP Agreement
4. Update on Willowbrook and Gaslight (Materials to follow in Final Board packet.)
5. Discussion on Year 15 Policy and Procedures (Qualified Contracts) IRS Code Section 42(h)(6)(E)(i)(II) (Contract to follow in Final Board materials.)
6. Request for Proposals (RFP's) (Materials to follow in Final Board packet.)
7. Other Business
8. Adjournment

Milton J. Bailey, President

PROGRAM NAME: Alternative Housing Pilot Program

CFDA: 97.087

Comment [FE1]: Double check this

GRANTEE: Alabama, Louisiana, Mississippi, and Texas

AGREEMENT NO.: EMW-2007-GR

Comment [FE2]: Double check this

AMENDMENT NO.:

ARTICLE I – AUTHORIZATION:

- A. Homeland Security Act of 2002, H.R. 5005-8, P.L. 107-296
- B. P.L. 109-234, Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, and Hurricane Recovery, 2006

ARTICLE II – PROJECT DESCRIPTION

The Grantee shall perform the work as described in the Program Narrative/Project Proposal, which is included as part of the application package dated _____, including revisions dated _____.

ARTICLE III – PERIOD OF PERFORMANCE/BUDGET PERIOD

- A. Performance Period: The Performance Period shall be a maximum of forty eight (48) months beginning with the accomplishment of the project activities and ending with the multi-year evaluation. The period of performance will begin on _____, 2007 and end on _____, 2009, and will correspond to the applicable approved Budget Period, unless extensions have been authorized.
- B. Costs: The Grantee shall only incur costs or obligate funds within the Budget Period for approved activities or within the approved Period of Performance if continuation award has been authorized. Any additional funding under this Grant is subject to the availability of funds and the needs of the Federal Government.
- C. Program Evaluation: The Grantee shall comply with the terms and conditions of the grant until the Department of Housing and Urban Development and the Federal Emergency Management Agency have completed the Alternative Housing Pilot Program Study, projected to end in 2011.

ARTICLE IV – AMOUNT OF AWARD

Approved Budget: The approved budget for this award by category is:

← → Formatted: Bullets and Numbering

Object Class		Total
Personnel		
Fringe Benefits		
Travel		
Equipment		
Supplies		
Contractual		
Construction		
Other		
TOTAL DIRECT		
Indirect Charges		
TOTAL BUDGET		
FEDERAL SHARE		

ARTICLE V – REQUEST FOR PAYMENT

- A. The Grantee may be paid in advance, or reimbursed by completing the SF 270, Request for Advance/Reimbursement. In accordance with Treasury regulations at 31 CFR Part 205, the Grantee shall maintain procedures to minimize the time elapsing between the transfer of funds and the disbursement of said funds.
- B. The Grantee may use the Internet at www.omb.gov to download the Standard Forms 1199A and 270.
- C. AHPP shall use a Two-Part Funding Method.

← → Formatted: Bullets and Numbering

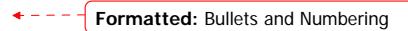
- 1. The Grantee may receive up to 50% of the grant funding at the time of award.
 - a. With these funds the Grantee conducts preconstruction planning, site survey and acquisition (not including site preparation) and conceptual designs.
 - b. Following applicant submission of pre-construction site plans, conceptual designs or individual placement site lists, FEMA will complete the following processes:

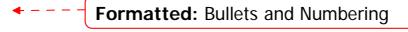
← → Formatted: Bullets and Numbering

National Environmental Policy Act (NEPA)  Formatted: Bullets and Numbering

Compliance

- i. National Historic Preservation (NHPA) Compliance
- ii. Endangered Species Act and other environmental compliance requirements
- iii. Building Science Review

c. FEMA monitors progress and verifies full compliance.  Formatted: Bullets and Numbering

d. Only after activities included, but not limited to those, listed in Article VI shall the Grantee be permitted to access the second half of its grant award, and move towards final construction of projects.  Formatted: Bullets and Numbering

2. After the grantee has identified exact locations for the housing, and completed all pre-preconstruction activities, including legally mandated reviews, the remaining grant funding is available as needed.
3. In order to access funds under either phase described in Article XI, the Grantee must comply with the **Cash Management Act** and demonstrate adherence to the timetables and activities found in its AHPP Program Management Plan (see Article VI for details).  Comment [FE3]: Grants – please elaborate

ARTICLE VI – PERFORMANCE REPORTING

The Grantee shall submit quarterly performance reports which provide updates on the progress on agreed-upon goals. The performance reports shall include information covering the following components/activities:

A. AHPP Project Management Plan

1. General. The AHPP Project Management Plan consists of a series of documents and submissions that are reviewed and approved by FEMA to govern the Grantee's AHPP project under this Grant Agreement.
2. **Components of the AHPP Project Management Plan.** The Grantee's Project Management Plan (AHPP Plan) includes each of the following components, as approved by FEMA. (See Appendix A for AHPP Program Management Template, which provides a format for this document). Because some of these documents may be submitted to FEMA for approval throughout the implementation of the Grant Agreement, an approved AHPP Plan shall be deemed to mean any or all of the following documents that have been submitted to FEMA on a timely basis, and that are approved by FEMA:

a. AHPP Plan that guides implementation of the project  Formatted: Bullets and Numbering

b. Disposition Plan for Units

← - - - Formatted: Bullets and Numbering

c. The Grantee's AHPP application, submitted in response to the AHPP Grant Guidance and Application Kit.

d. Requests for funds for predevelopment costs

e. Supplemental submissions that FEMA requires the Grantee to submit the following:

← - - - Formatted: Bullets and Numbering

i. Grantee's responses to the FEMA Office of Grant's Management Negotiation Email

← - - - Formatted: Bullets and Numbering

ii. Certifications and assurances provided by the Grantee in writing.

← - - - Formatted: Bullets and Numbering

iii. Program Schedule, in accordance with the timeframes established in the Articles of Agreement, and which uses a commonly used scheduling software.

iv. AHPP Budget (for all phases, and with drawdown plan)

← - - - Formatted: Bullets and Numbering

v. Any other information or documentation that is not otherwise required under any other component of the AHPP Plan that is requested by FEMA to supplement or refine information provided in the AHPP Application or to meet any terms or conditions of the Grant Agreement.

← - - - Formatted: Bullets and Numbering

3. Consistency with AHPP Plan. Any submissions provided to FEMA as part of the AHPP Plan under paragraph (2) of this Article, and that are approved in writing by FEMA, will be deemed to amend the AHPP Plan.

← - - - Formatted: Bullets and Numbering

4. Incorporation into Grant Agreement. As each component of the AHPP Plan is approved in writing by FEMA, it will be deemed to be incorporated into this Grant Agreement

← - - - Formatted: Bullets and Numbering

5. Time Periods for Implementation. The Grantee agrees to implement its AHPP Plan in accordance with the approved Program Schedule, including but not limited to the following time periods:

← - - - Formatted: Bullets and Numbering

a. Grantee must submit its Supplemental Submissions, as required by paragraph (2) of this Article, to FEMA within 30 days from the date of FEMA's written request for the Supplemental Submissions, in form and substance acceptable to FEMA.

b. The Grantee must complete Phase 1 activities within 4 months of receiving the AHPP Award.

c. If the Grantee does not proceed within a reasonable time frame, FEMA may withdraw any unobligated grant amounts. FEMA shall redistribute any withdrawn amounts to one or more other applicants eligible for AHPP grants or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the AHPP Plan of the original Grantee.

B. Progress Reports

1. The purpose and scope of the grant - this section is usually the same from month to month unless the scope changes. Please note, the scope may only be changed with the approval of the FEMA Project Officer.
2. Overall progress - a sentence or two on the status of the project as of the current reporting period.
3. Substantive performance - a detailed explanation of the reporting period's activity under each of the agreed upon goals. If there has been no activity under a goal that reporting period, you write no activity was required during that period under the particular goal. With each subsequent reporting period, do not delete the previous periods narrative, simply start a new paragraph for the new month or two-week period.
4. Schedule of performance - a couple of sentences on where you are in the overall plan.
5. Work expected to be performed in the next reporting period - actual listing of what you are going to accomplish in the next quarter.
6. Actual and proposed changes in key staff - this is to keep a record of changes in staffing.
7. Problems and obstacles to progress - this section is intended to keep a record of problems. However, the Project Director should call the FEMA Project Officer immediately if a problem develops. Problems and obstacles should be addressed as soon as possible.
8. Deviations - In the event that there are deviations from the initial schedule of progress, the grantee must discuss them directly with the FEMA Project Officer. The grantee shall address how deviations impact the project, and make recommendations for managing the deviation.

← → Formatted: Bullets and Numbering

← → Formatted: Bullets and Numbering

ARTICLE VII – FINANCIAL REPORTING

A. Financial Status Report: The Grantee shall submit quarterly financial reports FEMA Form 20-10 (financial Status Report) to the Grants Management Branch, Office of Acquisition, Procurement & Grants. . Final Financial Status Reports are due 90 days after the close of the grant.

B. Report Submission: Submit the reports to the FEMA Headquarters office at:

DHS/FEMA
Grants Management Branch
Attn: Assistance Officer
500 C Street, SW,
5th Floor – Patriot Plaza Center
Washington, D. C. 20472

ARTICLE VIII – MAINTENANCE OF EFFORT

Funds approved under this Grant agreement shall be used to supplement and shall not be used to supplant State or local funds dedicated to this effort.

ARTICLE IX – GRANT MANAGEMENT OFFICIALS

Officials for the Grant Agreement are as follows:

- A. The Project Manager (PM), designated by the Grantee, is responsible for performance of the activities approved in the award:

The Project Manager is:

Name:
Title
Office
Address
Telephone
Fax
eMail Address

- B. The DHS Project Officer (PO) shall be the DHS staff member responsible for monitoring the completion of work and technical performance of the project or activities described in the application under the Project Description.

