

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- () Funds have been encumbered out of funds previously appropriated for such purpose.
- () Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- () No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- () The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- () A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.

(X) Interlocal Agreement - Grant Funds Available

Date: April 18, 2006

City Controller of the City of Houston

D. Pender
M. Deluna P. Appel

FUND REF: NA AMOUNT: NA ENCUMB. NO.: NF90040-06

Cash
APR 18/06

City of Houston, Texas, Ordinance No. 2006- 347

AN ORDINANCE APPROVING AND AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF HOUSTON AND THE MIDTOWN REDEVELOPMENT AUTHORITY FOR THE CONSTRUCTION OF AN ADDITION TO THE HOUSTON TECHNOLOGY CENTER (402 AND 410 PIERCE STREET); CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor, however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 19th day of April, 2006.

APPROVED this _____ day of _____, 2006.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is APR 25 2006.

C. Russell
City Secretary

(Prepared by Legal Dept. [Signature])
(LH/ba 02/03/06 Assistant City Attorney)
(Requested by Marlene L. Gafrick, Director, Planning and Development Department)
L.D. File No. 0349400360065

u:\wpfiles\planningdepartment\ordinances\eda-htc

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: APR 25 2006

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
	ABSENT	EDWARDS
✓		WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		BROWN
✓		LOVELL
✓		SEKULA-GIBBS
	ABSENT-OUT OF CITY CITY BUSINESS	GREEN
✓		BERRY
CAPTION	ADOPTED	

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into pursuant to the Interlocal Cooperation Act [Tex. Gov't Code Ann. Chapter 791] and Tex. Loc. Gov't Code Ann. Chapter 323 by and between the CITY OF HOUSTON, TEXAS ("City"), a municipal corporation, and the Midtown Redevelopment Authority ("MRA"), a not-for-profit local government corporation authorized by City of Houston City Council Resolution No. 95-96, and operates pursuant to Articles of Incorporation and Bylaws filed with the Secretary of State approved by the City under the provisions of Chapter 431, Texas Transportation Code.

RECITALS

WHEREAS, the City and the MRA have applied for a \$1.5 million dollar grant from the U.S. Economic Development Administration ("EDA") with the City acting as administrator of the grant;

WHEREAS, the City and MRA entered into an interlocal agreement on June 29, 2001, approved by City of Houston Ordinance No. 2001-0465 for the exterior and interior renovation of the office building located at 410 Pierce which has been completed; and

WHEREAS, the expenditure of EDA and MRA funds to construct a 21,000 sq.ft. addition to the existing office building at 410 Pierce as additional business incubator space for the Houston Technology Center ("HTC") serves a public purpose. These funds shall be used for the construction of a 21,000 sq.ft. addition to the existing office building at 410 Pierce.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

Article I.
Agreement Term

1.1. This Agreement shall be deemed effective on the countersignature date and remains in effect for 12 months.

Article II.
Contract Process

2.1. The City shall pay the MRA a total sum of \$1.5 million dollars from the grant the City receives from the EDA, for use in improvements to the HTC incubator facility

located at 410 Pierce Street in Houston, Texas. The City shall pay the \$1.5 million dollars to the MRA in monthly installments as further described in Article III of this Agreement.

2.2. The MRA agrees to use the \$1.5 million dollars solely to construct a 21,000 sq.ft. addition to the existing office building at 410 Pierce for use by HTC in accordance with this Agreement. In addition, MRA agrees to comply with all conditions and limitations as set forth in the "Special Awards Conditions," Exhibit "A" of this Agreement, which is fully incorporated by reference and made a part of this Agreement. The MRA also agrees that all construction done in accordance with this Agreement will be completed by June 30, 2006. However, it is anticipated that this construction period may terminated earlier.

2.3. The MRA shall make all improvements to the 410 Pierce building in compliance with the March 11, 2005, Project Manual the MRA submitted to EDA. The Project Manual is on file with the EDA project number 08-01-03113.01. The front page to the Project Manual is attached to this agreement as Exhibit "B."

