

CHAPTER 5 – CDBG CONTRACT

This section of the CDBG Manual provides guidance on the steps that must be fulfilled before a funded project is implemented and an overview of the requirements a grantee has as a result of signing a CDBG Contract.

Caution:

- Prior to seeking any professional services or contractors, a Grantee must understand and follow the procurement processes required of CDBG funded projects. See Chapter 7 – Procurement.
- Prior to contracting for non-general administrative services, a Grantee must receive a Notice of Release of Funds/Environmental Clearance from the Department.

NOTICE OF APPROVAL

A letter announcing the award is sent to each successful CDBG program applicant. The letter specifies the amount of the award and the activity or activities funded. The amount of the award may be different than the requested amount. An approved applicant is required to designate an employee of the local governmental entity to have principal day-to-day responsibility for the administration of this grant. In addition, a CDBG Certified Administrator must be employed or contracted by the grantee to oversee the administration of the grant. The CDBG Certified Administrator may be the designated employee responsible for day-to-day administration or a contracted professional, in either case the Certified Administrator must be recognized by the Department as being a Certified Administrator.

The Notice of Approval cautions the grantee about incurring costs. Non-administrative costs incurred prior to receiving a Notice of Release of Funds/Environmental Clearance cannot be reimbursed with CDBG funds unless a special pre-agreement is executed. Only a very limited number of costs may be incurred prior to receiving a Notice of Release of Funds/Environmental Clearance. Only costs associated with the general administration of a grant are allowable such as contracting for administrative services or hiring staff to administer the grant. Administrative costs include the related costs necessary for completing the Special Conditions requirements of the CDBG Contract this includes the environmental review. Contracts for general administration services must be executed after the Notice of Approval date. All expenses incurred prior to the Notice of Approval cannot be reimbursed by CDBG funds or be considered as match.

A grantee will also find in the Notice of Approval the contact information for the Program Representative. This is the Department staff person who is the principal contact for all matters concerning this grant.

CDBG CONTRACT

Note: As a result of the Office of Management and Budget's release of the Super Circular and the U.S. Department of Housing and Urban Development's Notice of Transition to 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance*, the Department has made several changes and additions to the CDBG Contracts. Grantees are strongly encouraged to thoroughly review the CDBG contracts prior to execution.

The grantee will receive a complete electronic copy of the CDBG Contract (see the sample contract) after receiving the Notice of Approval. This is the contract between the Department and the grantee. The grantee should thoroughly review the terms and conditions of the contract with its attorney.

The Chief Elected Official is the only individual recognized by the Department authorized to sign and execute CDBG contractual documents and official correspondence. This applies to any contract extensions and amendments involving changes in terms, conditions and amounts. At the time of application, the grantee should have passed a resolution authorizing the Chief Elected Official to sign such documents.

The grantee has 30 days to review and return a signed original or color PDF image of the CDBG Contract signature page to the Department for full execution. It is not necessary to return a complete copy of the signed contract. Grantee may email a color PDF image of the signature page to the designated program representative or the original to the following address, at the attention of your Program Representative:

Community Development Block Grant
Nebraska Department of Economic Development
P.O. Box 94666
301 Centennial Mall South
Lincoln, NE 68509-4666

Upon receipt, the Department will return a scanned copy of the contract with both signatures for recordkeeping. A complete copy of the contract, including the fully executed signature page, must be retained in the grantee's records.

Terms

The CDBG Contract contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds. In most cases, the special conditions of the contract must be satisfied within three months and the project completed within twenty-four years.

Each grantee is responsible for adhering to all the terms of their CDBG Contract. A substantial number of regulations, acts, and statutes apply to the grant.

SPECIAL CONDITIONS FOR RELEASE OF FUNDS

Recipients of CDBG funds are advised to carefully review their CDBG Contract before implementing the funded project. Contained within the contract is a section entitled Special Conditions for Release of Funds. The section begins by stating that "Funding of the amount stipulated in §1.01 will not be released to the Recipient by the Department until the following Special Conditions for Release of Funds are met." These Special Conditions must be satisfactorily completed by the identified date, or the Department reserves the right to cancel the contract if these special conditions are not met within this specified period.

Note: Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Funds/Environmental Review to the Grantee.

Typical Special Conditions

Grantee Information Sheet

Documentation is required that the Grantee has completed and returned this form to the Department. This form should be resubmitted to the Department anytime a representative identified on the form has changed.