The DHS Project Officer is:

Name: Victoria Salinas
Title: Program Specialist
Office: DHS/FEMA - Recovery Division
Address: 500 C Street, SW, Room 400
Telephone: Washington, DC 20472
Fax: 202 – 646 - 4606
eMail Address: 202-646-
Victoria.salinas@dhs.gov

- C. The DHS Assistance Officer (AO) is the DHS official who has full authority to negotiate, administer and execute all business matters of the Grant award in concurrence with the Project Officer.

The Assistance Officer is:

Name: Sylvia A. Carroll
Title: Assistance Officer
Office: DHS/FEMA
Grants Management Branch
Address: 500 C Street, SW,
Fifth Floor – Patriot Plaza Center
Washington, DC 20472
Telephone: 202-646-3503
Fax: 202-646-4156
eMail Address: Sylvia.Carroll@dhs.gov

ARTICLE X – GRANT AWARD AMENDMENTS/BUDGETS

All budget and project narrative revisions shall be in compliance with Circular A-102, Grants and Cooperative Agreement to States and Local Governments, and 2 CFR, Part 225, (A-87), Cost Principles for State and Local Governments. This will also include 44 CFR Part 13, and 2 CFR Part 215 for the Administrative Regulations. In addition to these requirements, the Grantee shall submit and receive written prior approval before implementation for the following:

A. Budgets: The following conditions apply:

1. The Grantee shall follow prior approval requirements found in the Emergency Management and Assistance Regulations, 44 CFR Part 13.30, for construction grants. Transfers of funds between total direct cost categories and Program Categories in the approved budget shall receive the prior approval of DHS/FEMA Assistance Officer when such cumulative transfers among those direct cost categories and Program Categories are expected to exceed ten percent of the current total approved budget or result in a major change of scope. All changes, whether requiring prior approval or not, shall be noted in the Performance Reports and Closeout Documents.
2. No transfer of funds to agencies other than those identified in the approved grant agreement application shall be made without prior approval of the DHS/FEMA Assistance Officer.
3. If a Grantee estimates that it will have unobligated funds remaining after the end of the performance period, the Grantee should report this to FEMA Headquarters at the earliest possible time and ask for disposition instructions. Eligible uses of remaining funds will include demobilization of units (where appropriate), and supporting the HUD evaluation.
4. Need for additional funds. DHS is not obligated to provide additional funds prior to the submission and approval of consecutive continuation options based on satisfactory performance and availability of funds.

← - - - Formatted: Bullets and Numbering

B. Budget Revisions Process: Requests are not automatic. They must be submitted to the Assistance Officer and will also be reviewed by the Program Office. The final approval/denial will be in writing by the Grants Management Specialist or Assistance Officer. Budget Change requests can be submitted by priority mail, fax or email and the original signed FEMA Form 20-20 must be sent by priority mail. The request must contain the following information:

1. An explanation as to what the budget change entails.
2. If the budget change involves excess funding in one category due to over-estimating the costs, then please state this in your request and also address the need for moving the funding to another category. The 10% Budget Change Rules does apply to this type of a budget change.
3. If the request is due to a scope of work change that is within the main scope of work, please state this in your request along with addressing your changes and state why the changes are necessary. If you are requesting to a part of your scope of work please state why.
4. Please also submit a revised FEMA Form 20-20.

← - - - Formatted: Bullets and Numbering

C. Extension Requests: Requests for additional time extensions to the period of performance will be considered, but will not be granted automatically and must be supported by adequate justification in order to be processed. They must be submitted to the Grants Management Specialist, and will also be reviewed by the Project Officer. The final approval/denial will be in writing by the Grants Management Specialist or Assistance Officer. Approval of 2nd extensions require concurrence by the Program Director, and the Grants Management Branch Chief. When submitting an Extension Request all Financial and Performance Status Reports must be current, and the extension justification must be submitted or extension requests will not be processed. Extension requests can be submitted by priority mail, fax, or email and they must contain the following information:

1. Status of the ongoing activity.
2. An explanation as to why the activity could not be completed as required, actions taken to resolve any problems, and a description of performance measures that are necessary to complete the project.
3. An outline of remaining funds available that are necessary to complete the activity
4. An estimated completion date for the activity.
5. Extensions to the Period of Performance shall be authorized only in writing by DHS Assistance Officer.
6. There is no DHS obligation to provide additional funding as a result of time extensions approved.

← - - - Formatted: Bullets and Numbering

← - - - Formatted: Bullets and Numbering

ARTICLE XI – PROJECT ADMINISTRATION

As a contingency of the AHPP award, the Grantee must outline an acceptable plan to administer the program. The Grantee shall adhere to this Program Management Plan, referred to as the AHPP Plan, and deviations from it that are not approved by the FEMA Assistance Officer and DHS Project Officer may result in revocation of funds, cancellation of the grant, or stopping grant payments until program management issues are resolved to the adequate satisfaction of FEMA. See Article VI, 2 for additional details.

- A. Housing Eligibility Requirements –The Grantee may only house people in the following priority order (i.e., no individual/household in a lower priority category may receive an AHPP housing unit until ALL individuals/households in a higher priority category are met):
 - 1. Priority 1: Disaster victims who are pre-disaster residents of that State, and are currently eligible for FEMA financial or direct housing assistance.
 - 2. Priority 2: Disaster victims who are pre-disaster residents of that State, and currently receive Federal disaster housing assistance through other federal programs.
 - 3. Priority 3: Any other person in the state with on-going housing needs.
- B. Conditions of Occupancy - The resident should be clear (and agree to) the nature of the occupancy, ownership arrangements, and any other legal issues pertaining to the unit. As part of its application process, the grantee shall have all heads of household applying to receive an AHPP unit complete HUD's "Baseline Evaluation Survey" and sign a consent form indicating their agreement to participate in the HUD and FEMA multi-year evaluation, whether or not they receive a unit. Applicants will be informed that HUD's evaluation contractor may ask them to respond to up to four surveys over four years (even if they don't receive a unit). The survey data will be provided to HUD. For individuals selected to receive an AHPP unit or those not selected by living in another FEMA provided housing units, they will be required to make their units available (after receiving reasonable notice) for "unit quality and durability inspections." The Grantee shall advise all potential residents of AHPP units that occupancy of these units will result in FEMA considering the residents permanently housed, and ineligible for further disaster housing assistance from FEMA due to hurricanes Katrina and Rita. The Grantee shall ensure that all residents of AHPP units affirm that their housing needs have been met through AHPP, and they will no longer seek FEMA direct or financial housing assistance due to Hurricanes Katrina and Rita.
- C. Resident Placement Requirements - The Grantees are responsible for prioritizing who will be receiving AHPP housing, within the FEMA Prioritization Guidelines of Paragraph A of this Article. The Grantees must develop an equitable housing strategy, referred to as a Resident Placement Plan. The Resident Placement Plan must ensure that a diverse population will be housed which includes, but is not limited to, renters, homeowners, people with disabilities. The Grantee shall allow HUD to monitor and collect data on the

← - - - Formatted: Bullets and Numbering

screening, identification, selection, and placement of individuals and households into AHPP units. The Grantee must receive FEMA approval that their selection methods are consistent with HUD's evaluation requirements (a Grantee that selects program participants randomly from an applicant list will automatically be determined to meet HUD's evaluation requirements).

D. Timing Requirements - FEMA reserves the right to withdraw grant awards if the Grantee cannot expediently implement the project. See Article VI, Paragraph 5 for additional details for Timing Requirements of this grant.

1. The Grantee must submit its Supplemental Submissions, as required by paragraph (2) of this Article, to FEMA within 30 days from the date of FEMA's written request for the Supplemental Submissions, in form and substance acceptable to FEMA.
2. The Grantee must identify land for all planned units, and begin implementing the project within two months of grant award, unless otherwise agreed upon with FEMA.
3. The Grantee must complete Phase 1 activities within 4 months of receiving the AHPP Award.
4. The Grantee understands FEMA places no restriction on the length of time a person can live in an AHPP unit.

← - - - Formatted: Bullets and Numbering

E. Ownership of the Units – The Grantee is the owner of the units. The Grantee has the right to transfer ownership of the units to local governments, individuals, non-profit organizations, or other entities. If the Grantee chooses to transfer ownership of the units to another entity or an individual, the new owner is subject to the same rules, regulations, stipulations, and articles of agreement until the AHPP multi-year evaluation is completed. These requirements will be in an occupancy agreement, deed restrictions, or contract terms. The Grantee has the authority to donate, lease, rent, or otherwise have people occupying AHPP housing units. Refer to Allowable Uses of Revenue Generated from AHPP (Paragraph I) for rules governing monies generated by lease, rent or sale of units.

F. Ownership of Unit and Land Tenure – If the Grantee transfers ownership of the unit to an individual, it should protect the titles through any of a variety of strategies including, but not limited to title insurance, so the resident (new owner) is protected as well as a former owner that surfaces at some point in the future. Further, the Grantee shall ensure either that the individual to whom the unit is transferred:

1. has clear (or protected) title to the unit and to the land in "fee simple"; or,
2. has a long-term leasehold on the land for no less than 20 years that is recorded in the appropriate registry of deeds; or
3. is receiving a unit to be placed on leased land in a manufactured home leasehold community and/or park that is appropriately registered and licensed by the State or other unit of local government that typically licenses and regulates such communities in the state. In any event, the owner of the unit can move the unit off the leased community pursuant to the terms and conditions of the leasing agreement.