Article III.
Payment Terms

3.1. The MRA shall invoice the City every 30 days. The MRA's invoices shall describe in detail the work to be done or work that has been done in connection with that month's invoice. Within 10 days after receiving an invoice from the MRA, the City shall submit that invoice to the EDA. When the City receives payment for the invoice from the EDA, the City shall, within 30 days after receipt of the funds, submit the payment to the MRA. The total dollar amount of all the MRA's invoices may not exceed \$1.5 million dollars and the City must receive all invoices before the end of the contract term of this Agreement.

Article IV.
Reports

4.1. The MRA shall submit progress updates to the Director every 30 days during the term of this Agreement. The progress updates will include the status of the 21,000 sq.ft. addition to the existing office building at 410 Pierce and will indicate grant funds expended to date. The first progress report will be due 30 days after the countersignature date.

Article V.
Notices

5.1. All notices and communications directed to the MRA under this Agreement shall be mailed by certified mail, return receipt requested, or delivered at the following address:

Midtown Redevelopment Authority
3401 Louisiana Street, Suite No. 355
Houston, Texas 77002
Attn: Mr. F. Charles LeBlanc

5.2. All notices and communications directed to the City under this Agreement shall be mailed by certified mail, return receipt requested, or delivered at the following address:

City of Houston, Planning and Development Department
611 Walker, 6th Floor
Houston, Texas 77002
Attn: Ms. Marlene Gafrick

5.3. Any notice given hereunder shall be deemed given upon deposit of such in the United States Mail. Either party may change its address pursuant to this Article upon written notice to the other party.

Article VI.
Limit of Liability

6.1. The City's obligation for payment under this Agreement, if any, is limited to funds received from the EDA; unless adequate funds are received, the City shall have no obligation to pay the MRA. The MRA must look to the designated funds only and to no other funds for the City's payment under this Agreement.

Article VII.
Miscellaneous

7.1. Severability. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

7.2. Entire Agreement. This Agreement merges the prior negotiations and understandings of the parties and embodies the entire Agreement of the parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the parties regarding this Agreement.

7.3. Written Amendment. Unless otherwise specified, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by City Council) and the MRA.

7.4. Applicable Laws. This agreement is subject to the laws of the State of Texas, the City Charter and ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

7.4.a. Venue. Venue for any litigation relating to this Agreement is Harris County, Texas.

7.5. Captions. Captions contained in this Agreement are for reference only and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

7.6. Non-Waiver. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of a term, that waiver does not waive a later breach of this Agreement. The Director is not authorized to vary the terms of this Agreement.

7.7. Inspections and Audits. City representatives may perform, or have performed, (1) annual audits of the MRA's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. The MRA shall keep its books and records available for this purpose for at least three (3) years after this Agreement terminates. This provision does not affect the applicable statute of limitations. The MRA shall not be responsible for the cost of duplication of any records.

7.8. Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. City has the right to review all books, documents, vouchers and records related to the MRA's performance under this Agreement, with the exception of those documents made confidential by federal or state law or regulation, during the period of performance of this Agreement and for three years thereafter, or for so long as there exists any dispute or litigation arising from this Agreement. The MRA shall not be responsible for the cost of the duplication of any such records.

7.9. Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

7.10. Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement.

7.11. Parties in Interest. This Agreement does not bestow any rights upon any third party, but binds and benefits the City and the MRA only.

