

CHAPTER 3

SUBRECIPIENT AGREEMENTS

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CHAPTER 3

SUBRECIPIENT AGREEMENTS

Sandra Parker couldn't sleep. As the City's third Community Development Director in as many years, she faced the prospect of an unpleasant confrontation the next morning with Reverend Peter Nelson about supporting New Hope's Family Services Center in a building owned by the church. As New Hope's 70 year-old founder and Executive Director, the Reverend had been deeply involved in community work ever since the Model Cities days. He was highly regarded by the community and the press as a champion of the lower-income neighborhoods around Park Square, and every year he would find some new activity to be partially funded by the Community Development Agency. However, the problem was that New Hope was unable to document how it had spent its previous year's funds or demonstrate its capacity to staff and operate the proposed Family Services Project.

Sandra's dilemma centered on securing a new Subrecipient Agreement for the coming year. The old one, which hadn't been changed in four years, was 15 pages of boilerplate from the City's legal department. There were only two vague paragraphs describing New Hope's community service objectives, limited references to applicable Federal regulations, and a very sketchy statement of work and performance schedule for activities funded three years ago. It was clearly not adequate to assure that funding objectives would be met by New Hope, or that CDBG program regulations would be observed.

The Reverend indicated he did not see the need to sign a new Agreement with the City, and wanted only to amend the original one to reflect funding for the new project. But amending the original Agreement was hardly appropriate, especially given the complexity of the Family Services Project. If she couldn't get a new Agreement, Sandra was worried that funds might be wasted, and she would be held accountable for the waste by both the City and the HUD Field Office.

INTRODUCTION

Subrecipient Agreements are a central part of the subrecipient requirements of the CDBG program for Entitlement Communities. Though they govern the funding and activities of subrecipients, they are not referred to nearly enough except when they are signed or modified. However, the written Subrecipient Agreement can be one of your most important tools because it serves three key purposes:

1. Fulfills a legal requirement by presenting a concise statement of the rules of the CDBG program and the conditions under which funds are provided;
2. Provides a yardstick for monitoring subrecipient performance; and
3. Provides an essential vehicle for training your staff and the subrecipient's staff how to operate the CDBG program.

This chapter addresses the principal issues involved in drafting Subrecipient Agreements or modifying old ones. The central theme of the chapter is that the Agreement should not be seen as a weapon, but rather as a management tool useful to both grantees and subrecipients for measuring progress.

MINIMUM HUD REQUIREMENTS

HUD CDBG regulations (24 CFR 570.503) require that grantees have written Agreements in effect for each subrecipient before giving out any CDBG funds. The written Agreement must remain in effect during any period that the subrecipient has control over any CDBG funds, including program income.

Elements of Written Agreements

See the Subrecipient Agreement Checklist and Citations for the Basic Elements of a Subrecipient Agreement in Appendix 3.

The regulations specify that the written Agreement must include **at least** the following provisions:

- **Statement of work:** a description of the work to be performed, a schedule for completion of the work, and a budget, all in sufficient detail for you to monitor performance.
- **Records and reports:** the grantee must specify the records the subrecipient must maintain (including how long it must keep them) and the reports the subrecipient must submit (including dates for submitting them).
- **Program income:** the Agreement must set forth the program income requirements, detailed in 24 CFR 570.504(c), that address whether program income received is to be returned to the grantee or retained by the subrecipient. If the latter, the Agreement must specify the activities that will be undertaken with program income by the subrecipient, that all provisions of the Agreement apply to the activities carried out with program income, that program income must be substantially expended before any transfers of additional grant funds from the grantee to the subrecipient (per 24 CFR 570.504 (b)(2)(i), (ii) and (iii), and 570.504(c)), and that any remaining program income is to be returned to the grantee at the expiration of the Agreement.
- **Suspension and termination:** the Agreement must specify that (according to 24 CFR 85.43) suspension or termination may occur if the subrecipient materially fails to comply with any term of the Agreement. The Agreement may also be terminated for the grantee's convenience, consistent with 24 CFR 85.44.
- **Reversion of assets:** when the Agreement ends, the subrecipient must transfer to the grantee any CDBG funds on hand and accounts receivable attributable to the use of CDBG monies. The Agreement must also specify how the subrecipient will meet the requirements for use or disposition of any real property it

either acquired or improved with CDBG funds in excess of \$25,000.

Uniform Administrative Requirements: The Agreement must also state that subrecipients will comply with the following additional requirements and standards:

For **governmental subrecipients**, including public agencies:

- **OMB Circular A-87**, “Cost Principles for State and Local Governments.”
- **24 CFR Part 85**, “Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments,” as modified by 24 CFR 570.502(a).
- **OMB Circular A-133**, “Audits of State and Local Governments and Non-Profit Organizations.”

For **non-governmental subrecipients**, (including non-profit and for-profit CBDOs if so determined by the grantee):

- **OMB Circular A-122**, “Cost Principles for Non-Profit Organizations” or **OMB Circular A-21** “Cost Principles for Educational Institutions,” as applicable.
- **24 CFR Part 84**, “Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” as modified by 24 CFR 570.502(b).
- **OMB Circular A-133**, “Audits of States, Local Governments and Non-Profit Organizations.”

Other Program Requirements: The Agreement must also specify that the subrecipient will carry out its activities in compliance with the requirements of **Subpart K of 24 CFR 570**, except, however, that the subrecipient does not assume the grantee's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR Part 52.

Conditions prohibiting inherently religious activities: Where applicable, HUD rules prohibiting the use of CDBG funds for inherently religious activities (24 CFR 570.200(j)) must also be included in the Agreement.

The regulations prohibiting inherently religious activities are spelled out in 24 CFR 570.200(j).

Not just red tape. . .

It is tempting to view the fine print of the written Agreement as a bureaucratic and legalistic effort to protect you and HUD and to undermine the autonomy of the subrecipient. It is not. Rather, the Agreement should represent a concise, explicit statement of all the rules governing the relationship of the grantee and the subrecipient and the conditions under which funds are provided. There's no such thing as a “free lunch,” and playing by the rules is one of the conditions for receiving Federal funds.