← - - - Formatted: Bullets and Numbering

- G. Disposition of Units – The Grantee must adhere to the disposition plan outlined in its FEMA approved AHPP Plan. Unless a housing unit is no longer functional, the disposition of the unit should result in a disaster victim occupying the unit, be it through direct ownership of the AHPP unit by a disaster victim, through an entity (i.e. non-profit, housing authority, etc.), or other reasonable means. If the state seeks to dispose of a unit to someone without on-going housing needs due to Hurricanes Katrina or Rita, then it must ensure that disaster victims no longer have a demand for AHPP units; and FEMA must certify that this action is permissible.
- H. Allowable Uses of AHPP Funds - AHPP funds may not be used to pay for amenities such as telephone and cable television costs. Grant funds may be used to pay for the cost of water, sewer, solid waste, electricity or general real estate taxes during the period of performance, provided those costs were included in the official project budget . The Grantee agrees that if cost estimates were low, the grantee will receive no new money to cover these costs and should therefore plan accordingly. It is the responsibility of the grantee to implement and maintain effective mechanisms for paying these types of costs.
- I. Allowable Uses of Revenue Generated from AHPP - The Grantee shall use 100% of revenue generated from this program for affordable home ownership programs for low and moderate-income people with on-going housing needs due to Hurricanes Katrina and/or Rita. The grantees should describe how those funds will be administered in the AHPP Plan. The Grantee may transfer the monies to a community organization such as the Housing and Community Development Department of a city, county or state, and avoid the excess overhead of maintaining a separate organization.
- J. Operations and Maintenance – During the period of performance, the Grantee shall ensure that once units are ready for occupancy, they are occupied, operated effectively, and maintained in good working order. The Grantee understands that this may require finding new residents for AHPP units, if the initial resident no longer wants to live in the unit, or no longer has a need for the unit.
- K. Americans with Disabilities - Grantee shall build units and accommodate people with disabilities. Units for people with disabilities must be built to the highest federal standard for this type of construction.
- L. Group Sites – The Grantee shall ensure that multi-family sites built under AHPP, (e.g. group sites) are superior to FEMA traditional group sites in terms of layout and other factors that improve the quality of life for AHPP residents.
- M. Insurance.
 - 1. The Grantee, contractors of the Grantee, and sub-contractors used to implement this project shall at all times during the duration of this agreement maintain insurance or be self insured with: property, fire, flood insurance (where required by law), basic hazard insurance, casualty, liability, life, worker's compensation, and all other forms of insurance customarily obtained by entities in the same industry
 - a. The Grantee will not insure DHS agents, contractors, or anyone else against any of these risks. The Grantee will inform and require all residents of AHPP units of the need to purchase personal property insurance.

← - - - Formatted: Bullets and Numbering

← - - - Formatted: Bullets and Numbering

- b. Additional insurance is not required if the grantee is self-insured, but FEMA would still need to verify that flood is properly covered in the grantees self insurance; if not, flood insurance would be required. The Grantee understands that in order to qualify for flood insurance, the building needs to meet the definition of "building." If the buildings have wheels, they may not meet the NFIP definition of building, but will still need to be insured against flood damage during the grant period of performance.

2. National Flood Insurance Program Requirements - The grantee fully understands that housing like Travel Trailers and Mobile Homes are not insurable under the NFIP unless they meet the definition as stated in Section II of the NFIP policy.

- a. The NFIP policy defines a building as:
 - i. A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site.
 - ii. A manufactured home (a "manufactured home," also known as a mobile home, is a structure: built on a permanent chassis transported to its site in one or more sections, and affixed to a permanent foundation).
 - iii. "A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws."
 - iv. Then Grantee fully understands that a group policy is not available, and that the Group Flood Insurance Program, is only applicable to IHP recipients.

3. The Grantee fully understands that:

- a. Individual policies can be purchased by the State. Once the new owner moves into the housing, then the policy should be written in the owner's name if the policy is initially written in the name of the State.
- b. In Property and Casualty Insurance-Auto, Homeowners, etc. Travel Trailers with wheels that are not permanently anchored and mobile, are usually covered under an automobile policy. The Owner would need to consult with their insurance agent.

N. Environmental and Historic Preservation Compliance. Grantees must comply with all applicable Federal, State, and local environmental and historic preservation requirements, before initiating any construction or ground disturbing activities on a proposed site. Compliance with certain Federal laws such as National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA)

← → Formatted: Bullets and Numbering

← → Formatted: Bullets and Numbering

and Executive Orders on Floodplains (11988), Wetland (11990) and Environmental Justice (12898) must be approved by FEMA before the initiation of activities. Failure to meet Federal, State, and local environmental and historic preservation requirements and obtain applicable permits may jeopardize Federal funding.

1. Grantees are strongly encouraged to work with the FEMA Transition Recovery Office (TRO) Environmental Liaison Officer to integrate NEPA, (44 CFR Part 10), NHPA (Section 106), Floodplains Management (44 CFR Part 9), and other Federal environmental requirements into project planning, site selection, site preparation, and site development process to ensure effective and expeditious compliance with these requirements.
2. If any potential archeological resources are discovered during ground disturbing activities, the project applicant will immediately cease the activity in the project area and notify the State and FEMA.

O. Floodplain Management Requirements- For permanent structures, the Grantee must comply with the minimum floodplain management requirements established in community floodplain management codes or ordinances. For temporary structures, the Grantee must comply with the DSG Titled, *Abbreviated Decision Process for the Placement of Mobile Homes, Travel Trailers, and Readily Fabricated Dwellings*, dated October 24, 2006. Neither temporary or permanent units may be placed in the floodway or Coastal High Hazard Area, based on the requirements of 44 CFR Part 9 and EO 11988. “Coastal High Hazard Area” is defined, for the purposes of Part 9, as the V Zone on the effective FIRM, or where Advisory data is available, the 3-foot breaking wave zone as shown on the Advisory base flood elevation maps.

1. The state must follow the Disaster-Specific Guidance (DSG) issued by Recovery Division for placing temporary housing units, or follow the local floodplain management ordinance for permanent units.
 - a. The AHPP units that are “temporary” (will be in place on site less than 18 months) can go into the SFHA and ABFE areas but must follow the DSG and “be elevated to the highest level practicable, and be anchored.”
 - b. The AHPP units that are “permanent,” (on site more than 18 months) also can go into the Special Flood Hazard Area (i.e. 100 year flood plain) and Advisory Base Flood Elevation areas, as long as they follow the local floodplain management ordinances and local or model building codes.

← - - - Formatted: Bullets and Numbering

← - - - Formatted: Bullets and Numbering

P. Building Codes – The grantee shall follow locally adopted or model building codes. Regardless of the code applied, the designs used shall provide appropriate levels of protection for the structures and residents of the units. Since these units may be used regionally, the Grantee must describe how the building code used in the design will satisfy building and safety requirements of the region. The management and work plan shall describe the processes they will employ to ensure these standards.

Q. Warranty - Appliances and other equipment will be warranted for a minimum of two years. This can be provided through the basic warranty, a service contract, or an extended warranty.

ARTICLE XII – OTHER TERMS AND CONDITIONS

The other terms and conditions of the agreement are as follows:

- A. **Buy America.** The Grantee, Sub-grantees and contractors receiving funds from this grant shall comply with the Buy American Act (41 U.S.C. 10a et seq.) unless it is determined that it is inconsistent with the public interest, impracticable to comply with such a requirement or that it would unreasonably increase the cost of articles, materials, or supplies. The exception shall be noted in the specifications and documentation to justify the exception will be retained in the grant file for record.
- B. **Copyright.** The Grantee is free to copyright original work developed in the course of or under this agreement. DHS and the Federal Emergency Management Agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, replicate, mass produce, publish, or otherwise use, and to authorize others to use, any aspect of the work performed, inclusive of all products, technologies, and housing units built, under this award for Government purposes. Publication resulting from work preformed under this agreement shall include an acknowledgement of financial support from DHS and include a statement that the publication does not necessarily reflect the DHS views.
- C. **Refunds.** The Grantee shall transfer to DHS the appropriate share, based on the Federal support percentage, of any refund, rebate, credit or other amounts arising from performance of this agreement, along with accrued interest. The Grantee shall take necessary action to effect prompt collection of all monies due or which may become due and to cooperate with DHS in any claim or suit in connection with amounts due.
- D. **Overpayment and Earned Interest.** Within ninety (90) days of the expiration date of the Performance Period, overpayment of funds shall be remitted to the Assistance Officer by check payable to DHS. An overpayment represents the difference between allowable actual expenditures and total DHS payment received by the Grantee.
- E. **Security.** The Grantee shall not be granted access to classified information under this Grant. If security restriction should happen to apply to certain aspects of the proposed activity, the Grantee will be informed. In the event that the scientific work under this Grant may either need classification or involve access to or storage of any classified data, the Government shall make a decision on the need to classify, or require such access or storage within 30 days after receipt of a written notice from the Grantee. If the decision is affirmative, the Government may invoke the Termination clause, as appropriate.

F. Site Visits. DHS and the Department of Housing and Urban Development, through authorized representatives, have the right, at all reasonable times, to make site visits to review project accomplishments and management control systems to provide such technical assistance as may be required. If any site visit is made by DHS/HUD on the premises of the grantee or a contractor under an award, the grantee shall provide and shall require its contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner that will not unduly delay the work.

G. Clearances: Prior to the start of any construction activity (minor renovations only authorized under this Cooperative Agreement), the Grantee shall ensure that all applicable Federal, State, and local zoning and building permits and clearances are obtained.

H. Indirect costs

1. If a Grantee has an indirect cost rate approved by a cognizant Federal Agency, that includes a modified off-campus rate, the modified rate will apply. Copies of the Federal approved rate must be submitted with the application and become part of the official file.
2. If the Grantee has a third party managing the grant, FEMA will only pay the direct costs associated with the management of the grant. Indirect costs of the third party will not be applied to the total direct costs of the grant, and the direct costs associated with the management of the grant should be entered under the contractual budget object class on the FF 20-20, non- construction budget form. Copies of the Federal approved indirect cost rate must be submitted with the application and become part of the official file.

Formatted: Bullets and Numbering

I. Procurement

1. In accordance with 44 CFR 13.36 (g) and 2 CFR Part 215, Grantees and Sub-grantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document.

2. In accordance with 44 CFR 13.36(a) and 2 CFR Part 215, when procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. If you are not a State or local government, you will comply with 2 CFR Part 215. To the extent required by individual states, applicants should comply with state procedures consistent with EO 12372.

Formatted: Bullets and Numbering

Comment [FE4]: Grants - What does this mean???

J. Intergovernmental Review. To the extent required by individual states, applicants should comply with the state procedures consistent with EO 12372.