7.12. Remedies Cumulative. Unless otherwise specified, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

MIDTOWN REDEVELOPMENT AUTHORITY

ATTEST/SEAL

MIDTOWN REDEVELOPMENT AUTHORITY

By: _____
Kandi Schramm
Executive Assistant

By: _____
F. Charles LeBlanc
Executive Director
TAX ID NUMBER: 76-0487592

CITY OF HOUSTON, TEXAS

ATTEST/SEAL

CITY OF HOUSTON, TEXAS

City Secretary

By: _____
Mayor

APPROVED:

COUNTERSIGNED:

Director, Planning and Development

City Controller

APPROVED:

DATE COUNTERSIGNED:

Assistant City Attorney
L.D.File No. 0349400360065

EXHIBIT A
SPECIAL AWARD CONDITIONS

GRANT COOPERATIVE AGREEMENT

**AMENDMENT TO
FINANCIAL ASSISTANCE AWARD**

ACCOUNTING CODE
20024020010021041101600

AWARD NUMBER
08-01-03113.01

PRIMARY RECIPIENT NAME
City of Houston

ADDRESS
P.O. Box 1562

CITY, STATE, ZIP CODE
Houston, Texas 772512

SECONDARY RECIPIENT NAME
Midtown Redevelopment Authority

STREET ADDRESS
3401 Louisiana Street, Suite 355

CITY, STATE, ZIP CODE
Houston, Texas 77002

AMENDMENT NUMBER
01

EFFECTIVE DATE
From date of approval as indicated below

EXTEND WORK COMPLETION TO
From date of approval to 48 months after approval

CFDA NO. AND PROJECT TITLE

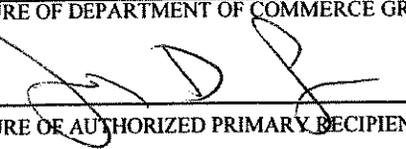
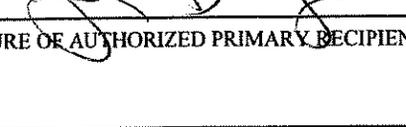
11.300 -Title II, Section 201: Public Works and Economic Development Facilities Grant (Demolition, asbestos abatement, construction of a new building -- approximately 21,000 sq.ft. at 402 Pierce Street as an addition to the 26,000 sq. ft. recently renovated at 410 Pierce Street. The two adjacent buildings will fully complete the 47,000 sq.ft. committed in the initial award.)

COSTS ARE REVISED AS FOLLOWS:	PREVIOUS ESTIMATED COST	ADD	DEDUCT	TOTAL ESTIMATED COST
FEDERAL SHARE OF COSTS	\$ 1,110,000	\$ 1,500,000	\$	\$ 2,610,000
RECIPIENT SHARE OF COST	\$ 740,000	\$ 1,080,500	\$	\$ 1,820,500
TOTAL ESTIMATED COST	\$ 1,850,000	\$ 2,580,500	\$	\$ 4,430,500

REASON(S) FOR AMENDMENT

The joint-applicants received a Financial Assistance Award in the amount of \$1,110,000 during fiscal year 1997. The assistance was used to establish a technology and business incubator. The \$740,000 matching funds established a total budget of \$1,850,000. A grant amendment in the amount of \$1.5 million is needed to enable the demolition and construction of approximately 21,000 sq.ft. at 402 Pierce Street as an addition to the 26,000 sq.ft. of space recently renovated at 410 Pierce Street. The additional 21,000 sq.ft. will fully complete the 47,000 sq.ft. committed in the initial award.

This Amendment approved by the Grants Officer is providing four copies and constitutes an obligation of Federal funding. By signing the four documents, the Recipients agree to comply with the attached Amendment provisions, as well as previous provisions incorporated into the Award. Upon acceptance by the Recipients, two signed Amendment documents shall be returned to the Grants Officer and the remaining copies shall be retained by the Recipients. If not signed and returned without modification by the Recipients within 30 days of receipt, the Grants Officer may unilaterally terminate this Amendment.