WRITTEN AGREEMENT AS A MANAGEMENT TOOL

If properly written and executed, the Subrecipient Agreement can be both an indispensable management tool for you and an orientation and educational document for the subrecipient.

The written agreement should be a concise statement of the relationship between grantee and subrecipient and the conditions under which funds are provided.

As a management tool, the written Agreement provides you with a mechanism for verifying regulatory compliance and monitoring program performance. In particular, the “Statement of Work” (or “Scope of Services”) section should describe the objectives for each activity and the specific tasks that need to be accomplished to achieve those objectives. For example, if a subrecipient will operate programs to provide child care services to low-income families, the Statement of Work should specify:

- The **purpose and nature** of the different services to be offered and where they will be provided;
- The **tasks** to be performed (outreach, intake or enrollment, day care services, family child care classes);
- The **level of service** that will be provided for each activity (identified in some quantifiable unit of service, for example, children cared for per month, parents to receive instruction, courses to be taught);
- The schedule for performance of the work—in terms of **overall duration** and **cumulative units of service per month** during the contract period (for example, 12–15 children per month or at least 48 children by the end of month 4).

Federal regulations make you responsible for monitoring whether the subrecipient achieves the objectives and does so according to schedule. Therefore, in drafting this section, be sure to write in the *measurable objectives* and deadlines that will allow you to determine whether the promised services have been delivered, as well as whether they were delivered on time.

WRITTEN AGREEMENT AS A TRAINING TOOL

Revisions to existing Subrecipient Agreements should reflect any corrective actions you want the subrecipient to take.

For grantee and subrecipient staff who are not familiar with HUD's administrative and fiscal requirements, OMB circulars, and Executive Orders, you can use the Agreement to teach them how to comply with these key administrative provisions.

Whether you are drafting Agreements for new subrecipients or revising and extending old ones for current subrecipients, the occasion provides an opportunity for you to explain to them how CDBG requirements apply to their work. Reviewing the provisions of the document with a subrecipient at the beginning of the program year is especially important if the organization has experienced any operational difficulties in the past. You should incorporate as part of the new or amended Agreement the specific steps the subrecipient must take to solve its earlier problems and specify a schedule for implementing these actions.

Sample Subrecipient Agreements

A sample written Agreement as well as sample Scopes of Service are included in the Appendix to this chapter. You may use these samples *as a starting point* for developing *your* own Subrecipient Agreement or as a benchmark for evaluating the adequacy of your *existing* Agreements. Keep in mind, however, that because state and local laws differ, any “model” Agreement needs to be customized to fit your local requirements.

In addition, no matter how carefully you craft your Agreement, be prepared to revise the document to address loopholes or problem situations with subrecipients that you may not have anticipated. Many times, these changes can be incorporated in the form of amendments during the term of the existing Agreement, or by revising the Agreement before executing a new one.

COMMON PROBLEMS WITH SUBRECIPIENT AGREEMENTS

The two most dangerous deficiencies relative to Subrecipient Agreements (that are violations of the CDBG regulations in and of themselves) are:

- 1. Failing to have *any* formal, signed Subrecipient Agreement in place, and**
- 2. Using Agreements that fail to cover *all* the regulatory and legal requirements that apply to the CDBG activities being carried out.**

If you use subrecipients to conduct CDBG activities without adequate written Agreements, you are courting disaster.

If one of your subrecipients, for example, spends CDBG funds improperly and your Agreement is silent on the matter, you may have no legal recourse for recovering those funds that HUD has disallowed.

Noted below are four other difficulties commonly associated with Subrecipient Agreements. Although none of the problems represent violations of the regulations *per se*, they do exhibit inadequate management controls and/or business practices.

❑ **Subrecipient Compensation Is Not Tied to Measurable Performance**

• **Solution: Tie Payment to Performance Measures**

It is critical that your reimbursements to subrecipients reflect timely performance in accomplishing measurable objectives (such as numbers of housing units inspected, buildings rehabilitated, or clients assisted). Otherwise, you run a significant risk of the subrecipient spending all of its CDBG funds before it has achieved its work objectives.

❑ **Subrecipients Are Not Familiar with Agreement Conditions**

• **Solution: Review Terms and Conditions with the Subrecipient**

It is not uncommon for grantees to hear subrecipient staff excuse their failure to comply with program requirements by saying they did not understand the terms and conditions of the written Agreement. Boards of Directors frequently offer this explanation after an organization has experienced a turnover in its CDBG related staff. However, lack of understanding excuses neither you nor your subrecipients from the consequences of a mistake.

You should review the document, line by line, with the subrecipient's key officials and staff as part of an orientation at the beginning of each program year—particularly with the Board of Directors who, depending on the organization's by-laws, may be the only individuals legally empowered to sign the written Agreement and who have the responsibility to ensure compliance regardless of changes in the organization's staff.

❑ **Written Amendments Are not Executed when Conditions Change**

• **Solution: Amend Agreements in Writing**

Even if you have an excellent Subrecipient Agreement in place, amendments may occasionally be necessary if there are changes in the scope or schedule of work. Although you and the subrecipient may enjoy an excellent relationship, neglecting to amend the Agreement to reflect the current understanding of subrecipient responsibilities places both of you at risk:

- From your standpoint, the unamended Agreement is no longer an effective tool for monitoring and enforcing performance standards.
 - From the subrecipient's perspective, the unamended Agreement may continue to legally bind the organization to obligations that you may have informally agreed are no longer a responsibility of the subrecipient. Clarifying or correcting these misunderstandings after the fact can be both disruptive and costly.
- **New Written Subrecipient Agreements Are Not Executed or Updated for Each Program Year**
- **Solution: Update for Current Year**

Over time, there may be changes in the regulations governing a particular activity being undertaken by a subrecipient. With each new program year, a subrecipient may also be funded to take on new eligible activities, involving additional regulatory requirements. Moreover, experiences with other subrecipients may have revealed inadequacies in the basic Agreement “boilerplate” being used by your program. All of these possibilities suggest that it is a good practice to update and execute written Agreements with each subrecipient on an annual basis.