K. Indemnity.

To the maximum extent permitted by applicable law, but no further, the Grantee, its contractors, or subcontractor hereby releases and shall indemnify, defend and hold harmless FEMA, the Government and their subsidiaries and affiliates and the officers, agents, employees, successors and assigns and authorized representatives of all the foregoing from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs, expenses, and losses of whatsoever kind or nature (collectively "Losses") in connection with or incidental to the performance of this grant and any contracts or subcontracts formed due to this grant, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of Grantee, Contractors, or Subcontractor, its lower-tier suppliers, subcontractors or of anyone acting under its direction or control or on its behalf. Notwithstanding the foregoing, however, to the extent such Losses result from the negligence, act or omission of the indemnified party, Grantee's liability for such Losses shall only apply to the extent such Losses are caused by, or arise out of the acts, omissions, fault or negligence of Grantee or its lower-tier suppliers, contractors, subcontractors or of anyone acting under its direction or control or on its behalf.

(b) The foregoing shall include, but is not limited to, indemnity for: 1) Property damage and injury to or death of any person, including employees of FEMA, Government or Subcontractor. 2) The breach by Grantee of any representation, warranty, covenant, or performance obligation of this Grant.

ARTICLE XIII - Evaluation of the Alternative Housing Pilot Program

Reporting Requirements for the Evaluation –

- A. In addition to the progress reports, baseline survey data and evaluation consent forms for applicants, and approval of program participant selection criteria, the grantee agrees to the assist HUD and its evaluation contractors as follows:
 1. To allow researchers to regularly attend meetings and interview key participants in the design and implementation of the AHPP program in order to tell the story of implementation
 2. To allow researchers access to units and program applicants, including all administrative data collected by the state for AHPP program on those units and program applicants, for evaluation purposes. The data provided to HUD and its contractor(s) as well as other data directly collected by HUD and its contractor(s) will be protected by the 1974 Privacy Act and will be maintained in a secure manner. HUD will only present aggregated information on program applicants. All personal information will be carefully protected.

- B. Grantees agrees to coordinate their criteria for the selection of residents for AHPP units with HUD to ensure the criteria used support the subsequent data collection and analysis.
- C. Grantees will be expected to collect and provide access to information regarding the construction process for the AHPP units. This may include information on costs, schedule, technical requirements for construction, transport, and the like.
 - 1. The Grantee fully understands and accepts that the HUD evaluation will require access to all construction locations use to produce units under the AHPP. Grantees will ensure their contractors and partners are aware of and comply with this requirement.
 - 2. The Grantee fully understands and accepts that as part of the HUD evaluation, pricing information will be required.
 - a. Unless grantees or their contractors specifically describe some aspect of the cost or pricing data that they consider proprietary, it will be assumed that all cost, pricing and labor information will be available.
 - b. If the grantee asserts some restrictions to the data, they should be prepared to describe how the evaluation could be supported through the use of data analogs or other collection approaches.
 - 3. The Grantee fully understands and accepts that as part of the HUD evaluation of the AHPP, interviews may be required of some individuals in the construction process. These interviews will be scheduled and are not intended to interrupt ongoing activities. Grantees will ensure all requests for such interviews will be supported.
 - 4. During the course of the construction or evaluation of the AHPP units, Grantees fully understand, accept, and anticipate, that there will occasionally be unforeseen requirements for HUD or its contractors for information collection.
- D. The Grantee shall comply with Article XI, Paragraph B, and ensure that all people that apply for AHPP units agree to provide information requested by HUD as part of this evaluation. Further, any person that lives or stays in an AHPP unit – for any duration of time – agrees to provide information requested by HUD for this evaluation. Any person that is involved with any aspect of project implementation, including, but not limited to government employees, contractors, and sub-contractors agrees to provide information requested by HUD.
- E. All terms and conditions of the grant will apply until HUD has completed the evaluation.

ARTICLE XIII – AUDIT REQUIREMENTS

Grantees and Sub-grantees must follow the audit requirements under OMB Circular A-133. Non-Federal entities that expend \$500,000 or more in Federal funds in a year shall have a single or program-specific audit conducted for that year in accordance with the provisions of A-133.

ARTICLE XIII – GOVERNING PROVISIONS

The Grantee and any subgrantee shall comply with all applicable laws and regulations. A non-exclusive list of regulations commonly applicable to DHS grants are listed below:

A. Administrative Requirements

1. OMB Circular A-102, State and Local Governments
(44 CFR Part 13)
2. OMB Circular A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (2 CFR Part 215)

B. Cost Principles

1. 2 CFR, Part 225, (OMB Circular A-87), State and Local Governments
2. 2 CFR, Part 205, (OMB Circular A-21), Educational Institutions
3. 2 CFR, Part 230, (OMB Circular A-122), Non Profit Organizations

C. Audit Requirements.

OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

Grant award is approved by DHS on _____, including revisions dated
thru _____.

PROJECT DEVELOPMENT AGREEMENT

by and between

LOUISIANA HOUSING FINANCE AGENCY

and

CYPRESS REALTY PARTNERS, LLC

dated as of the ___ day of __, 2007

TABLE OF CONTENTS

ARTICLE 1 Definitions.....	2
ARTICLE 2 The Project	8
ARTICLE 3 Contractor's Turn-key Services.....	9
ARTICLE 4 Term of the Agreement; Project Schedule; Time of Essence	11
ARTICLE 5 Ground Lease Compliance.....	11
ARTICLE 6 The Development Team.....	11
ARTICLE 7 Compensation.....	11
ARTICLE 8 Application for Payment	12
ARTICLE 9 Contractor Records	13
ARTICLE 10 Protecting Tax-Exempt Status of Bonds.....	14
ARTICLE 11 Project Site Access and Safety; Utilities.....	14
ARTICLE 12 Insurance	14
ARTICLE 13 Environmental Matters.....	14
ARTICLE 14 Indemnities.....	15
ARTICLE 15 Performance and Payment Bonds	16
ARTICLE 16 Force Majeure	16
ARTICLE 17 Defaults and Remedies.....	16
ARTICLE 18 Project Completion	18
ARTICLE 19 Change Orders.....	19
ARTICLE 20 Contractor's Duties in Case of Loss; Emergencies	20
ARTICLE 21 Taxes, Fees and Licenses	20
ARTICLE 22 Ownership of Information and Materials.....	20
ARTICLE 23 Miscellaneous.....	21

PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (this "**Agreement**") is made as of the ___ day of May, 2007 and effective as of the ___ day of May, 2007 (the "**Effective Date**") by **LOUISIANA HOUSING FINANCE AGENCY ("LHFA")**, a State housing finance authority established under the Louisiana Housing Finance Act, Chapter 3-A of Title 40 of the Louisiana Revised Statutes of 1950, as amended, appearing herein in its individual capacity and as administrative agent for the State of Louisiana (the "**State**"), and **CYPRESS REALTY PARTNERS, LLC ("CRP")** or the "**Contractor**"), a limited liability company duly organized under the laws of the State of Louisiana (LHFA and CRP, hereinafter collectively referred to herein as the "**Parties**").

WITNESSETH:

WHEREAS, the Federal Emergency Management Agency ("**FEMA**"), requested proposals from interested parties to develop housing projects under its Alternative Housing Pilot Program in the State of Louisiana ("**AHPP**"); and

WHEREAS, FEMA selected CRP's proposal (the "**Proposal**") for the development of alternative housing units under the AHPP in the State, and awarded Contractor \$74,542,370.00 in federal funds to develop such alternative housing units, pursuant to an award letter dated May ___, 2007, a copy of which is attached hereto as **Exhibit "A"** (the, "**FEMA Award**"), and a FEMA Articles of Agreement, dated May ___, 2007, a copy of which is attached hereto as **Exhibit "B"** (the "**FEMA Articles of Agreement**"); and

WHEREAS, pursuant to the AHPP requirements, the LHFA, as the administrative agent designated by the State, will administer the disbursement of the FEMA Award, under and pursuant to the terms of this Agreement; and

WHEREAS, pursuant to the FEMA Award, the Contractor will identify and evaluate housing sites; design, develop and install approved housing units; facilitate the operation and maintenance of the units and the sites for a period of time after completion of the housing units; and facilitate integration of social services and housing programs; and

WHEREAS, the alternative housing units will be owned by a public corporation of the State, another public entity or governmental authority or a private non-profit corporation and will be occupied by residents eligible under AHPP criteria; and

WHEREAS, the Parties wish to enter into this Project Development Agreement to set forth their respective rights and obligations concerning the development, construction, completion, operation and administration of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND EXHIBITS

Section 1.1 *Definitions.* All capitalized terms not otherwise defined herein shall have the meanings assigned hereto in the preamble hereto. The terms and conditions of the preamble hereto are incorporated in this Agreement as substantive terms and conditions of this Agreement by reference hereto. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended by the Parties. Capitalized terms used but not defined herein also have the meanings assigned to them in the FEMA Articles of Agreement.

"Administrative and Legal Expenses" means those legal and administrative expenses incurred by the Parties hereto and by the Subcontractors, to design, administer and implement the Program.

"Agreement" means this Project Development Agreement, dated May ___, 2007, between the Parties, as may hereafter modified and amended under the terms of this Agreement.

"Applicable Law" means all present and future laws, statutes, rules, regulations, ordinances, codes, resolutions and orders of any Governmental Authority applicable to the Project.

"Application for Payment" means a request for payment by the Contractor from the Award Amount for costs, expenses and fees incurred in connection with the Project, as set forth in the Project Budget, substantially in the form of **Exhibit "C"** attached hereto.

"Architect" means collectively, Duany Plater-Zyberk, Marianne Cusato, Stephanie Eugster and any other architects selected by Contractor to assist in the design and implementation of the Project.

"Award Amount" means \$74,542,370.00 in Federal funds awarded by FEMA to Contractor for the Project.

"Change Order" means any change, modification or amendment to the Scope of Work including without limitation the Plans and Specifications.

"Change Order Request" means a written request for a Change Order delivered to one Party by the other Party.

"Commencement Date" means the date on which LHFA delivers written notice to the Contractor to proceed with the construction of the Project.

"Completion Date" means the date of Substantial Completion of the Project, but in no event later than the Termination Date, as the same may be extended or changed due

to Force Majeure or in accordance with the any of the other terms and conditions of this Agreement.