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER 	TYPED NAME AND TITLE Pedro R. Garza Regional Director	DATE SEP 26 2002
SIGNATURE OF AUTHORIZED PRIMARY RECIPIENT OFFICIAL 	TYPED NAME AND TITLE Robert M. Litke, Director Planning & Development Department	DATE
SIGNATURE OF AUTHORIZED SECONDARY RECIPIENT OFFICIAL 	TYPED NAME AND TITLE Robert Sellingsloh Chairman	DATE 1/30/03

**AMENDMENT TO
FINANCIAL ASSISTANCE AWARD**

Primary Recipient: City of Houston, Texas
Secondary Recipient: Midtown Redevelopment Authority

The provisions of the award amendment are described below:

- Department of Commerce Financial Assistance Standard Terms and Conditions (10/2001)
- Special Award Conditions, Including Line Item Budget
- EDA Standard Terms and Conditions for Title II Public Works & Development Facilities and Economic Adjustment Construction Components (03/99)
- EDA Standard Terms and Conditions for Capacity Building Programs (03/99)
- EDA Standard Terms and Conditions for Economic Adjustment Program Revolving Loan Fund Grants (03/99)
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures

**AMENDMENT TO
FINANCIAL ASSISTANCE AWARD**

Primary Recipient: City of Houston, Texas
Secondary Recipient: Midtown Redevelopment Authority

The provisions of the award amendment are described below:

- Department of Commerce Financial Assistance Standard Terms and Conditions (10/2001)
- Special Award Conditions, Including Line Item Budget
- EDA Standard Terms and Conditions for Title II Public Works & Development Facilities and Economic Adjustment Construction Components (03/99)
- EDA Standard Terms and Conditions for Capacity Building Programs (03/99)
- EDA Standard Terms and Conditions for Economic Adjustment Program Revolving Loan Fund Grants (03/99)
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

SPECIAL AWARD CONDITIONS

For Public Works and Development Facilities under the Public Works and Economic Development Act of 1965, as amended, this Award Number 08-01-03113.01 to the city of Houston, Texas and the Midtown Redevelopment Authority, supports the work described in the Recipient's application received on July 22, 2002, which is incorporated into this award by reference. Where the terms of this award and proposal differ, the terms of this award shall prevail.

TITLE: Title II, Section 201, Public Works and Economic Development Assistance Program Grants

PRIMARY RECIPIENT/ADDRESS: City of Houston, Texas
P.O. Box 1562
Houston, Texas 77251

SECONDARY RECIPIENT/ADDRESS: Midtown Redevelopment Authority
3401 Louisiana Street, Suite 355
Houston, Texas 77002

GRANT ADMINISTRATOR/ADDRESS: Pedro R. Garza
Regional Director
Austin Regional Office
U.S. Department of Commerce
Economic Development Administration
327 Congress Avenue, Suite 200
Austin, Texas 78701-4037

AREA DIRECTOR/PHONE NUMBER: Sharon T. Frerking
(512) 381-8176

PROJECT ENGINEER/PHONE NUMBER: Charles W. Herpin
(512) 381-8140

I. TOTAL AUTHORIZED BUDGET:

Federal Cash Contribution	\$1,500,000	(58.13%)
Non-Federal Cash Contribution	<u>1,080,500</u>	<u>(41.87%)</u>
Total Project Costs	\$2,580,500	(100.00%)

II. DETAILED BUDGET INVOLVING CONSTRUCTION

<u>LINE ITEMS</u>	<u>PROPOSED</u>	<u>APPROVED</u>
Administrative Expenses	\$ 4,100	\$ 1,000
Land, Structures, ROW	-0-	-0-
Relocation Expenses and Payments	-0-	100
Architectural & Engineering Fees	154,424	154,000
Other Architectural & Engr. Fees	-0-	-0-
Project Inspection Fees	-0-	-0-
Site Work	-0-	-0-
Demolition and Removal	335,895	336,000
Construction	2,090,000	1,990,000
Equipment	-0-	-0-
Miscellaneous	-0-	-0-
Contingencies	<u>99,500</u>	<u>99,400</u>
TOTAL PROJECT COSTS	\$2,683,919	\$2,580,500

Remarks:

1. Reduced proposed Administrative fees to a more reasonable amount.
2. Opened Relocation expenses and payments line item
3. Rounded proposed Architecture and Demolition fees
4. Reduced proposed Construction costs based on dollars per square foot estimate in proposal

III. ADDITIONAL TERMS:

- 1. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following project development time schedule:

Time allowed after approval of Financial Assistance Award for:

Return of executed Financial Assistance Award	30 days
Start of Construction	03 months
Construction period	45 months
Award period	48 months

Project closeout: All project closeout documents, including final financial information and any required program reports, shall be submitted to the Government not more than 90 days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall pursue diligently the development of the project so as to ensure completion of the project and submission of closeout documents within this time schedule. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the award in accordance with the regulation set forth at 15 CFR 24.43 (53 Federal Register 8048-9, 8102, March 11, 1988).

- 2. GOALS FOR WOMEN AND MINORITIES IN COMPETITION: Department of Labor regulations set forth in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of the project by including such notices, clauses and provisions in the "Solicitations for Offers or Bids" as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice..... 6.9 percent

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6. The minority participation goal for this project is 27.3 percent.

3. **AFFIRMATION OF AWARD:** This Financial Assistance Award, subject to the other Special Award Conditions and the EDA Standard Terms and Conditions--Construction Program, dated March 1999, shall constitute an obligation to make such award. If the Recipient fails to affirm its intention to use the award in accordance with the terms and conditions of this Financial Assistance Award, it will be terminated without further cause. By signing and returning one of the original Financial Assistance Award documents within 30 calendar days from receipt, the Recipient hereby affirms that it intends to use the award in accordance with the terms and conditions as above-referenced.
4. **ARCHITECT/ENGINEER AGREEMENT:** Prior to disbursement of funds by EDA, the Recipient shall submit to the Government for approval an architect/engineer agreement that meets the requirements of Section I of the EDA publication, "Requirements for Approved Projects," as well as the competitive procurement standards of Department of Commerce Regulations at 15 CFR Part 24 or 15 CFR Part 14, as applicable. The fee for basic architect/engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
5. **EVIDENCE OF GOOD TITLE:** Prior to the initial disbursement of funds by EDA, the Recipient shall provide evidence satisfactory to the Government that the Recipient has acquired good and merchantable title, free of all mortgages or other foreclosable liens, or title equivalent to all land, rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 CFR 314, except when a mortgage waiver has been granted by the Assistant Secretary or his/her designee.
6. **AFFIRMATION TO AVAILABILITY/COMMITMENT OF NON-FEDERAL MATCH:** In affirming this Award, the Recipient certifies that the non-federal share of project costs is committed and is available as needed for the project, that the non-federal share is from sources which can be used as match for the EDA project, and that the non-federal share will not affect ownership of, or title to, the project facilities. The Recipient further acknowledges that, prior to award of any construction contracts, it will be required to provide evidence satisfactory to the Government that all funds necessary to complete the project are available.
7. **PRESERVATION OF OPEN COMPETITION:** Pending judicial resolution of a legal challenge (see Building and Construction Trades Department v. Joe M. Allbaugh, 172 F. Supp. 2d 138 (D.D. C. 2001) to Executive Order 13202, as amended, implementation of the requirements of Section L.08 of the Department of Commerce Financial Assistance Standard Terms and Conditions, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federally Funded Construction Projects," will be suspended under this award.
8. **USEFUL LIFE OF INVESTMENT:** The useful life of this project is defined as 20 years for the purposes set forth in paragraph K of the EDA Standard Terms and Conditions for Construction Grants.