Environmental Review

Documentation is required by the Department evidencing the Grantee's completion of its responsibilities for environmental review and decision making pertaining to the project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58, which furthers the purposes of NEPA. (See Chapter 6)

Language Assistance Plan (Project Specific)

Documentation is required by the Department evidencing the grantee's completion of its responsibilities regarding Limited English Proficiency (LEP) persons, assignment of an LEP Representative, a Four Factor Analysis, and a description of the actions grantee will take to fulfill the requirements to provide meaningful access to LEP persons.

Authorization to Request Funds

Documentation is required that the Grantee has completed and returned this form to the Department. This form should be resubmitted to the Department anytime a representative identified on the form has changed.

Financial Management

Documentation is required evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

Procurement Standards and Code of Conduct

Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 2 C.F.R. Part 200.300-345 and 24 C.F.R. Part 570.

Excessive Force Certification

Documentation is required that the Grantee has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

Fair Housing

Documentation is required that the Grantee has specifically provided a description of the actions it will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. (See later in this chapter for more guidance on fair housing)

Implementation Schedule

Documentation that the grantee has completed and submitted this form to the Department.

CDBG Certified Administrator

Documentation is required that the grantee has selected a CDBG Certified Administrator. This includes a letter from the Chief Elected Official identifying the CDBG Certified Administrator and the procurement method utilized.

Disclaimer: The above list represents a list of typical standard special conditions, however all CDBG Contracts are tailored to a specific project with unique standard conditions. The Special Conditions for Release of Funds in the CDBG Contract must be satisfied before the Notice of Release of Funds will be issued for that project. Forms and samples to assist in completing special condition requirements are available from the Department's website.

Federal and State Requirements

In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the grantee agrees to comply with: the

Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 CFR Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved Project.

The grantee must gain understanding of all the requirements for which they are agreeing to comply. The following is a summary of some of the requirements and not an exhaustive list of the responsibilities of CDBG grantees.

Civil Rights and Equal Opportunity Provisions

- **Title VI of the Civil Rights Act of 1964**
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.

- **Section 109 of the Housing and Community Development Act of 1974**
Provides that no person shall be excluded from participation in (including employment), denied program benefits of, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

- **Age Discrimination Act of 1975**
Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance.

- **Section 504 of the Rehabilitation Act of 1973**
Provides that no otherwise qualified individual shall; solely by reason of his or her handicap, be excluded from participation in (including employment), denied program benefits of, or subjected to discrimination under any program or activity receiving federal funding assistance.

United States Housing and Urban Development (HUD) regulations require that grantees follow specific steps in complying with Section 504 of the Rehabilitation Act of 1973. Attachment 2 provides guidance on those compliance steps.

- **Americans with Disability Act**
Extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications. Discrimination could occur if facilities are designed or constructed (built for initial occupancy after January 26, 1993) and are not accessible or usable by those with disabilities. The ADA also mandates that structurally-based architectural and communications barriers be removed, provided that the removal be readily achievable, easily accomplished and capable of being accomplished with little difficulty or expense.

- **Executive Order 11246**
Applies to all federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of a federal or federally-assisted construction contract in excess of \$10,000. Grantees must include the applicable equal opportunity language

in the bid specifications and contract documents.

- **Executive Order 11063, As Amended by Executive Order 12259**
Provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States. Under this executive order, if HUD (or in this case, the state) concludes that any person or entity applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulations, or procedures issued or adopted pursuant to this order, they shall endeavor to remedy such violation by informal means, including conference, conciliation and persuasion. In the event of failure of such informal means, sanctions may be imposed.

- **Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988**
This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The grantee must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.

Environmental Standards and Provisions

For more information on environmental requirements refer to Chapter 6:

- **Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58**
Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the grantee must also submit environmental certifications to the Department when requesting that funds be released for the project.

The grantee must certify that the proposed project will not significantly impact the environment and that the grantee has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

- **EPA List of Violating Facilities**
The grantee will ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities.

- **Flood Insurance**
The grantee will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.

- **Historic Preservation**
The grantee will, in connection with its performance of environmental assessments under the

National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:

- Consulting with the state Historical Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.0) by the proposed activity; and,
- Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.

Labor Standards and Provisions

For more information on labor standards requirements refer to Chapter 9 – Construction & Labor Standards

- Davis-Bacon Act
- Section 2 of the June 13, 1934 Act Popularly Known as The Copeland Anti-Kickback Act Contract Work
- Hours and Safety Standards Act
- Section 3 of the Housing and Urban Development Act of 1968
- Fair Labor Standards Act of 1938

AFFIRMATIVELY FURTHERING FAIR HOUSING

All CDBG grantees, regardless of the type of CDBG project, must certify that they will affirmatively further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of action to be taken by the grantee, not just passive compliance with existing laws and ordinances. The requirement is not limited to those grantees with a housing activity, but must be undertaken by all DED CDBG grantees each time a grant is awarded.