"Consultant" means any company, entity, firm, attorney, person, individual, or advisor that contracts with and is paid by or charges a fee to the Contractor or a Subcontractor to perform any duties or services relating to Project design, development, construction, equipping, operation, management or maintenance, including without limitation the Construction Consultant.

"Construction Consultant" means Shaw Environmental and Infrastructure, Inc., a Louisiana corporation, its permitted successors and assigns.

"Contractor" means Cypress Realty Partners, LLC, a Louisiana limited liability company, its successors and assigns. Under the terms of this Agreement, the Contractor may act through its Subcontractors.

"Contractor Default" is defined in Section 13.1 of this Agreement.

"Contractor Insurance" means the insurance requirements of the Contractor as set forth in **Exhibit "D"** to this Agreement.

"Contractor's Proprietary Materials" means the proprietary logos, trademarks and licenses of Contractor, Subcontractors, and their affiliates, including without limitation the materials described on **Exhibit "J"** attached hereto.

"Contractor Representative" means the person designated in writing by the Contractor as its representative and contact for all purposes under this Agreement, initially Scott Kirkpatrick.

"Cottage" means an approved alternative housing unit as described in the Plans and Specifications.

"Development Costs" means, collectively, the sum of the costs necessary or required to design, develop, implement and construct the Project, including without limitation all construction and development costs (hard and soft costs), all costs and expenses incurred in obtaining Site control, the fees and compensation of all Subcontractors, and the costs of the Facilities Equipment. The Development Costs may be amended or modified from time to time as permitted under the Project Budget or as otherwise set forth herein, but in any event may not exceed the amount of the FEMA Award, unless other monies are made available for such purpose by FEMA or LHFA.

"Effective Date" means May __, 2007.

"Emergency" means an unanticipated event resulting in the need for the Contractor to act in order to (i) preserve the structural integrity of the Project; (ii) protect the safety and welfare of people or property; (iii) comply with the emergency requirements of a Governmental Authority; or (iv) avoid a default under any Ground Lease.

"Environmental Regulations" means any Applicable Law relating Hazardous Materials.

"Event of Default" means a Contractor Default or LHFA Default, as applicable, which is not cured within any applicable notice and/or grace period.

"Existing Site Conditions" are any and all conditions of the Sites as of the Effective Date, including, but not limited to, geological, geotechnical, archeological, paleontological and environmental conditions, including the presence or absence of any Hazardous Materials and compliance or non-compliance with Environmental Regulations as of the Effective Date.

"Facilities Equipment" means the furniture, fixtures, equipment and other personal or moveable property funded with the FEMA Award and used to furnish the Cottages for occupancy, or used in connection with the operation of the Project and that are not component parts of or permanently affixed to the Cottages.

"FEMA" means the Federal Emergency Management Agency.

"FEMA Award" means the FEMA Award letter attached hereto as **Exhibit "A"**.

"FEMA Articles of Agreement" means the FEMA Articles of Agreement attached hereto as **Exhibit "B"**, as modified, amended and supplemented from time to time in accordance with the terms thereof.

"Force Majeure" means any circumstances beyond the control of Contractor or the LHFA (as applicable), including, without limitation, an Emergency, acts of God, acts of a public enemy, governmental interference or regulation, inability to obtain labor, energy, materials or supplies, riot, civil commotion, strike, lockout, lockdown, curfews, Abnormal Weather Conditions (hereinafter defined) or any other unforeseeable, the occurrence of which would or does prevent, delay or preclude the Contractor or the LHFA (as applicable), respectively, from fully and completely carrying out the performance of their respective obligations under this Agreement other than the obligation of the LHFA to pay an Application for Payment. For purposes of this Agreement, **"Abnormal Weather Conditions"** shall mean severe or inclement weather during the relevant period of time, including without limitation hurricanes, natural disasters and flooding.

"Governmental Authority" means any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, parish, district, municipality, city or otherwise) whether now or hereafter in existence.

"Ground Lease" means each of those ground lease agreements or other contractual agreement providing for the occupancy or use of a Site for purposes of the Project, short of full ownership, as modified, amended and supplemented in accordance with the terms thereof, if any.

"Hazardous Materials" means dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances as defined in Environmental Regulations, and also any urea formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner to any damages, penalties or liabilities under applicable Environmental Regulations.

"LHFA" means the Louisiana Housing Finance Agency, as administrative agent for the State, and any successor administrative agent appointed by the State to replace the LHFA.

"LHFA Default" is defined in Section 13.2 of this Agreement.

"LHFA Representative" means the person designated in writing from time to time by LHFA to serve as its representative with respect to this Agreement, initially Dana Pitts.

"Location" means the municipal address of the Sites in the State on which the Cottages will be constructed.

"Management Fee" means the amounts payable to the Contractor for administrative and managerial services rendered to the Project as set forth in the Project Budget.

"Party" and **"Parties"** means the Contractor and the LHFA, individually or collectively, as the context requires.

"Payment" means payment of the amounts shown on an Application for Payment.

"Plans and Specifications" means plans, designs, drawings and specifications of the Cottages, as set forth on Exhibit "E" attached hereto, as modified, supplemented and amended from time to time in accordance with this Agreement.

"Pre-Agreement Services" means those services within the Scope of Work provided or performed by the Contractor prior to the Effective Date of this Agreement. A description of the Pre-Agreement Services and the cost thereof is set forth on Exhibit "F" attached hereto.

"Progress Reports" means the written reports required by FEMA and prepared by the Contractor detailing the progress of the Scope of Work and submitted quarterly to the LHFA and to FEMA.

"Project" means the design, development, implementation, construction and equipping of Cottages on the Sites and at the Locations, in accordance with the Plans and Specifications, and the provision of other housing and related social services for residents displaced by Hurricanes Katrina or Rita. The Project is more fully described in the Proposal and the Plans and Specifications.

"Project Budget" means the budget for the Project, as approved by FEMA and LHFA, a copy of which is attached hereto as **Exhibit "G"**, as modified, supplemented or amended from time to time in accordance with the terms of this Agreement.

"Project Information" means all written data and information generated by or for the Contractor in connection with the Project, other than Contractor's Proprietary Materials, including without limitation:

- (a) Data and information supplied to the Contractor by the LHFA other than Contractor's Proprietary Materials;
- (b) All drawings, plans, logs, photographs, books, records, contracts, agreements, documents and writings in Contractor's possession or control relating to the Scope of Work or the Project other than Contractor's Proprietary Materials or information relating to the Scope of Work that would violate privacy laws; and
- (c) Plans, specifications, and drawings (including as-built Construction Drawings, in hard copy and/or CADD format) for the Project or any other element of the Project other than Contractor's Proprietary Materials.

"Project Schedule" means the schedule prepared and updated by the Contractor for the completion of the Project, approved by FEMA and LHFA, as set forth in **Exhibit "H"** attached hereto, as modified and amended from time to time in accordance with the terms of this Agreement.

"Proposal" shall have the meaning assigned to it in the Preamble.

"Publication" means any sign, advertisement, promotional publication, commercial, or other dissemination of any information about the Project.

"Punch List Items" means details of construction, decoration, mechanical adjustment, and landscaping, following Substantial Completion of a Cottage, which, in the aggregate, are minor in character and do not materially interfere with the use or enjoyment of the Cottage.

"Schedule of Facilities Equipment" means the schedule of Facilities Equipment as determined by the Contractor and LHFA and to be installed and furnished in and to the Cottages.

"Scope of Work" means the services to be provided by the Contractor in order to design, develop, construct, and complete the Project by the Completion Date, as more fully described in **Exhibit "I"** attached hereto. The Scope of Work contains all services necessary to complete (i) the design, development, construction and equipping of the Project; (ii) any other related services specifically contemplated to be performed by the Contractor (to the extent they pertain directly to the design, development, construction and equipping of the Project and are set forth in this Agreement); and (iii) any other services necessary for the design, development, construction and equipping of the Project that are within the scope of the Proposal, and the FEMA Articles of Agreement.

"Site" means each of the lots, tracts or parcels of land at the Locations on which a Cottage is anticipated to be built and operated.

"State" means the State of Louisiana.

"Subcontract" means each of the subcontracts by and between Contractor (in its capacity as Contractor under this Agreement) and any Subcontractor for the design, construction and delivery of the Project.

"Subcontractors" means the Architect, Construction Consultant and any other Consultants or subcontractors engaged by Contractor to provide services to the Project, or in connection with the design, delivery, construction and completion of the Project, and approved by FEMA, as applicable.

"Supporting Documentation" means the following documents and information to be included in each Change Order submitted by the Contractor:

- (i) The proposed change in the Scope of Work;
- (ii) The effect of the proposed change on the Project Budget and the Project Schedule; and
- (iii) Supporting documentation for cost including detailed, itemized proposals from all affected Subcontractors and Consultants, including the following components:
 - (1) Labor, rates, and hours.
 - (2) Equipment rates and hours.
 - (3) Material quantities and costs.
 - (4) Applicable taxes, insurance, and bond.
 - (5) Credit for work deleted (similarly documented).
 - (6) Overhead and profit

"Substantial Completion" or **"Substantially Complete"** means, as to any particular portion of the Project (including without limitation a Cottage), the date when (i) such portion of the Project has been substantially completed, as certified by the Architect, (ii) if available in the jurisdiction in which that portion of the Project is located, receipt of a Certificate of Occupancy (permanent or temporary) or its equivalent for such portion of the Project, and (c) such portion of the Project is available for use and occupancy, subject to completion of Punch List Items.

"Term" means the term of this Agreement, beginning on the Effective Date and terminating on the Termination Date.

"Termination Date" means the date which is two (2) years following the dated date of this Agreement, unless sooner terminated in accordance with the provisions of this Agreement.

"Warranty Defects" are any material defects, material deficiencies, or material repairs as a result of the breach of any warranties extended by the Contractor or Subcontractors in connection with the construction of the Project, but shall exclude ordinary wear and tear, misuse, abuse or use for other than the originally-intended purpose, and damage to fire, flood or other casualty.