9. **FEDERAL SHARE OF PROJECT COSTS:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs based on the area's grant rate eligibility at the time of award, whichever is less.
10. **REPORT ON UNLIQUIDATED OBLIGATIONS:** All recipients of an EDA grant award of more than \$100,000 whose grant has not been fully disbursed as of the end of each reporting period are required to submit a financial report to EDA annually on the status of unreimbursed obligations. The report will provide information on the amount of allowable project expenses that have been incurred by the Recipient but not claimed for reimbursement as of the end of the reporting period. The report will be as of September 30 of each year and must be submitted annually until the final grant payment is made to EDA. The report shall be submitted to EDA no later than October 30 of each year. Noncompliance with this requirement will result in the suspension of EDA grant disbursements. Standard Form 269A, Financial Status Report, will be used for this purpose. Instructions for completing and filing the report will be furnished to the recipient at least 60 days before the report is due.
11. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993. Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA will advise recipients in writing within a reasonable period prior to the time of submission of the reports, and in the event that there are any modifications in the performance measures.
12. **DELAYED CONSTRUCTION START:** The Recipient acknowledges that if significant construction (as determined by EDA) is not commenced within two years of approval of the project or by the date estimated for start of construction in the grant award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the grant recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.
13. **MEMORANDUM OF UNDERSTANDING:** Prior to the initial disbursement of funds by EDA, the Recipient shall submit to the Grant Administrator an executed copy of the Memorandum of Understanding between the City of Houston and the Midtown Redevelopment, detailing the administrative procedures for the EDA funded investment.
14. **RECORDED STATEMENT:** The Recipient expressly agrees to grant to the Government, prior to initial grant disbursement, a first priority unsubordinated lien against, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of 13 CFR Part 314. The statement shall be satisfactory in form and substance to EDA. The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law. EDA will in its own

discretion determine whether the lien, covenant or statement of interest is satisfactory, and EDA may require an opinion of counsel for the Recipient that it is valid and enforceable according to its terms, and has been properly recorded. Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

The Recipient further agrees that:

(a) except as provided in 13 CFR 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the Recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) if property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

(c) the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(d) the lien, covenant or other statement of EDA's interest must remain in effect throughout the useful life of the Project which is determined to be 20 years.

Where the Recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

This Award agreement contemplates leases, by the Recipient, of space in the Houston Technology Center at 402 Pierce Street constructed in this Project. The making of such leases, consistent with the authorized purpose of the Award and applicable EDA requirements concerning, but not limited to, adequate consideration, nondiscrimination and environmental compliance, is an authorized use of the Project property, provided that the lease is pursuant to a lease agreement that is approved by EDA.

15. **OPERATION AND MAINTENANCE AGREEMENT:** If the Recipient will not operate and maintain the project, then prior to initial disbursement, the Recipient shall provide to EDA an executed copy of an Agreement with the party responsible for operation and maintenance of the project. Such Agreement must be consistent with EDA policies including, but not limited to, nondiscrimination, environmental requirements, and adequate consideration. The Agreement must also set forth that prior to occupancy, the occupant of any part of the land acquired or improved by this project must furnish

to the Recipient, for transmittal to EDA, properly executed EDA forms evidencing assurance of compliance with EDA Civil Rights requirements at 13 CFR Part 317 and all other applicable requirements.

16. ENVIRONMENTAL STATUS REPORT: Prior to final disbursement, the grantees shall provide evidence in the form of a status report satisfactory to the government attesting substantial site remediation progress or a Site Closure Letter or No Further Action Letter from the Texas Natural Resource Conservation Commission (TNRCC).

EXHIBIT B
PROJECT MANUAL FRONT PAGE

PROJECT MANUAL

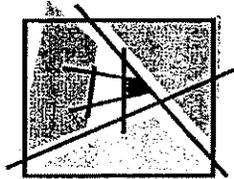
AT3 Project No. 03104

Issue for Construction

**HOUSTON TECHNOLOGY CENTER
PHASE II
410 Pierce Street
Houston, Texas 77002**

MIDTOWN REDEVELOPMENT AUTHORITY

EDA Project No. 08-01-03113.01



midtown

Architect

ARCHI*TECHNICS/3, INC.

10405 Town and Country Way, Suite 102
Houston, Texas 77024

11 March 2005