SUMMARY

The subrecipient application materials outlined in Chapter 2 and the Subrecipient Agreements discussed here provide you with the primary *documentation* that your CDBG program needs in order to monitor subrecipient activities. If these documents are weak, missing, or out of date, you may not be able to administer your program effectively. Adequate written Agreements are required by HUD regulations. They are *essential management tools* for measuring your subrecipients’ performance and regulatory compliance. They are also useful in teaching or reminding subrecipients about their performance objectives, methods and administrative responsibilities. By consulting the sample Agreement in Appendix 3, and by referring to the relevant regulations, you can avoid the problems outlined above.

The confrontation with Peter Nelson did not turn out to be the nightmare Sandra had expected. She had placed the issue of the new Subrecipient Agreement squarely on the table, and Reverend Nelson had been forced to admit that the old one left out a great many details that could wind up hurting both the City and New Hope. Over a period of two weeks, Sandra's staff had worked with New Hope's Board of Directors and staff to lay out in detail the objectives, scope of work, and schedule for the Family Services Project. In the process, the New Hope Board became fully aware of how inadequate its present record-keeping systems were, and how little it knew about the costs of activities that were currently being funded by CDBG. Sandra was pleased to give them an introduction to the requirements of OMB Circular A-110 as implemented in 24 CFR Part 84.

At the same time, she felt happy that she understood much more clearly what it was that New Hope wanted to achieve, and how the achievement of its goals could be accomplished under the new Agreement.

NOTES:

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SUBRECIPIENT AGREEMENT CHECKLIST

The recommended provisions for a written Agreement between grantees and subrecipients (subgrantees) include the following provisions (irrespective of activity):

1. National Objective Compliance/Eligibility
2. Scope of Work
3. Time of Performance
4. Personnel Assigned to Scope of Work
5. Levels of Performance
6. Budget
7. Project Schedule/Milestones
8. Compensation and Method of Payment
9. Program Income
10. Record-Keeping Requirements
11. Reporting Requirements
12. Public Access to Program Records
13. Record Retention
14. Grant Closeout Procedures
15. Uniform Administrative and Program Management Standards
16. Use and Reversion of Assets
17. Real Property
18. Other Program Requirements
19. Suspension and Termination
20. Compliance with Laws/Regulations
21. Antidiscrimination/Affirmative Action and Equal Employment Opportunity
22. Financial Management
23. Audits
24. Religious and Lobbying Activities
25. Budget Modifications
26. Monitoring
27. Conflict of Interest
28. Procurement Standards and Methods
29. Environmental Issues

The format and specific language of each Agreement could vary substantially, depending on the legal requirements of each state.

CITATIONS FOR THE BASIC ELEMENTS OF A SUBRECIPIENT AGREEMENT

Provisions	Federal Regulations*	OMB Circulars for Non Gov't. Subrecipients	OMB Circulars for Gov't. Subrecipients	Other Federal Regulations**
1. National Objective Compliance/Eligibility	570.200(a)(1)+(2), 570.201–570.209, 570.506			
2. Scope of Work	570.503			
3. Time of Performance	570.503			
4. Compensations and Method of Payment	570.502, 570.513	A-122, A-21	A-87	24 CFR Part 85
5. Program Income	570.500(a), 570.503(b)(3), 570.504			
6. Record-Keeping Requirements	570.502, 570.503(b)(2), 570.506			24 CFR Parts 84 and 85
7. Reporting Requirements	570.502, 570.507			24 CFR Parts 84 and 85
8. Public Access to Program Records	570.502, 570.508			24 CFR Parts 84 and 85
9. Grant Closeout Procedures	570.502, 570.509			
10. Uniform Administrative and Program Management Standards	570.502, 570.503(b)(4), 570.610	A-122, A-21, A-133	A-87, A-133	24 CFR Parts 84 and 85
11. Reversion of Assets	570.502, 570.503, 570.505			
12. Real Property	570.502, 570.503(b)(7), 570.505			
13. Other Program Requirements	570.503(b)(5), 570.600–603, 570.605–614			
14. Termination	570.502, 570.503			24 CFR Part 84.43
15. Compliance with Laws/Regulations	570.501	A-122		24 CFR Parts 84 and 85
16. Antidiscrimination/Affirmative Action and EEO	570.601, 570.602, 570.607			
17. Financial Management	570.502, 570.610			24 CFR Parts 84.20 and 85.20 and Treasury Cir. 1075
18. Audits	570.502, 570.610	A-133	A-133	24 CFR Parts 84.26 and 85.26
19. Religious and Political Activities	570.200(j), 570.207			
20. Budget Modifications	570.502, 570.503(b)(1)			
21. Monitoring	570.501(b), 570.502(b)(vii), 570.503(b)(1)			24 CFR Parts 84 and 85
22. Conflict of Interest	570.611			24 CFR Parts 84 and 85
23. Procurement Methods	570.502			24 CFR Parts 84.40–48 and 85.36
24. Budget	570.503			
25. Project Schedule/Milestones	570.503			
26. Environmental Review	570.503(b)(3)(1)			

* Unless otherwise noted, citations are from Title 24 of the Code of Federal Regulations (CFR).

** Part 84 applies to institutions of higher education, hospitals, and other non-profit organizations; Part 85 applies to state, local, and Federally recognized Indian Tribal governments.

SAMPLE SUBRECIPIENT AGREEMENT

Starting on the following page is a sample subrecipient agreement. Items I – VI generally relate to the specific project or activities being funded. Items VII – XV are “boilerplate” requirements applicable to all activities undertaken with CDBG funds.