Fair housing choice is the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, national origin, religion, sex, familial status, or disability. Local governments, because of their influence and power, are in the most effective position to promote fair housing. CDBG grantees make a commitment to Affirmatively Further Fair Housing in the community as a recipient of CDBG funds. Although the Department has a specific action requirement, it is important for grantees to be aware that this is a commitment to understand every individual's fair housing rights and ensure all local policies and practices do not hinder fair housing and when appropriate actively further fair housing.

Grantees, as a Special Conditions requirement must:

- Identify a local contact, preferably an employee or elected official of the local government, as the community Fair Housing representative that will actively promote fair housing and ensure potential fair housing violations are reported to the appropriate agencies. The Department does not expect, or recommend, that the community Fair Housing representative take on the responsibility of deciding whether specific complaints are legitimate violations of the Fair Housing Act. Instead the Fair Housing representative needs to make individuals aware of the agencies that can assist them with investigating and resolving a complaint that is potentially a violation of the Act.
- Inform the Department of a specific action they will undertake to further fair housing and clearly document the action that was taken in the project file. Documentation of the Fair Housing Action can include newspaper articles, meeting and board minutes, contracts and agreements with workshop presenters, sign-in sheets, web-sites, and video files.

Standard, minimal actions that may be undertaken without additional actions only by a grantee that it is a first-time recipient of CDBG funds and with permission from the Department program representative:

- Add the Equal Opportunity Fair Housing logo to official letterhead.
- Prominently display posters, logo, and informational material on fair housing in the village office and community meeting places.
- Pass a Fair Housing Resolution with a commitment to fair housing and measurable action steps to promote fair housing.

Acceptable Fair Housing Actions for purposes of meeting the Special Conditions requirement that Affirmatively Further Fair Housing:

- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies and practices. Document the review and make it available to the public. Develop a Fair Housing Plan with corresponding action steps to address discriminatory policies and practices.
- Take an action step identified in your Fair Housing Plan that has not been previously taken.
- Develop a community Fair Housing web-page which prominently displays the community’s commitment to Further Fair Housing on the community web-site including links to fair housing enforcement and education agencies such as the Nebraska Equal Opportunity Commission, the Fair Housing Center of Nebraska-Iowa, and HUD.
- Enhance the community’s Fair Housing Web-page with additional resource and education materials.
- Print a notice or advertisement that appears in a prominent location of the local newspaper that states that the grantee is an active supporter of fair housing laws. The notice or advertisement must include the contact information for the community Fair Housing representative.
- Support and participate in an educational program coordinated with local realtors, home builders, and/or mortgage lenders designed to provide information on fair housing rights.
- Provide a housing referral and counseling services session with fair housing advocates to assist minorities, women, and persons with disabilities seeking housing within the grantee’s jurisdiction.
- Host an informational fair housing session for local employers to encourage cooperation in efforts to find housing for their employees and to promote equal housing choices within the community.
- Speak to an elementary school class about the Fair Housing rights of the children and their families.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups to host a fair housing informational or technical assistance seminar in your community or region.
- Sponsor a billboard that informs citizens of their basic fair housing rights and contacts if they feel they have experienced discrimination.
- Invite the Nebraska Equal Opportunity Commission (NEOC) or other Fair Housing advocacy organization to have a discussion with a group of lenders or rental property owners and managers about their fair housing responsibilities.
- Host a Fair Housing Month (April) event such as a Fair Housing poster contest or Housing information event that includes Fair Housing advocates.

When promoting fair housing it is sometimes more effective to refer to the injustice of “housing discrimination” in materials for the public as most people are familiar with the concept of discrimination.

- Other actions approved in advance by the Department on a per grant basis.

Basic Facts about Individual Rights and Other Components in the Fair Housing Act

What Housing Is Covered?

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

What Is Prohibited?

In the Sale and Rental of Housing:

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting) or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

In Mortgage Lending:

No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap (disability):

- Refuse to make a mortgage loan.
- Refuse to provide information regarding loans.
- Impose different terms or conditions on a loan, such as different interest rates, points, or fees.
- Discriminate in appraising property.
- Refuse to purchase a loan, or
- Set different terms or conditions for purchasing a loan.