"Warranties and Guarantees" means the warranties against defects and deficiencies in the Project (i) provided by the Contractor in compliance with the FEMA Articles of Agreement; and (ii) obtained by Contractor from the Subcontractors, with respect to the construction of the Project.

Section 1.2 *Exhibits*. The Preamble, Recitals and Exhibits "A" through "J", are part of this Agreement and are incorporated herein by reference. The Exhibits are as follows:

Exhibit A- FEMA Award

Exhibit B- FEMA Articles of Agreement

Exhibit C- Form of Application for Payment

Exhibit D- Insurance Requirements

Exhibit E- Plans and Specifications

Exhibit F- Pre-Agreement Services

Exhibit G-Project Budget

Exhibit H- Project Schedule

Exhibit I- Scope of Work

Exhibit J- Contractor's Proprietary Materials

ARTICLE 2 THE PROJECT

Section 2.1 *Project Commencement*. Contractor has performed the Pre-Agreement Services prior to the Commencement Date. Contractor shall commence work on the Project on the Commencement Date, or such other later date as may be agreed to by the Parties in writing.

Section 2.2 *Project Construction*. The Contractor shall perform the Scope of Work, and construct the Project on a turn-key basis on or before the Completion Date, at a total cost not to exceed the Project Budget. The Project shall be designed, constructed, implemented, operated, {B0440211.7}

maintained and managed by Contractor in accordance with (i) the terms of the FEMA Articles of Agreement, this Agreement, the Plans and Specifications and the Project Budget; and (ii) all Applicable Laws. Notwithstanding anything set forth herein to the contrary, Contractor's obligation to perform the Scope of Work is conditioned upon the LHFA's obligation to make Payments to Contractor on a timely basis as set forth in this Agreement. All Punch List Items will be completed within 60 days of Substantial Completion.

Section 2.3 Subcontractors. The Contractor may execute or cause to be executed Subcontracts for the performance of any portion of the Scope of Work, without the consent of LHFA; provided, however, Contractor shall continue to have primary responsibility and obligation for performance and completion of the Scope of Work. LHFA approves of the engagement of the Architect and the Construction Consultant.

Section 2.4 Consultants. The Contractor may contract with any qualified Consultant to perform any one or more of the services within the Scope of Work without the consent of the LHFA; provided, however, any engagement of a Consultant shall not relieve the Contractor of its responsibility to complete the Scope of Work in accordance with the terms of this Agreement.

Section 2.5 Warranties and Guarantees. The Contractor shall obtain the Warranties and Guarantees, and FEMA and LHFA shall be third party beneficiaries of such Warranties and Guarantees. Upon termination of this Agreement such Warranties and Guarantees shall be assigned to the owner(s) of the Project and/or to LHFA.

Section 2.6 Project Deliverables. The Contractor will perform due diligence procedures on each Site, and deliver copies of the following materials to LHFA:

- (a) an ALTA title insurance policy on each Site, from a national title insurance company, in amounts reasonably determined by Contractor, insuring Contractor's ownership/leasehold interest in the Site, and containing only those exceptions to title acceptable to Contractor;
- (b) ALTA surveys of the Sites;
- (c) a copy of the Plans and Specifications;
- (d) copies of all third party inspection reports obtained for each Site, including without limitation any environmental audits, soil testing, soil borings, engineering reports, and wetlands delineations;
- (e) copies of all Subcontracts;
- (f) copies of any Ground Leases;
- (g) the Project Schedule;
- (h) the Project Budget;
- (i) copies of the Warranties and Guarantees;

- (j) Punch List Items;
- (k) any Certificates of Occupancy or its equivalent for the Project;
- (l) certificates from the Architect as to Substantial Completion of the Project; and
- (m) any other information required to be delivered by Contractor under this Agreement.

Section 2.7 *Progress Reports.* The Contractor shall make, in such detail and with such frequency as required by the FEMA Articles of Agreement, and forward to the LHFA Representative, reports in writing as to the actual progress of the Project. The Project shall be subject to inspection by authorized personnel of the LHFA as required for LHFA to properly administer the Project for the State, the cost of which shall be included within the Project Budget.

Section 2.8 *Approval of Plans and Specifications and Scope of Work.* LHFA hereby approves of the Plans and Specifications attached as Exhibit "E" to this Agreement and the Scope of Work attached as Exhibit "I" to this Agreement.

Section 2.9 *Approval of the Project Budget.* LHFA hereby approves of the Project Budget, including the fees, costs and charges, and the services, materials and supplies set forth therein, attached as Exhibit "G" to this Agreement.

Section 2.10 *Third Party Beneficiary.* Although FEMA is not a party to this Agreement, it is understood and agreed between the Parties that the Contractor seeks to act in accordance with the intentions of FEMA regarding the design, development, construction and equipping of the Project and that the Project is subject to FEMA control and direction. To ensure compliance with FEMA requirements and regulations, LHFA agrees to comply with all FEMA reporting and other requirements pursuant to the FEMA Articles of Agreement and to recognize FEMA's right to control the Project.

ARTICLE 3 **TERM OF THE AGREEMENT AND PROJECT SCHEDULE**

Section 3.1 *Term of this Agreement.* The Term of this Agreement begins on the Effective Date and ends on the Termination Date unless extended by Force Majeure, or the written consent of the Parties. The Parties recognize that the Contractor has performed or caused to be performed the Pre-Agreement Services, and that Contractor shall be reimbursed for the costs of the Pre-Agreement Services from the FEMA Award, pursuant to a separate Application for Payment submitted by Contractor to LHFA.

Section 3.2 *Approval of Project Schedule.* LHFA approves of the Project Schedule attached hereto as Exhibit "H".

ARTICLE 4 COMPENSATION

Section 4.1 *Compensation.* As full compensation for performing and causing to be performed the Scope of Work under this Agreement, the LHFA will pay to the Contractor the amounts as set forth in the Project Budget in periodic Payments as the Scope of Work is completed and Applications for Payment are submitted.

Section 4.2 *Payments.* Payments will be made as follows:

(a) [] shall be due and payable to the Contractor on or before the Commencement Date for Pre-Agreement Services; and

(b) The balance of Contractor's compensation, including the prorated portion of Management Fees, shall be due and payable on a monthly basis pursuant to the Applications for Payment submitted by the Contractor to LHFA.

ARTICLE 5 APPLICATION FOR PAYMENT

Section 5.1 *Applications for Payment.* The Contractor shall submit all Applications for Payment to the LHFA Representative in accordance with the following procedures:

- (a) Only one Application for Payment may be submitted in any 30-day period;
- (b) Each Application for Payment shall be submitted at least eighteen (18) days prior to the date funds are requested to be made available from FEMA for Payment, and the LHFA will use its best efforts to pay such Applications for Payment within thirty (30) days after submission by Contractor; and
- (c) The LHFA Representative shall have authority to approve all Applications for Payment.

Section 5.2 *Dispute over Application for Payment.* Except and unless an Application for Payment complies with FEMA standards and requirements, LHFA may dispute an Application for Payment, provided that the Contractor is notified in writing by the LHFA within ten (10) days of receipt of the Application for Payment ("Dispute Notice"), which Dispute Notice shall include with specificity the basis for the dispute and sufficient back-up information supporting LHFA's position on the Application for Payment. Provided, however (i) if LHFA fails to send the Dispute Notice within the 10-day period, such dispute shall be deemed to have been waived by LHFA, and the Application for Payment shall be deemed to have been accepted by LHFA; and (ii) LHFA must timely pay the undisputed portion of the Application for Payment, notwithstanding such dispute in order for the Dispute Notice to be valid and binding on Contractor. Absent timely delivery to Contractor of a Dispute Notice or evidence that the Application for Payment does not comply with FEMA standards and requirements under the FEMA Articles of Agreement, the Application for Payment shall be deemed accepted by LHFA

and the amount invoiced thereon shall be due and payable to Contractor within the time periods set forth herein.

Section 5.3 Mechanic's Liens. If any mechanics' liens or materialmen's liens shall be recorded against the Project, the Contractor shall cause the same, as a Development Cost, to be bonded over or released of record within thirty (30) days of filing, or, in the alternative, if the Contractor or Subcontractors in good faith desire to contest the same, the Contractor or Subcontractors shall be permitted to do so, so long as any such lien does not place the Project in imminent danger of being foreclosed upon or forfeited during the pendency of such contest.

Section 5.4 Payment Schedule. The Contractor shall keep accurate records and schedules of all Payments received. Upon written request, the Contractor shall furnish copies of such records to the LHFA or to the State Legislative Auditor.

Section 5.5 Termination Payments. Upon termination of this Contract, amounts awarded to Contractor pursuant to the FEMA Articles of Agreement and not expended for Project Costs shall remain the property of Contractor.

ARTICLE 6 CONTRACTOR RECORDS

Section 6.1 Books and Records. The Contractor shall maintain books, records and accounts relating to the Project in accordance with generally accepted accounting principles and FEMA rules and regulations.

Section 6.2 Access to Books and Records. Contractor's books and records pertaining to the Project shall be accessible to LHFA and FEMA personnel, including without limitation State and FEMA auditors and the State Legislative Auditor, during normal business hours, and upon reasonable notice, at the Contractor's office in Baton Rouge, Louisiana or at the construction Sites, during the Term and for a period of three (3) years following termination of this Agreement. On the Termination Date, at the option of the Contractor, such books and records may be delivered to the LHFA. All copy costs and other costs and expenses incurred in auditing or inspecting the books and records for the Project shall be paid by LHFA, State or FEMA, as applicable, and shall not be considered part of the Development Costs.

ARTICLE 7 FEDERAL PROGRAM REQUIREMENTS

Section 7.1 FEMA Guidelines. FEMA is providing 100% of the funding for the Project through its AHPP. LHFA agrees to take such steps and provide such reports as to permit Contractor, the Subcontractors and the Consultants to comply with AHPP policies and procedures, and so as to facilitate FEMA's funding of the Award Amount on a timely basis to ensure timely Payments by LHFA to Contractor under this Agreement.