Following the sample agreement are sample “scope of services” statements for three different types of activities: public services, housing rehabilitation, and special economic development, job creation activities, which could be inserted in the sample agreement. Note that each of these three samples indicate the number of intended beneficiaries or measurement units for performance. Some of these examples also include additional language regarding budgets, method of payments, and other applicable requirements.

SAMPLE SUBRECIPIENT AGREEMENT*

AGREEMENT BETWEEN [Grantee]
AND
[Non-Governmental Subrecipient]
FOR
[NAME OF CDBG PROGRAM]

THIS AGREEMENT, entered this ____ day of _____, 20____ by and between the _____
(herein called the “Grantee”) and _____ (herein called the “Subrecipient”).

WHEREAS, the Grantee has applied for and received funds from the United States Government under Title I
of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Subrecipient will be responsible for administering a CDBG Year [___] [Name of Program] in a
manner satisfactory to the Grantee and consistent with any standards required as a condition of
providing these funds. Such program will include the following activities eligible under the
Community Development Block Grant program:

Program Delivery

Activity #1 *[Complete description of activity to be undertaken including what products or
services are to be performed, where they are to be provided, for whom they are to be
provided, how they are to be provided]*

Activity #2 *[Same description as above]*

Activity #3 *[Same description as above]*

General Administration

*[Add description of general administrative services to be performed in support of activities noted
above]*

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program’s National Objectives:
benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight;
or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.*

*Sample Form Only. Not to be Used as a Legal Contract.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet (indicate which National Objective). Briefly describe how this National Objective will be met.

C. Levels of Accomplishment – Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted, or meals served, and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
Activity #1	[# of Units]	[# of Units]
Activity #2	[# of Units]	[# of Units]
Activity #3	[# of Units]	[# of Units]
[Add other activities as necessary]		

[NOTE: Provide definition of Units of Service here.]

D. Staffing

[Provide list of staff and time commitments to be allocated to each activity specified in I.A. above.]

A Grantee might include the following provision if it felt among the Subrecipient’s staff only certain personnel had the requisite experience to implement the activity, or if the Subrecipient had a history of reassigning responsibilities that tended to create problems.

“Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.”

E. Performance Monitoring

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the ____ day of _____, 20__ and end on the ____ day of _____ of 20__. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

III. BUDGET

<u>Line Item</u>	<u>Amount:</u>
Salaries	\$_____
Fringe	_____
Office Space (Program only)	_____
Utilities	_____
Communications	_____
Reproduction/Printing	_____
Supplies and Materials	_____
Mileage	_____
Audit	_____
Other (Specify)	_____
Indirect Costs (Specify)	_____
TOTAL	\$_____

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Subrecipient.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$_____. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III and in accordance with performance.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

<u>Grantee</u>	<u>Subrecipient</u>
_____, Manager	_____, Exec. Director
Grantee _____	Subrecipient _____
[Address] _____	[Address] _____
[City, State, ZIP] _____	[City, State, ZIP] _____
[Telephone] _____	[Telephone] _____
[Fax Number] _____	[Fax Number] _____

VI. SPECIAL CONDITIONS

[This section of the Agreement can be used by Grantee to include special conditions specific to the particular activity or individual Subrecipient.]

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient’s environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient’s responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. “Independent Contractor”

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;

- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee’s annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee’s or Subrecipient’s responsibilities with respect to services provided under this contract, is prohibited by the [insert applicable State or Federal law] unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient’s obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report [insert frequency of reports, e.g., “monthly”] all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient’s share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40–48.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market

value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

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

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

XI. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;

- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The Grantee’s failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

[NOTE: For the above sections, if the Subrecipient is a governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” and OMB Circular A-87 would apply.]

Date _____

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

[Grantee]

[Subrecipient]

By _____
Chief Elected Official or Executive Officer

By _____
Title _____

Attest _____
ASSISTANT [CITY/COUNTY] CLERK

Countersigned: _____
FINANCE OFFICER

By _____
Title _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Fed. I. D. # _____

ASSISTANT [CITY/COUNTY] ATTORNEY

AFFIRMATIVE ACTION APPROVAL

CONTRACT COMPLIANCE SUPERVISOR

Example #1: Sample Scope of Services for PUBLIC SERVICE ACTIVITIES

This is an example of a Scope of Services for a non-profit subrecipient that is providing center-based day care services [under 24 CFR 570.201(e)] for children aged 14 months to 5 years. The public service is structured as a limited clientele activity that will principally benefit low- and moderate-income persons.

Please keep in mind that the following example is only one of the ways of structuring a Scope of Services and Method of Compensation for a public services provider being assisted through the CDBG program. In this example, the CDBG assistance comes in the form of a subsidy paid to the provider on behalf of the children from low- and moderate-income families enrolled in day care. However, the option is also available to assist the day care center provider's overall operations with CDBG funds, which could also meet the National Objective of principal benefit to low- and moderate-income persons as long as a majority of the children served by the center are from low- and moderate-income families.

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for providing day care and related services to eligible children over the period of _____ to _____. With funding from the Year _____ CDBG program of the [name of Grantee], the Subrecipient will make available the equivalent of 10 full-time day care slots during this period. The day care services will be provided at the Subrecipient's main day care center at [address of facility). The Subrecipient will administer all tasks in the provision of the aforementioned public services in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

Changes in the scope of services, budget, or method of compensation contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and Grantee.

The major tasks that the Subrecipient will perform in connection with the provision of the eligible day care services include, but are not limited to, the following:

- 1) Maintain facilities at all times in conformance with all applicable codes, licensing, and other requirements for the operation of a day care center. This will include all requirements for lead-based paint testing and abatement, as necessary. The facilities must also be handicapped accessible, and organized into separate areas appropriate for each of the age groupings being served (toddler, 14 months to 2. 5 years; pre-school, 2. 5 to 4 years; and pre-kindergarten, 4 to 5 years).
- 2) Conduct outreach through flyers, public service announcements, networking with local agencies, scheduling of open houses and other means to inform the low- and moderate-income community of the availability of the fully-subsidized day care slots available, and to ensure sufficient demand to maintain enrollment. All descriptions of the program will emphasize that the center is handicapped-accessible. [Depending on the demographics of the community, a Grantee may want to specify that outreach materials also be produced in Spanish, French, Cambodian, etc.)