In Addition:

It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.
- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Additional Protection if You Have a Disability

If you or someone associated with you:

- Have a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities
- Have a record of such a disability or
- Are regarded as having such a disability

Your landlord may not:

- Refuse to let you make reasonable modifications to your dwelling or common use areas, at your expense, if necessary for the disabled person to use the housing. (Where reasonable, the landlord may permit changes only if you agree to restore the property to its original condition when you move.)
- Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
- Examples:
 - A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.
 - An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

Requirements for New Buildings

In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
 - An accessible route into and through the unit
 - Accessible light switches, electrical outlets, thermostats and other environmental controls
 - Reinforced bathroom walls to allow later installation of grab bars and
 - Kitchens and bathrooms that can be used by people in wheelchairs.

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in State or local law.

Housing Opportunities for Families

- Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under the age of 18 live with:
 - A parent
 - A person who has legal custody of the child or children or
 - The designee of the parent or legal custodian, with the parent or custodian's written permission.
 - Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

Exemption: Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988, to continue living in the housing, regardless of their age, without interfering with the exemption.

If You Think Your Rights Have Been Violated

HUD is ready to help with any problem of housing discrimination. If you think your rights have been violated, the Housing Discrimination Complaint Form is available for you to download, complete and return, or complete online and submit, or you may write HUD a letter, or telephone the HUD Office nearest you. You have one year after an alleged violation to file a complaint with HUD, but you should file it as soon as possible.

What to Tell HUD:

- Your name and address
- The name and address of the person your complaint is against (the respondent)
- The address or other identification to the housing involved
- A short description to the alleged violation (the event that caused you to believe your rights were violated)
- The date(s) to the alleged violation

Where to Write or Call:

Send the Housing Discrimination Complaint Form or a letter to the HUD Office nearest you or you may call that office directly.

If You Are Disabled:

HUD also provides:

- A toll-free TTY phone for the hearing impaired: 1-800-927-9275.
- Interpreters
- Tapes and braille materials
- Assistance in reading and completing forms

What Happens when You File a Complaint?

HUD will notify you when it receives your complaint. Normally, HUD also will:

- Notify the alleged violator of your complaint and permit that person to submit an answer
- Investigate your complaint and determine whether there is reasonable cause to believe the Fair Housing Act has been violated
- Notify you if it cannot complete an investigation within 100 days of receiving your complaint

NOTICE OF RELEASE OF FUNDS/ENVIRONMENTAL CLEARANCE

After receiving a Notice of Release of Funds/Environmental Clearance and incurring eligible costs, the grantee may request CDBG funds from the Department. The grantee must complete and send to the Department a Request for CDBG funds only as funds are needed for the project. CDBG funds will be disbursed electronically to the grantee’s bank account generally within two weeks if the request contains no errors. The grantee has only **5 business** days to spend CDBG funds following receipt.

The Department recommends to grantees, as a sound financial practice, that CDBG funds be drawn after the grantee has incurred and paid the eligible expense. It is an absolute requirement that expenses are incurred prior to drawing CDBG funds. More information on requesting funds is available in Chapter 12.

AMENDMENTS

During the course of administering a project, situations may occur that require a change in the original terms of the CDBG contract. These changes are referred to as contract modifications or amendments, and include contract extensions.

Grantees must request approval from the Department for **any** modification or amendment to the CDBG contract. When submitting the request for approval, the grantee must complete and submit the CDBG Contract Amendment Request form to the Department along with any attachments required by the Department.

Common amendment requests include:

- Changes to the budget
- Extensions of the contract end date
- Decreases in proposed accomplishments
- Amendments to program guidelines

The Department will review amendment requests using the following factors:

- The effect the amendment will have on the points earned in the selection process.
- Whether the amendment is appropriate and will enhance the overall impact of the original project.
- Grantee’s performance and capacity. (An on-site visit may be required before a determination can be made).
- Any other relevant information.

The Department will inform grantees in writing as to whether the amendment has been approved. When the amendment is approved, the Department will provide the Grantee with a formal contract amendment, which will need to be executed by the grantee and the Department. Grantees should never assume that an amendment has been, or will be approved, and no action should be taken until written approval from the Department is received by the grantee.

Grantees should be aware that changes to the budget that allocate funds from one activity to another activity may require the Grantee to provide additional matching funds for the project, as the proportion of match to CDBG funds that was approved during the application phase must be maintained when the

budget is modified.

Additional items may be required to accompany the submission of the CDBG Contract Amendment Request Form depending on the type of amendment request. Below is a list of the common types of contract amendments and the attachments to be submitted to the Department with the CDBG Contract Amendment Request Form. For other types of contract amendments, please contact your program representative at the Department to determine what information will be required to process your request.