Section 7.2 FEMA Requirements. The Contractor agrees to abide by the requirements of the following as applicable in connection with the Scope of Work: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era
{B0440211.7}

Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972 and the Age Act of 1974, and the Americans with Disabilities Act of 1990. The Contractor agrees not to discriminate in its employment practices, on the basis of race, color, religion, sex, national origin, veteran status, political affiliation or disabilities.

ARTICLE 8 PROJECT SITE ACCESS AND SAFETY; UTILITIES.

Section 8.1 Site Access. During construction, the Contractor shall permit LHFA's agents, representatives, or employees to enter the Project and the Sites, at reasonable times for the purposes of review and inspection, to determine whether the Contractor is in compliance with the terms of this Agreement, or for other reasonable purposes. Except in the event of an Emergency, any such inspection shall be conducted after notice reasonable under the circumstances and at a reasonable time and in a manner to minimize disruption of the Contractor's construction activities.

Section 8.2 Utilities. It shall be the responsibility of the Contractor, as a Development Cost, to provide for connecting to and metering such utilities as necessary for the development, construction, operation, use and occupancy of the Cottages.

ARTICLE 9 INSURANCE

Section 9.1 Insurance Requirements. Throughout the Term, the Contractor shall acquire and maintain in force and shall cause the Subcontractors to acquire and maintain in force the insurance policies as more specifically described in **Exhibit "D"** attached hereto.

ARTICLE 10 ENVIRONMENTAL MATTERS

Section 10.1 Compliance with Environmental Regulations. Except for its employees or Subcontractors fully qualified to do so, or as otherwise set forth herein, the Contractor may not:

- (a) Direct, suffer, or permit any of its Project employees to handle or dispose of any Hazardous Materials (as defined herein) in or about the Project Site in violation of applicable Environmental Regulations; or
- (b) Knowingly or negligently suffer or permit:
 - (i) Any Hazardous Materials to be used by any third party in any manner in violation of applicable Environmental Regulations; or
 - (ii) The Project Site to become contaminated with any Hazardous Materials in violation of applicable Environmental Regulations.

Section 10.2 Remediation of Hazardous Materials. To the extent the Contractor discovers any Hazardous Materials at the Project Site in violation of applicable Environmental

Regulations; the Contractor shall immediately notify LHFA and FEMA of the existence of such Hazardous Materials. Contractor shall determine whether to cause the removal of the Hazardous Materials or remediation of the Site as required by FEMA and Governmental Authorities at the cost to the previous owner of the site or to allocate additional moneys from the FEMA Award to cover the costs of removal or remediation.

Section 10.3 *Disposal of Hazardous Materials.* Notwithstanding the foregoing, the Contractor and Subcontractors may handle or dispose of Hazardous Materials to the extent customary and necessary for the performance of Contractor's duties under this Agreement, the cost of which shall be included in Development Costs. The Contractor and Subcontractors shall always handle and dispose of those Hazardous Materials in a manner not in violation of applicable Environmental Regulations. The Contractor shall also take reasonable precautions to prevent those Hazardous Materials from contaminating the land in violation of applicable Environmental Regulations or the environment or violating any applicable laws, regulations or ordinances of any federal, state or local governmental authority.

ARTICLE 11 INDEMNITIES

Section 11.1 *Contractor Indemnity.* The Contractor will indemnify, defend and hold harmless LHFA and FEMA, and their officers, directors, agents and employees from and against any and all claims, demands, losses, liabilities, actions, lawsuits, and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) related to the Project to the extent arising out of a Contractor Default, except for:

- (a) Such claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused directly by the negligence of FEMA, the LHFA and/or the State, or their officers, designated members, members, directors or employees; and
- (b) Such claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) as are caused, directly or indirectly, by the Existing Site Conditions.

Section 11.2 *LHFA Indemnity.*

The LHFA will indemnify, defend and hold harmless the Contractor, and its officers, directors, agents, and employees from and against any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) to the extent arising out of an LHFA Default, except for such claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused directly by the gross negligence of the Contractor, or its officers, members, directors or employees..

Section 11.3 *Survival.* The provisions of this Article survive termination of this Agreement.

ARTICLE 12 FORCE MAJEURE

Section 12.1 *Force Majeure.* Neither party shall be in default as a result of a delay in performance or impossibility of performance that is a direct result of Force Majeure. The Completion Date and any other deadline for performance of the Scope of Work hereunder shall be extended, on a day-to-day basis, during the pendency of any events of Force Majeure. The Contractor will use its commercially reasonable efforts to promptly notify the LHFA of the occurrence of any Force Majeure. Force Majeure is not a defense to timely Payment of an Application for Payment.

ARTICLE 13 DEFAULTS AND REMEDIES

Section 13.1 *Contractor Default.* The following events shall constitute a "**Contractor Default**" (which, after expiration of any applicable grace period or cure period hereunder, shall constitute an "**Event of Default**" by Contractor hereunder):

- (a) The Contractor files a voluntary proceeding under any bankruptcy or insolvency laws, or is the subject of an order of relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors;
- (b) The Contractor seeks, consents to, or acquiesces in the issuance of an order of relief, appointment of any trustee, receiver, custodian, conservator, or liquidator of Contractor, for all or any substantial part of its properties ("acquiesce" includes the failure to file a petition or motion to vacate or discharge any order of relief, judgment, or decree providing for that appointment within the time specified by law);
- (c) A court of competent jurisdiction enters an order of relief, judgment, or decree approving an involuntary bankruptcy proceeding filed against the Contractor and such order, judgment or decree is not vacated and not stayed for an aggregate of 90 days after its entry;
- (d) The Contractor seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors, or the Contractor consents to or acquiesces (as defined above) in the entry of an order of relief, judgment, or decree, or it is not vacated and not stayed for an aggregate of 60 days after its entry; and
- (e) Any trustee, receiver, custodian, conservator, or liquidator of the Contractor or of all or any substantial part of its properties is appointed without the consent or acquiescence of the Contractor and that appointment is not vacated and not stayed for an aggregate of 60 days.

Section 13.2 *Notice of Contractor Default.* The LHFA shall provide the Contractor with a written notice of Contractor Default that describes the nature of the Contractor Default, {B0440211.7}

after which the Contractor will have thirty (30) days to cure the Contractor Default; provided however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred or to exist if, and so long as the Contractor shall commence such performance, observation or compliance within such period and shall diligently and continuously prosecute the same to completion.

Section 13.3 Remedies for Contractor Default. If an Event of Default resulting from a Contractor Default exists and is continuing, upon five (5) days' written notice to the Contractor and with the written approval of FEMA, LHFA may assume sole control of the Project and complete the same with the FEMA Award, or sue Contractor for specific performance. LHFA waives any and all other rights and remedies LHFA may have, at law or in equity, including without limitation suit for money damages, arising out of a Contractor Default.

Section 13.4 LHFA Default. The following events shall constitute an "**LHFA Default**" (which after expiration of any applicable grace or cure period hereunder, shall constitute an "**Event of Default**" by LHFA hereunder):

- (a) LHFA fails or refuses to pay any undisputed portion of an Application for Payment within the time provided in this Agreement; and
- (b) LHFA fails or refuses to perform any other obligation under this Agreement in the manner and within the time required by this Agreement; and
- (c) Any act by LHFA that causes or with the passage of time or the giving of notice would cause an Event of Default under any Ground Lease by Contractor.

Section 13.5 Notice of LHFA Default. The Contractor shall provide LHFA with a written Notice of Default that describes the nature of the LHFA Default, after which LHFA shall have (a) five (5) days to cure a monetary LHFA Default; and (b) thirty (30) days to cure a non-monetary LHFA Default; provided, however, that if such performance, observation or compliance of a non-monetary default requires work to be done, action to be taken or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred or to exist if, and so long as LHFA shall commence such performance, observation or compliance within such period and shall diligently and continuously prosecute the same to completion.

Section 13.6 Remedies for LHFA Default. If an LHFA Default exists and is continuing, the Contractor may terminate this Agreement upon written notice to LHFA subject to the provision of Section 5.5. Contractor shall be entitled to payment for all work deliverables in progress, to the extent work has been performed; all costs and expenses and obligations that have been incurred as of the date of termination or which extend beyond the date of termination; all costs and expenses due Subcontractors under the Subcontracts as a result of such termination, and reasonable contract costs. In addition, Contractor may exercise any rights available to it

under Louisiana law, or in equity, to obtain and enforce its remedies, including without limitation specific performance.

ARTICLE 14 **DAMAGE OR DESTRUCTION OF PROJECT**

Section 14.1 Notice of Casualty. The Contractor shall immediately notify the LHFA of (a) any material casualty or other damage to the Project or any portion of the Project Site or of the Facilities Equipment; and (b) any material personal injury occurring at the Project or on any Site and any material property damage to the Project or to any Site. The Contractor will arrange for an insurance adjuster to view the damage before repairs necessitated by such casualty or damage are started.

Section 14.2 Damage to Project. Provided that sufficient insurance proceeds are available to Contractor therefor, in the event any portion of the Project is damaged by casualty or otherwise prior to the Termination Date, regardless of the extent of such damage or destruction, within 270 days following the date of such damage or destruction, the Contractor shall cause the work of repair, reconstruction or replacement of the damaged or destroyed Project to be commenced and prosecuted with reasonable diligence to completion, so that the Project shall be restored to substantially the same size, function and value as the Project existing prior to the damage. Provided, however, notwithstanding anything to the contrary contained herein, Contractor shall not be required to expend any of its funds in such repair and reconstruction, Contractor's obligations under this Section being limited to the amount of insurance proceeds actually received by Contractor resulting from the casualty.

Section 14.3 Damage to Facilities Equipment. In the event any portion of the Facilities Equipment is damaged by fire or otherwise prior to The Termination Date, provided that sufficient insurance proceeds are available to Contractor therefore, regardless of the extent of such damage or destruction, within ninety (90) days following the date of such damage or destruction, the Contractor shall cause to be commenced the repair or replacement of the damaged or destroyed Facilities Equipment. Provided, however, notwithstanding anything to the contrary contained herein, Contractor shall not be required to expend any of its funds in such repair and reconstruction, Contractor's obligations under this Section being limited to the amount of insurance proceeds actually received by Contractor resulting from the casualty.