- 3) Accept applications and perform eligibility determinations. Only children aged 14 months to 5 years from families in [name of town/city/county] with incomes that do not exceed the low- and moderate-income limits of the CDBG program, by family size, will be eligible for enrollment in the subsidized day care slots.
- 4) Offer day care services from 8:00 a. m. to 6:00 p. m. Monday through Friday to approved eligible families. Families should be provided the option of enrolling their children in either part-time or full-time day care slots, provided that children from eligible low- to moderate-income families occupy 10 of the 40 “full-time equivalent” slots available at the day care center. [If services are not expected to be provided on some or all holidays, they should be specified in the scope.]
- 5) Ensure that the numbers, background and qualifications of the Subrecipient’s staff providing the on-site day care and any related services at all times are appropriate for the enrolled child population at the center and meet at least the minimum standards established by the pertinent licensing bodies.
- 6) Provide two nutritionally balanced snacks and a warm lunch every day for children participating full time.
- 7) Provide transportation services for children requiring transport to and from their home.
- 8) As part of the day care services, provide a range of structured social, educational, and cultural enrichment activities appropriate to the age groups being served.
- 9) Maintain program and financial records documenting the eligibility, attendance, provision of services, and Subrecipient expenses relative to the children receiving day care services as a result of assistance provided through the CDBG program.

B. Budget and Method of Compensation

With the submission of original monthly bills together with proper support documentation, for the services described in Section A. of this Agreement, the Subrecipient will be reimbursed on a monthly basis according to the following schedule:

For day care services: A *pro rata* share of the Subrecipient’s allowable monthly expenses for the provision of day care services as supported by a cost allocation plan prepared in accordance with OMB Circular A-122 and the Department of Health and Human Services Publication OASMB-5. FTE day-care slots may be used as the allocation basis for the plan if it can be shown that this basis provides for an equitable distribution of the indirect costs. Aggregate monthly billings are limited to \$7,500.00.

For transportation services: The actual direct costs and any allocable indirect costs incurred by the Subrecipient for the provision of day care-related transportation for authorized, enrolled children from low- and moderate-income families during the month in question, up to an aggregate limit of \$500.00 per month.

It is also important to note two special requirements for support of public services under the CDBG program. First, to be initially eligible for CDBG funding, the public service must be either a new service or a quantifiable increase in the level of service provided or assisted by the local government with state or local

funds during the prior year. This requirement does not prevent refunding the CDBG-assisted public service at the same level in a subsequent year, however.

Second, under most circumstances the amount of CDBG funds obligated within a program year to support public service activities must not exceed 15 percent of the total grant awarded to the grantee for that year, together with 15 percent of the program income received by the grantee and its subrecipients for the preceding year. The grantee may want to include explicit language in the Subrecipient Agreement acknowledging these conditions for the eligibility of the public services expenses.

The grantee may also want to place special emphasis on the antidiscrimination language in the Subrecipient Agreement in order to ensure that individuals with disabilities or other special populations receive equitable access to the CDBG-assisted services.

Example #2: Sample Scope of Services/Schedule of Payment for HOUSING REHABILITATION ACTIVITIES

In this example, the housing rehabilitation effort is aimed primarily at owner-occupied properties. The Subrecipient administers the activity, but the actual rehabilitation work is conducted by private contractors. (Other likely scenarios include a local rehabilitation program where the Subrecipient's own staff perform some or all of the rehabilitation, and/or where the Subrecipient itself owns the property; in such cases, the specifics of the Scope of Services would need to be changed accordingly.)

The illustrative Scope of Services and Schedule of Payment that follow could be used along with the overall "boilerplate" agreement language found earlier in this Appendix to create a complete Subrecipient Agreement for housing rehabilitation activities.

In reviewing the following, however, keep in mind that this is only one of the many acceptable ways a Scope of Services could be structured for such work, and the particular language and level of detail contained in this example are not mandatory. Essentially, a grantee should develop a Scope of Services that is sufficient to provide clarity about all the activities that the subrecipient is expected to carry out, with explicit review and approval mechanisms that are adequate to permit the grantee to exercise its oversight responsibilities.

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering a CDBG Year____ housing rehabilitation program, also referred to as (specific name of program), for the city/county of (name of Grantee), hereinafter referred to as "the Grantee." The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

The major goal of the Subrecipient's efforts under this Agreement will be the completion of rehabilitation of thirty-five (35) eligible housing units, per the Subrecipient's proposal of [date], as amended and approved by the Grantee on [date]. Changes to the program goals, scope of services, schedule or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and Grantee. Toward the goal of the completion of rehabilitation for 35 eligible units, the major tasks that the Subrecipient will perform include, but are not necessarily limited to, the following:

1) Refinement of housing rehabilitation program plans, procedures and forms: subject to review and approval by the Grantee, the Subrecipient will establish, or make any necessary revisions to, the housing rehabilitation program design and procedures (including but not limited to the priorities among applicants and among rehabilitation measures, the limits and structure of financial assistance, and the recapture and affordability policies), as well as any other necessary forms, documents or sample contracts.

2) Outreach: the Subrecipient will conduct sufficient advertisement of the housing rehabilitation program and other forms of outreach to ensure that enough eligible applicants from the designated target neighborhood(s) of [names of neighborhoods] participate in the program to meet the CDBG Year____ housing rehabilitation goal of 35 completed units.

3) Intake/assessment of eligibility: the Subrecipient will assist property owners and residents in the designated neighborhoods in the completion of applications to permit eligibility determinations for rehabilitation assistance. The Subrecipient will make provision for translation services to meet the needs of non-English-speaking applicants. In the event of applicants who have impaired mobility or other disabilities, the Subrecipient will make provisions for completing the application at the applicant's residence or other acceptable procedures for ensuring equal access to services.