Changes to the Budget/Sources and Uses

- **Attachment 1:** Letter from the Chief Elected Official including:
 - 1) Certification that the local governing body has approved the budget amendment;
 - 2) Identification and reasons for the proposed budget amendment; including
 - a. Changes to the nature of the project requiring the amendment
 - b. Steps being taken to avoid any future amendment requests for the same reasons
 - 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
 - 4) If the amendment includes a new activity, certification that the activity meets the national objective.
- **Attachment 2:** Minutes from the public hearing held on the proposed amendment (required if reallocating more than 10% of the total original grant amount).
- **Attachment 3:** If the budget amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity
- **Attachment 4:** Certification of re-evaluation of the environmental assessment (this form is included in Chapter 6 – Environmental Review)

Extensions of the Contract End Date

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the extension;
 - 2) Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;
 - b. Steps being taken to avoid any future amendment requests for the same reasons
 - 3) If additional local matching funds are required as a result of this extension, certification that such funds are available.
- **Attachment 2:** A revised implementation schedule showing when major milestones will be completed for each activity

Decreases in Proposed Accomplishments

- **Attachment 1:** A letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the decrease in proposed accomplishments;
 - 2) Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;
 - b. Steps being taken to avoid any future amendment requests for the same reasons
 - 3) If additional local matching funds are required as a result of this decrease, certification that such funds are available.
- **Attachment 2:** A revised implementation schedule showing when major milestones will be

completed for each activity

Amendments to Program Guidelines (Housing and/or Commercial Rehabilitation)

- **Attachment 1:** Letter from the Chief Elected Official stating the following:
 - 1) Certification that the local governing body has approved the amendment to the program guidelines;
 - 2) Identification and reasons for the proposed amendment;
 - 3) If additional local matching funds are required as a result of this amendment, certification that such funds are available.
- **Attachment 2:** If the program guidelines amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity
- **Attachment 3:** A complete copy of the proposed revised program guidelines

Note: The CDBG Contract Amendment Request Form is available on the Department's website at: <http://opportunity.nebraska.gov/community/grants/applications/cdbg-forms>

SAMPLE CONTRACT

**STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 14-PP-000
[CFDA #14.228]**

This contract is entered into between the State of Nebraska Department of Economic Development ("Department"), and the [Village/City/County] of [Anytown], Nebraska ("Grantee"), upon the date of signature by both parties.

RECITALS:

A. The Department has been designated by the United States Department of Housing and Urban Development ("HUD") to administer; and HUD has awarded the Department funds for; the Community Development Block Grant Program ("CDBG").

B. The Grantee has submitted, and the Department has approved, Grantee's application ("Application") which will undertake community development activities ("Project") authorized under the Housing and Community Development Act of 1974, as amended ("HCDA" or "Act"), and as authorized under the federal regulations governing CDBG at 24 C.F.R. Part 570.

X. The Application submitted proposes that Grantee will utilize "in kind" matching funds for a portion of the required Grantee match.

C. The authorized use of CDBG funds is premised upon, and conditioned on, the Grantee fulfilling a CDBG national objective as a result of the CDBG-assisted activity. Some of the specified national objectives in the Act (and in the CDBG regulations) are:

1) *Benefiting low-to-moderate income ("LMI") persons.*

- a. Such LMI benefit national objective is usually satisfied in the context of planning projects by demonstrating the projects serve a primarily residential area having at least 51% LMI residents. This subcategory of LMI benefit is referred to as LMI Area Benefit.
- b. Such LMI benefit national objective is sometimes satisfied in the context of planning projects by demonstrating the projects serve a limited clientele which qualifies as benefiting a presumed sufficient LMI group. This subcategory of LMI benefit is referred to as LMC Limited Clientele.
- c. Such LMI benefit national objective is sometimes satisfied in the context of planning projects by demonstrating the projects serve to identify or determine the extent of the need for providing or improving permanent residential structures to be occupied by LMI households. The LMI benefit status for this purpose is based on households—not on persons. See 24 C.F.R. §570.483(b)(3). This subcategory of LMI benefit is referred to as LMI Housing.

2) *Activities which aid in the prevention or elimination of slums or blight.* A recognized subcategory of this national objective involves activities of only planning, related to a slum or blighted area. See 24 C.F.R. 570.483(c)(3). This subcategory of a national objective is referred to (in this contract) as SBA Planning.