ARTICLE 15 **CHANGE ORDERS**

Section 15.1 Change Orders. The Contractor and LHFA may, unless prohibited by the FEMA Articles of Agreement, issue change orders to modify the Scope of Work, Project Schedule and Project Budget. Change Orders for the Project shall be implemented in accordance with the following:

- (a) LHFA may initiate Change Orders. If LHFA initiates a Change Order, LHFA shall execute a Change Order Request to request the Contractor to proceed with changes in the Scope of Work. Contractor shall not unreasonably withhold, delay or condition its agreement to comply with the Change Order Request; provided,

however, that if the change requested increases the Development Costs, such change may only be implemented if: (i) the LHFA identifies an additional source of funding to implement the change (unless LHFA and the Contractor otherwise agree in writing); or (ii) commensurate reductions are made in the Scope of Work to reduce the number of Cottages built. The Project Budget shall be adjusted accordingly, and if the change requested increases the time necessary to construct the Project, the Project Schedule and Completion Date shall be extended by such increase in time.

- (b) The Contractor may, without the prior approval of the LHFA, initiate Change Orders as provided in the FEMA Articles of Agreement: *i.e.*, if the cost of the changes are not expected to exceed ten percent (10%) of the Project Budget and if the changes would not result in a major change to the Scope of Work.. If a Change Order increases Development Costs above this ten percent threshold, Contractor shall request LHFA approval of the Change Order. The LHFA shall not unreasonably withhold, delay or condition approval of a such Change Order Request and shall respond within the time requested (no more than five (5) days) in the Change Order Request and if it does not so timely respond, such Change Order Request shall be deemed to have been approved.
- (c) Each Change Order Request shall include the Supporting Documentation.

ARTICLE 16 TAXES, FEES AND LICENSES

Section 16.1 Permits, Fees and Licenses. The Contractor shall pay or cause to be paid, as a Development Cost, any federal, state and local taxes and fees that may be levied upon the Contractor in connection with the Scope of Work provided under this Agreement. Additionally, the Contractor shall maintain current all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor at the Project Sites. The Contractor may pay any of the above items in installments if payment may be so made without penalty other than the payment of interest.

ARTICLE 17 OWNERSHIP OF INFORMATION AND MATERIALS

Section 17.1 Project Information. During the Term, Contractor owns the Project Information, and at all times during the Term and following termination of this Agreement, Contractor owns the Contractor's Proprietary Materials. Upon termination of this Agreement, the Contractor shall deliver to LHFA originals of the Project Information to the extent the Contractor has been paid the sums due to Contractor under this Agreement; provided, however, the Contractor shall be permitted to retain copies of the Project Information generated by or for Contractor in connection with the Project. It is agreed and understood that Contractor's Proprietary Materials shall remain the property of Contractor and its affiliates, and LHFA shall have no rights thereto.

Section 17.2 Use of Project Information. LHFA may use Project Information with respect to the Project without further compensation to the Contractor or any of its Consultants and their respective contractors, subcontractors, subconsultants, agents or employees supplying labor, equipment or material to the Project. The Contractor may use Project Information in marketing its services to other parties.

Section 17.3 Advertisement of Contractor. The Contractor may identify itself as the Contractor of the Project on any Publication.

ARTICLE 18 MISCELLANEOUS

Section 18.1 Notices. Each notice, request, and communication required under this Agreement shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the first business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by facsimile, on receipt of electronic confirmation of its receipt; or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return receipt requested, addressed to the other Party's address below):

If to the LHFA:

Louisiana Housing Finance Agency

Suite _____
Baton Rouge, LA _____

Attn: _____
Title: _____
Phone: _____
Fax: _____

If to the Contractor:

Cypress Realty Partners, LLC
251 Florida Street, Suite 201
Baton Rouge, LA 70802

Attn: Scott Kirkpatrick
Phone: 225-408-3259
Fax: 225-408-3089

Section 18.2 Venue. The Contractor is a limited liability company duly organized and validly existing under the laws of the State of Louisiana. Venue for any litigation that relates to or arises out of this Agreement or its breach will be exclusively in a trial court in the City of Baton Rouge, East Baton Rouge Parish, and State of Louisiana or in the Federal District Court that includes the Parish within its jurisdiction.

Section 18.3 Attorney's Fees. In any lawsuit or injunctive proceeding between the Parties concerning any part of this Agreement or the rights and duties of either Party, the Party

prevailing in that matter (as determined by the court) will be entitled to recover its reasonable attorneys' fees and court costs, to the extent permitted by applicable law, separately from and in addition to any other amount included in such judgment. This includes reasonable attorneys' fees and costs related to any post-judgment collection or enforcement proceedings.

Section 18.4 Independent Contractor. In providing the services under the Scope of Work, the Contractor will be an independent contractor of LHFA, not its employee or agent.

Section 18.5 Severability. If any clause, provision or Section of this Agreement be held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause provision or Section had not been contained herein. In case any agreement or obligation contained in this Agreement be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Issuer or LHFA, as the case may be, only to the extent permitted by law.

Section 18.6 Waivers. No waiver by the LHFA or the Contractor of a breach of any of the covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition or restriction herein contained. The failure of the LHFA or the Contractor to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future breaches of such covenant or option. A receipt by the Contractor of Compensation with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach. No waiver, change, modification or discharge by LHFA or the Contractor of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Parties.

Section 18.7 Assignability. The Contractor may not assign its rights or obligations without the prior written consent of LHFA. All of the rights, benefits, duties, liabilities, and obligations of the Parties will inure to the benefit of and be binding on their respective successors and assigns.

Section 18.8 No Public Contract. The parties agree that: (i) this Agreement is not a public contract "as defined in La. RS. 38:22 11(A)(10); (ii) the Scope of Work hereunder is not a "public work" as defined in La. R.S. 38:2211(A)(12); and (iii) the prohibitions of La. R.S. 38:2195 are not applicable to any matters or claims arising out of Contractor's performance of its obligations under this Agreement.

Section 18.9 No Liability to Third Parties. Neither Contractor nor any of its subcontractors or Consultants shall have any responsibility and/or liability for any claim brought by LHFA or any third party arising out of requirements or performance standards imposed by LHFA that are not otherwise required by the AHPP or the FEMA Articles of Agreement.

Section 18.10 Amendments. This Agreement may be amended or modified only by mutual written consent of both Parties.

Section 18.11 Headings. The headings are inserted for convenience only. The headings do not affect the construction or meaning of anything in this Agreement.

Section 18.12 Interpretation. "Include" and "including" each refers to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter appearing before it. All references to Articles, Sections, Paragraphs, Recitals, Preamble, and Exhibits mean designated parts of this Agreement.

Section 18.13 Reasonable Assurances. Each Party will execute other documents and take other actions as may be reasonably required by the other Party to carry out the purposes of this Agreement.

Section 18.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

Section 18.15 Full Agreement. This Agreement, together with the exhibits attached hereto, contains the entire agreement between the Parties hereto with respect to the Project and the Project Sites and contains all of the terms and conditions agreed upon with respect to the Project and the Project Sites, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement except for the requirements and obligations under the FEMA Articles of Agreement, which shall be deemed to control and supercede this Agreement, shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

Section 18.16 Defense of Actions. Contractor shall be allowed to charge as an expense under this Agreement all reasonable costs and fees incurred by it in defending and/or paying any claim brought by any third party against it arising out of directly or indirectly Contractor's performance of its obligations under this Agreement.

Executed by the Parties on the Effective Date, in Baton Rouge, Louisiana.

WITNESS:

By: _____
Print Name: _____
Title: _____

WITNESS:

By: _____
Print Name: _____
Title: _____

Cypress Realty Partners, LLC

By: _____
Print Name: _____
Title: _____

Louisiana Housing Finance Agency

By: _____
Print Name: _____
Title: _____

Update on Willowbrook and Gaslight Litigation

Materials to follow in Final Board packet.

Year 15 Policy and Procedures (Qualified Contracts) IRS Code Section 42(h)(6)(E)(i)(II)

Materials to follow in Final Board packet.

Requests for Proposals – RFP's

Materials to follow in Final Board packet.

**Louisiana Housing Finance Agency
Legal Committee Meeting Minutes
Wednesday, May 9, 2007
2415 Quail Drive
Committee Room 1
Baton Rouge, LA 70808
9:00 A.M.**

Commissioners Present

Allison A. Jones, Chairman
Dr. Adell Brown, Jr.
Guy Williams
Greg Gachassin

Commissioners Absent

Lisa Woodruff-White
Mark Madderra

Legal Counsel Present

Keith Cunningham
Christine Bratkowski
Wendell Clark
Wayne Neveu

Staff Present

Brenda Evans
Louis Russell
Dana Pitts
Loretta Wallace
Nicole Johnson
Melanie Brocato

Others Present

Chairman Allison A. Jones called the meeting to order at 9:36 a.m. and asked for roll call. A quorum was established.

1. Call to order, roll call and introduction of guests

2. **Approval of the minutes.** A motion was made by Commissioner Allison Jones, and a second by Commissioner Guy Williams to approve the minutes of the May 9, 2007 Legal Committee meeting. The minutes were approved.
3. **Katrina Cottages Cooperative Endeavor Agreement and FEMA AHPP Agreement.** The committee has done everything they can do to get the contract finalized. The committee is waiting for the FEMA final budget. When we have the final budget and contract we can move forward with Cypress Group. Dana Pitts is waiting on insurance quotes.
4. **Report on Willowbrook and Gaslight Litigation.** Wendell Clark, Long Law Firm gave a summary of the litigation on Willowbrook and Gaslight. After discussing the many issues facing these properties a motion was made by Allison Jones and a second by Dr. Adell Brown to look into litigation for the June meeting. Upon a motion by Allison Jones the committee went into Executive Session.
3. **Discussion on Year 15 Policy and Procedures (Qualified Contracts) IRS Code Section 42(h)(6)(E)(i)(II).** This item was deferred to the June meeting agenda.
4. **Other Business.** No other business to discuss.
5. **Adjournment.** The meeting adjourned at 10:21 a.m.