Initial eligibility determination of households/structures will be made by the Subrecipient on the basis of satisfaction of income requirements (single-unit structures must be occupied by a low- and moderate-income household; if a two-unit structure, at least one must be so occupied; and if three or more units in a structure, at least 51 percent of the units must be occupied by low- and moderate-income households [at affordable rents, where applicable] according to the most current income limits established by HUD), the apparent need for rehabilitation measures to correct relevant housing code or Housing Quality Standard (HQS) deficiencies, and any other pertinent criteria set forth in the approved program design.

4) Work write-ups: for each eligible unit to be assisted, the Subrecipient will complete a detailed work write-up of the rehabilitation to be performed, including estimated costs of each activity, materials to be used, and industry or regulatory standards to be met. This write-up will be initialed and dated by the homeowner.

5) Bank financing: for those applicants who will be securing some of the financing for the rehabilitation work through private loans from a bank or other type of private financial institution, the Subrecipient will provide assistance to applicants when applying for such complementary financing upon request.

6) Solicitation and selection of contractors: the Subrecipient will assist approved applicants in the identification, proper solicitation, and selection of contractors qualified to perform the authorized rehabilitation of eligible housing units. The Subrecipient will provide forms and sample contract formats for the applicants to use in contracting with the contractors and will assist the applicant in ensuring that the description of the work contained in any contracts with contractors is accurate and complete.

7) Periodic and final inspections: the Subrecipient will perform periodic site visits to ascertain that approved and contracted rehabilitation work is proceeding properly and satisfactorily, will authorize (with the owner's written approval, including signature and date) appropriate change orders, and will mediate in the event of owner dissatisfaction with the work done by the contractor.

8) Approval of contractor payments: as rehabilitation progresses and as invoices are submitted by contractors, the Subrecipient will verify that the expenses are reasonable and the work has been completed properly (including a sign-off by the owner), and will authorize drawdown of funds from the Grantee, and disbursement to the contractors.

9) Maintenance of case files and other records: for each applicant, the Subrecipient will maintain case files, including application and documentation of eligibility, work write-ups, the assistance agreement between the property owner and Subrecipient (along with repayment/recapture provisions), documentation of liens and any other forms of security, contractor selection criteria, copy of contract between owner and contractors), documentation on all

necessary licenses and permits, site visit/inspection reports (including final inspection), change orders, and approved contractor invoices for payment (with owner sign-off). The Subrecipient will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project, as well as information on those displaced or temporarily relocated (per 24 CFR 570.606 and 24 CFR part 24). The Subrecipient will maintain these and other program and financial records in accordance with the general requirements for record keeping specified in Section __ of this Agreement.

B. Staffing

The Subrecipient shall assign the following staff as Key Personnel to the CDBG Year ____ housing rehabilitation program:

Staff Member Title	General Program Duties	Time Allocation
Jane Smith, Program Manager	General program oversight and administration; revision of forms and procedures; approval of contractor selection; submission of approved contractor invoices	10 hours/week
John Doe, Asst. Program Manager	Assist with revision of forms and procedures; outreach; intake and eligibility determinations; solicitation of contractors; supervision of Rehabilitation Specialist; maintenance of program records	30 hours/week
Harold Baker, Rehabilitation Specialist	Work write-ups; inspections	25 hours/week
Alice Glass, Bookkeeper	Financial Records	5 hours/week

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

C. Project Schedule

Unless amended by mutual written agreement by the Subrecipient and the Grantee, (Subrecipient’s name) will perform the described housing rehabilitation tasks and complete the rehabilitation of eligible units in conformance with the schedule attached as Exhibit 1.

D. Line Item Budget

The following is the budget for the CDBG FY____ housing rehabilitation program to be administered by (name of Subrecipient). Unless otherwise noted, this budget may only be modified through a formal written amendment approved by the Grantee.

Rehabilitation Loans and Grants		\$310,000. 00
Relocation Assistance		20,000. 00
Operations and Administration		83,804. 00
Salaries	50,860. 00	
Fringe @ 40%	20,344. 00	
Office space (program only)	4,800. 00	
Communications	440. 00	
Reproduction/printing	600. 00	
Supplies and materials	660. 00	
Mileage	1,200. 00	
Audit	3,000. 00	
TOTAL		<u>\$413,804. 00</u>

METHOD OF COMPENSATION/SCHEDULE OF PAYMENTS

A. Direct Rehabilitation Expenses

The Subrecipient may draw down funds (against the “Rehabilitation Loans and Grants” budget line item) to establish escrow accounts for individual participating property owners to finance payments to contractors for the rehabilitation of eligible property. The loan agreement with the homeowner must specify that an escrow account will be used. Drawdowns for such escrow accounts may be initiated at the time that the assistance agreement between the Subrecipient and property owner is executed, but any funds drawn for such escrow accounts must be limited to the amount expected to be disbursed within 10 working days from the date of drawdown, must be placed in one interest-bearing account, and must be disbursed to contractors within 10 days of receipt by the Subrecipient. Payments to contractors from such escrow accounts should be made on the basis of work completed, with a set-off of at least 10 percent until final inspection and sign-off of the completed rehabilitation by the Subrecipient’s staff and property owner.

Exhibit 1

**Housing Rehabilitation Program
Work Schedule – CDBG YEAR _____**

Tasks/Program Goals	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
1. Refinement of Forms and Procedures	_____											
2. Outreach/Intake	_____ (as needed) _____											
3. Number of Applicants Determined Eligible (cumulative)	0	5	15	25	35+							
4. Number of Work Write-ups Completed (cumulative)	0	3	12	22	32	35+						
5. Number of Eligible Units Out-to-Bid (cumulative)	0	1	10	18	28	35						
6. Number of Eligible Units Where Rehab Started (cumulative)	0	1	5	13	21	29	35					
7. Number of Eligible Units Where Rehab 50% Complete (cumulative)	0	0	1	5	13	21	29	35				
8. Number of Eligible Units Where Rehab/Final Inspection Completed (cumulative)	0	0	0	2	4	8	16	24	32	35		
9. Submission of Quarterly Reports	X			X			X					

B. Relocation Assistance

The Subrecipient may draw down funds as Relocation Assistance expenses are incurred, up to the approved line item budget level. Relocation Assistance must be provided in accordance with 24 CFR 570.606 and 49 CFR part 24.