D. As is agreed in §1.03 below, but also being cited here in the Recitals for emphasis, a failure to fulfill the CDBG national objective as a result of the CDBG-assisted activities will result in the disallowance of CDBG funding for the Project, and the Grantee will be required, under HUD CDBG regulations, to repay all CDBG funds to the Department.

E. This Recital provision is to formally memorialize in this contract (as opposed to such data simply being among the various Application materials, or among other administrative file materials, submitted by the Grantee) the national objective to be met, and in the case of an LMI national objective, the proposed LMI beneficiaries data established at the time of the approval of the Project and which is being used by the Department in ascertaining that the LMI national objective is proposed to be met by the Project. The national objective being utilized for the Project is:

LMI Area Benefit

The data for proposed beneficiaries is → 000 persons, of whom 000 (00.00%) are LMI persons.

LMC Limited Clientele

The data for proposed beneficiaries based on this presumptive category is → 000 persons, of whom 000 (00.00%) are LMI persons.

LMI Housing

The data for proposed beneficiaries based on category is → 000 LMI households. This data is derived from HUD's 2000 Census summary data for the area relevant to the Grantee.

SBA Planning

AGREEMENT:

Premised on the Recitals above, and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment of CDBG Funds.

The total amount of CDBG funds paid by the Department to the Grantee for allowable expenses incurred will not exceed \$000. Of that amount, approved administrative and audit expenses will not exceed \$000.

The grant will be used to fund the Project as detailed in the Application, which generally involves [description of project] for [Anytown], Nebraska.

Part V (Compliance with Applicable Laws and Regulations) of this contract incorporates, as being applicable to this contract, all of the Department's administrative requirements which are contained in the *Nebraska Community Development Block Grant Program Administration Manual* ("Administration Manual"). Those administrative requirements contain many restrictions governing the receipt of CDBG funds from the Department. Included among those restrictions are limitations on the amount of administration expenses the Grantee is allowed, dependent on the Project's status.

Requests by the Grantee for reimbursement of Project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the Project, at the time of each request for reimbursement of administration expenses, with this requirement applicable at all times through Project completion (including final Project reports). As a cross reference, note that §2.09 requires a CDBG Certified Administrator to achieve the initial Release of Funds for the Project.

To request payment of allowable expenses, the Grantee must submit a request for payment to the Department, in the manner and form prescribed from time to time by the Department, mailed to the Housing and Community Development Division, Department of Economic Development, 301 Centennial Mall South, P.O. Box 94666, Lincoln, Nebraska 68509-4666.

§1.02 Time of Performance.

The period covered under this contract will be 24 months from [date]. The termination date of this contract will be [date]. All of the required activities and services, except for submission of final reports, administration, and audit, will be completed by or before this date. The provisions of this contract that survive the termination date are specified in §4.31 of this contract.

§1.03 National Objective Compliance—Failure Requiring Repayment by Grantee.

A failure to fulfill the national objective as a result of the CDBG-assisted activities will result in the disallowance of CDBG funding for the Project, and the Grantee will be required, under HUD CDBG regulations, to repay all CDBG funds to the Department.

§1.04 Final Planning Products Must be Submitted by Grantee.

The Grantee must submit to the Department, prior to closeout of the grant, two copies of the final planning products resulting from the Project.

§1.05 Incorporation of RECITALS Paragraphs as Agreed Terms of Contract.

All provisions of paragraphs A, B, C, D, E, and F of the Recitals above are incorporated as agreed provisions of the contract.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 of this contract will not be released to the Grantee by the Department until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than [date]. The Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

§2.01 Grantee Information Sheet.

Completion, and submission to the Department, of the Department's Grantee Information Sheet.

§2.02 Environmental Review.

Submission to the Department of documentation evidencing the Grantee's completion of its responsibilities for environmental review and decision making pertaining to the Project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of federal law as specified in 24 C.F.R. Part 58 which furthers the purposes of NEPA as now in effect, and as such law may be amended during the term of this contract.

§2.03 Authorization to Request Funds Form.

Completion by the appropriate chief elected official of the Grantee, and submission to the Department, of the Department's Authorization to Request Funds form.

§2.04 Financial Management.

Submission to the Department of documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

§2.05 Procurement Standards.

Submission to the Department of documentation evidencing adoption of procurement standards in compliance with provisions of federal law as now in effect, and as such law may be amended during the term of this contract, including but not limited to, 24 C.F.R. 570.489, 2 C.F.R. Part 200.300-345, with emphasis on 2 C.F.R. 200.318 through 200.326, and the provisions in 2 C.F.R. 200.322 regarding procurement of recovered materials. Such procurement standards must include written standards of conduct covering conflicts of interest and governing the actions of Grantee's employees engaged in the selection, award and administration of contracts.