C. Operations/Administrative Expenses

During start-up of the CDBG FY ___ housing rehabilitation program (Months 1–3), the Subrecipient may draw down on a monthly basis up to one-twelfth of the budgeted amount for Operations and Administration, to cover expenses actually incurred. After Month 3, drawdowns against the balance of budgeted funds for Operations and Administration must be based on costs actually incurred, and proportional to the percentage of the total authorized amount for Rehabilitation Loan/Grant funds and Relocation Assistance that have been expended.

[NOTE: A grantee might structure compensation for operations/administrative expenses in this way to allow for start-up costs, and to ensure that the subrecipient does not exhaust its CDBG operations budget before the rehabilitation of all the assisted units is completed.]

Alternatively, a grantee could choose to reimburse the subrecipient simply on the basis of operations/administrative expenses incurred, or at a fixed rate per unit completed (in this case, \$2,394.40 per unit based on a budget for operations and administration of \$83,804 and a volume of 35 units). This latter approach may only be used if it is supported by a cost allocation plan to ensure that the reimbursement is tied to the actual cost of services.]

In addition to the provisions outlined above, it is especially important that a grantee should ensure that a Subrecipient Agreement for the operation of a housing rehabilitation program also includes citations relative to the following program requirements:

- **Affordability provisions [24 CFR 570. 208(a)(3)]:** for activities benefiting low- and moderate-income persons, the subrecipient must adopt and make public the grantee’s standards for determining that for rental housing assisted under the program, the rents of units occupied by low- and moderate-income persons are “affordable.”
- **Davis-Bacon requirements and other Labor Standards [24 CFR 570.603]:** these statutes require the payment of prevailing wages for CDBG-assisted construction work, including construction or rehabilitation of residential property containing eight units or more, in excess of \$2000. The Contract Work Hours and Safety Standards Act also applies to such activities.
- **Historic Preservation [16 U.S.C. 470 et seq. and 36 CFR Part 800]:** these requirements mandate (a) consultation with specified agencies having responsibility for historic preservation to identify properties listed (or eligible for inclusion) in the National Register of Historic Places that may be subject to adverse effects by the proposed CDBG activities, and (b) compliance with procedures or other requirements to avoid or mitigate such adverse effects.
- **National Flood Insurance Program [24 CFR 570.605]:** if a community has had notice for more than a year that an area has been identified by FEMA as having special flood hazards, CDBG funds cannot be spent for acquisition or construction purposes within that area unless the community is participating in the National Flood Insurance Program and such insurance has been purchased for the properties in question.

- **Relocation, Real Property Acquisition, and One-For-One Housing Replacement [24 CFR 570.606]:** The acquisition of real property for a CDBG-assisted project and the displacement of any person (family, individual, business, non-profit organization or farm) as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project must comply with 24 CFR 670.606 and 49 CFR part 24. The Subrecipient must also conduct its CDBG activities so as to minimize displacement, and if displacement occurs, the displaced persons or entities must be provided assistance consistent with the Uniform Relocation Act, as amended, or Section 104(d), as applicable. In addition, there must be a one-for-one replacement of any occupied (or vacant, occupiable) low- and moderate-income dwelling that is demolished or converted to another use in connection with a CDBG-funded activity.
- **Lead-based Paint [24 CFR 570.608 and 24 CFR Part 35]:** There is a general prohibition against the use of any lead-based paint in connection with any CDBG activity involving the construction or rehabilitation of residential structures. If the structure was constructed prior to 1978, the tenants or purchasers must be notified of the hazards of lead-based paint poisoning; and, depending on the level of Federal assistance made available to the structure, paint inspection, risk assessment, treatment and/or abatement must be provided.
- **Program Income [24 CFR 570.500; 570.503(a), (b)(3) and (b)(7); and 570.504]:** A grantee must approve (a) whether a Subrecipient will be allowed to retain and use program income, and (b) for what activities the program income may be used. The use of such program income must be in compliance with all other applicable program requirements and, upon the expiration of the Subrecipient Agreement, any program income on hand or subsequently received by the Subrecipient must be returned to the grantee.

Examples of language that can be incorporated into a Subrecipient Agreement for most of these additional requirements can be found in the sample “boilerplate” Agreement in the preceding section of this Appendix.

Example #3: Sample Scope of Services for SPECIAL ECONOMIC DEVELOPMENT JOB CREATION ACTIVITIES

*This is an example of a Scope of Services for a subrecipient that is providing low-interest loans to private for-profit businesses (per 24 CFR 570.203(b)) as a means of creating jobs for low- and moderate-income persons. With such “special economic development activities” documentation that the loan program constitutes an **eligible activity** and meets a **National Objective** is crucial, and therefore is given particular attention in this illustrative Scope of Services.*

*As mentioned in the preceding section that focused on housing rehabilitation, there are a variety of acceptable ways to structure the scope and compensation schedule for any particular activity being undertaken by a Subrecipient. Therefore, the example that follows **should not be viewed as required contract language**, but rather as one approach for structuring the Scope of Services in a S Agreement.*

SCOPE OF SERVICES

A. Principal Tasks

The Subrecipient will be responsible for administering a CDBG Year ____ economic development loan program, also referred to as (specific name of program), for the city/county of (name of Grantee) hereinafter referred to as “the Grantee.” The Subrecipient will administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

Changes to the program focus and objectives, scope of services, schedule, or budget contained in this Agreement, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by both the Subrecipient and Grantee.