§2.06 Excessive Force Certification.

Submission to the Department of documentation that the Grantee has adopted a policy to prohibit the use of excessive force by local law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

§2.07 Fair Housing.

Submission to the Department of documentation identifying the local fair housing representative for the Grantee, including the representative's name and contact information. The Grantee must also submit a description of the actions Grantee will take during the course of the grant to fulfill the requirements to affirmatively further fair housing, and submit documentation demonstrating the actions that were actually taken. The requirement to submit documentation demonstrating the actions that were actually taken need not be submitted within the time frame for completion of the special conditions, but as required in §4.07, such documentation must be submitted prior to closeout of the grant. The Department's Administration Manual contains additional detail about affirmatively furthering fair housing.

§2.08 Implementation Schedule.

Completion, and submission to the Department, of the Nebraska CDBG Grantee Implementation Schedule form. The Implementation Schedule will serve as the schedule for completion of the Project, and may be used by the Department to assess Project progress.

§2.09 CDBG Certified Administrator Required.

Documentation must be submitted to the Department identifying the CDBG Certified Administrator the Grantee will use for the Project. The Department's Administration Manual contains details about the certification process.

In addition to satisfying this special condition as a prerequisite for receiving a Notice of Release of Funds, Grantee should note as a cross reference the contract provision in §1.01 providing that requests by the Grantee for reimbursement of Project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the Project at the

time of the request(s) for reimbursement.

§2.10 Limited English Proficiency.

Submission to the Department of documentation evidencing completion of responsibilities for ensuring meaningful access to the Project activities and services for persons with Limited English Proficiency (“LEP”), as required by Title VI of the Civil Rights Act of 1964, Executive Order 13166, and HUD's final “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons,” published in the Federal Register on January 22, 2007, and which became effective on March 7, 2007 (“HUD LEP Guidance”).

Such documentation must include all of the following (1) information identifying the LEP representative for the Grantee, including the representative’s name and contact information; (2) a Four Factor Analysis that is consistent with the HUD LEP Guidance; and (3) a description of the actions the Grantee will take during the course of the grant to fulfill the requirements to provide meaningful access to LEP persons. If deemed necessary as a result of the Four Factor analysis, Grantee will prepare and submit to the Department, a Language Access Plan (“LAP”) that includes all elements of an effective LAP as defined by HUD.

The Grantee must also keep records of requests for LEP services, and all LEP services provided by Grantee during the course of the grant. Grantee must submit documentation to the Department demonstrating LEP services provided. The requirement to submit documentation demonstrating the LEP services provided need not be submitted within the time frame for completion of the special conditions, but as required in §4.07, such documentation must be submitted prior to closeout of the grant.

§2.11 Other Special Conditions.

None.

PART III: SOURCES AND USES OF FUNDS; AND OTHER REQUIREMENTS.

§3.01 Sources and Uses of Funds.

SOURCES→	CDBG	OTHER	TOTAL
USES (Activities)↓			
0000 [description]	\$0	\$0	\$0
0181 General Administration	\$0	\$0	\$0
TOTAL	\$0	\$0	\$0

The Sources and Uses of Funds table above reflects:

- The anticipated total costs of the CDBG-assisted Project.
- The CDBG-assisted activities being funded.
- The sources and amounts of other matching funds required for each activity.
- The maximum authorized CDBG funds for each CDBG-assisted activity.
- The ratio (derived by computation, not expressly shown) of CDBG funds to other matching funds for each CDBG-assisted activity, **which ratio is a further limitation upon the maximum authorized CDBG funds** which may be paid for each activity. The ratio is invoked as a limitation if the actual total costs of the activity are less than anticipated.

[An example illustrates this point: If the anticipated cost of an activity such as the acquisition of

equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the Grantee as the source—but the actual cost of the machinery turned out to be \$90,000—then the 40% ratio limits CDBG funding to \$36,000, rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources, for each activity and for the Project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources, for each activity and for the Project in total. CDBG funds will not be the first funds invested in the Project—but rather—CDBG funds will flow into the Project in proportion to all other funding sources.
- It is noted that the Application proposes that Grantee will utilize "in kind" matching funds for a portion of the required Grantee match.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Program Income.

Program income is regulated by the provisions of 24 C.F.R. 570.489(e) as now in effect, and as such law may be amended during the term of this contract. The text of this regulation should be consulted for definitions and for other guidance concerning program income.