The focus of the Subrecipient’s efforts under this Agreement will be the provision of low-interest loans to private for-profit businesses located in the city/county of (name of grantee) that will result in the creation of jobs at those businesses primarily for low- and moderate-income individuals. The principal objective of the CDBG Year ____ economic development loan program will be the creation of 25 jobs through the provision of up to ten (10) loans. The major tasks that the Subrecipient will perform in connection with the (specific name of program) include, but are not limited to, the following:

1) Refinement of economic development loan program procedures and forms: subject to the review and approval by the Grantee, the Subrecipient will establish, or make any necessary revisions to, the economic development loan program design, procedures, and forms (including but not limited to the underwriting criteria, collateral/loan security requirements, standards for loan value-to-job creation ratio(s), repayment terms, loan review procedures, standard application forms and loan documents, loan servicing terms and procedures, and loan re-negotiation, default and/or foreclosure policies).

2) Outreach: the Subrecipient will advertise the CDBG FY ____ economic development loan program and conduct other forms of outreach. The Subrecipient’s outreach efforts will be sufficient to generate enough demand to be able to close loans that produce 25 jobs, the majority of which will be for low- and moderate-income persons.

3) Completion of loan applications; underwriting assessment: the Subrecipient will assist for-profit businesses in completing loan applications, and will perform an assessment of each loan request to: (a) determine the CDBG eligibility of the loan, (b) evaluate the loan's job creation potential relative to meeting the National Objective and Public Benefit standards, and (c) ascertain that the loan will minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The Subrecipient will perform a front-end assessment to determine whether each loan and the financing terms associated with it are appropriate, and as part of this assessment will consider the business' need for financial assistance, the feasibility of the proposed venture or business activity, the past business experience of the applicant, the reasonableness of the proposed costs and return to the applicant, the commitment of other sources of funds, and the ratio of the loan amount to the full-time equivalent jobs expected to be created.

4) Obtain loan collateral: the Subrecipient will identify and obtain loan collateral, or other appropriate forms of loan security, sufficient to reduce the financial risk associated with each CDBG-funded loan, consistent with the program intent of providing financing in situations where adequate conventional financing is not available.

5) Loan Review Committee: the Subrecipient will establish and maintain a Loan Review Committee, consisting of a representative of the Subrecipient, a representative of the Grantee, and three representatives of local financial institutions familiar with business loans. The Loan Review Committee will review all loan recommendations forwarded to it by the economic development program staff of the Subrecipient. No loan will be made under the economic development loan program without the approval of a majority of the members of the Loan Review Committee.

6) Loan closing: with the authorization of the economic development loan program's Loan Review Committee, the Subrecipient will execute all necessary documents and will draw down funds as necessary to cover the expenses of approved applicants for activities authorized by executed loan agreements. The loan documents executed with applicants will include explicit provisions describing (a) the records that loan recipients must maintain to demonstrate the eligibility of the CDBG expenditures and the satisfaction of the CDBG National Objective, and (b) the conditions and procedures under which late payment penalties, default and/or foreclosure will occur.

7) Loan servicing/loan portfolio management: the Subrecipient will establish and maintain a consistent method for recording monthly payments, with up-to-date ledgers and timely reconciliations (at least quarterly). The Subrecipient will also establish a system to monitor the financial health of the ventures funded, in order to anticipate repayment problems. The Subrecipient will apply its policies and procedures regarding late payments, defaults, loan re-negotiation, and foreclosure in a timely and consistent manner.

8) Monitoring of job creation: the Subrecipient will monitor loan recipients on at least a quarterly basis to assess their progress in creating jobs for low- and moderate-income persons, and will institute default and foreclosure of the loan (with penalties if appropriate) in instances where the loan recipient fails to take sufficient action to satisfy the CDBG National Objective requirement.

9) Management of program income: any program income generated in connection with the economic development loan program, including loan repayments, late payment penalties,

recaptures, or proceeds from foreclosure, will be utilized consistent with the provisions of 24 CFR 570.500(a), 570.503(a) and (b)(3), and 570.504, and all other applicable CDBG program requirements. The Subrecipient shall apply this program income toward additional loans under the economic development loan program through the use of a revolving fund pursuant to 24 CFR 570.500(b).

10) Maintenance of records: in addition to the financial records regarding loan repayment cited in Paragraph A.6 above, the Subrecipient will maintain sufficient records to fully document (a) the loan application and underwriting review, including the front end assessment of CDBG eligibility and appropriateness of the loan, (b) the final terms and conditions of the loan, including collateral or other forms of loan security involved, (c) satisfaction of the CDBG National Objective, and Public Benefit requirements consistent with the requirements of 24 CFR 570.208(a)(4) and 570.209, and (d) proper utilization of program income received. All such records will be maintained according to the general requirements of 24 CFR 570.506 and those specified in the section of this Agreement on retention of records [Grantee to add specific reference here].

Along with this Scope of Services, the grantee should develop Agreement language regarding Key Personnel and should include a Project Schedule and a Line Item Budget comparable to those found in the preceding example for housing rehabilitation activities. The Project Schedule may be more difficult to develop in the instance of this special economic development activity, however, because it probably will be harder to predict when individual loans might be closed. Nevertheless, in the Project Schedule the grantee should at least identify the discrete tasks and make every effort to frame measurable milestones and/or levels of accomplishment over time.

For the Method of Compensation/Payment Procedures section, the Subrecipient's draw down of funds to finance the loans themselves should be predicated on the amount needed to cover the actual expenses of approved applicants relative to activities authorized by executed loan agreements. The somewhat uncertain schedule for loan closings also might make it difficult to structure compensation for the Subrecipient's operational/administrative expenses on a "performance basis;" that is, payment to the Subrecipient for operational/administrative expenses based on the number of loans closed or jobs created, etc. An alternative method is to reimburse the Subrecipient for operational and administrative costs simply on the basis of expenses incurred.

These sections on Scope, Project Schedule, Budget, and Method of Compensation/ Payment Procedures can be added to the general Agreement "boilerplate" language to form a complete Subrecipient Agreement.