Program income generally means gross income received by the Grantee, or by a subrecipient of the Grantee, that was generated from the use of CDBG funds. Some exceptions to this general rule are detailed in 24 C.F.R. 570.489(e)(2). Program income includes, but is not limited to, the following:

- Payments of principal and interest on loans made using CDBG funds.
- Proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds.
- Proceeds from the disposition of equipment purchased with CDBG funds.
- Interest earned on program income pending its disposition.
- Interest earned on CDBG funds held in a revolving loan fund's cash balance interest-bearing account.

Program income received prior to the completion of the approved grant activities must be applied to those activities prior to requesting additional CDBG funds from the Department.

Should Grantee receive and retain program income, Grantee agrees to treat it as additional CDBG funds, subject to all requirements applicable to the CDBG Program. Additionally, Grantee agrees to submit regularly occurring reports to the Department regarding program income, and agrees, upon the Department's request to maintain a contractual relationship with the Department for the duration of the time period in which Grantee maintains program income.

§4.02 Matching Requirements.

The Grantee agrees to provide matching and other leveraged funds for each approved activity in the amounts, ratios, and proportions set forth in §3.01 of this contract. Matching and other leveraged funds must be expended during the grant period.

Grantees are required to certify, with each request for CDBG funds, the amount of matching funds applied to the Project. Project costs are to be paid from grant and matching funds as specified in §3.01 of this contract. The Grantee will be responsible for costs that exceed the total Project costs set forth in §3.01.

The Application proposes that Grantee will utilize "in kind" matching funds for a portion of the required Grantee match.

§4.03 Legal Authority; and Acceptance of Environmental Review Responsibility.

By signing this contract, the Grantee certifies that it possesses legal authority to accept CDBG funds, and to carry out the Project described in this contract; and that the Grantee's chief elected official:

- (a) Consents to assume the status of responsible federal official and the responsibilities for environmental review and decision making under the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law as specified in 24 C.F.R. Part 58 which further the purposes of NEPA as such law is now in effect, and as such law may be amended during the term of this contract; and,
- (b) Is authorized and consents on behalf of the Grantee that they accept the jurisdiction of the federal courts for the purpose of enforcement of their responsibilities as such responsible federal official.

§4.04 Designation of Officials to Execute Contract and Amendments.

The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract, on behalf of the Department.

The Chief Elected Official of the Grantee is the official authorized to execute this contract and any amendments to this contract, on behalf of the Grantee.

The Grantee or the Department may request amendments to this contract. Amendments will not take effect until mutually agreed to in writing by both parties.

§4.05 Grantee Compliance with CDBG Regulations and Uniform Administrative Requirements.

The Grantee will comply with applicable CDBG Regulations in 24 C.F.R. Part 570 as now in effect, and as such law may be amended during the term of this contract. Grantee will also comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements set forth in this contract and in 2 C.F.R. Part 200, (which have been adopted by HUD through 2 C.F.R. Part 2400) as now in effect, and as such law may be amended during the term of this contract, or any reasonably equivalent procedures and requirements that the Department may prescribe.

In particular, Grantee agrees to establish internal controls in order to have reasonable assurance that Grantee is carrying out the Project in compliance with federal statutes, regulations, and terms and conditions of this contract, as required by 2 C.F.R. 200.303, as now in effect, and as such law may be amended during the term of this contract. Grantee also agrees to comply with provisions regarding protection of personally identifiable information as required by 2 C.F.R. 200.303 and 2 C.F.R. 200.512 as now in effect, and as such law may be amended during the term of this contract.

§4.06 Record Keeping.

The Grantee agrees to keep the following records: (1) records as specified in 24 C.F.R. 570.506, *Records to be Maintained*; (2) adequate documentation to support costs charged to the CDBG Program; (3) records detailing procurement procedures followed by Grantee; (4) as required by 24 C.F.R. 570.490, for fair housing and equal opportunity purposes, records that include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the Project; and (5) any other records as the Department may reasonably require. The Grantee agrees to keep such records

so as to allow the Department to perform a 24 C.F.R. 570.492, *State's review and audits*.

All records pertinent to this grant and work undertaken as part of the Project, will be retained by the Grantee for the period required by 2 C.F.R. 200.333, as interpreted by HUD, and applied to the CDBG Program through 24 C.F.R. 570.490. Grantee agrees to transfer records pertinent to this grant and work undertaken as part of the Project to the Department, upon request of the Department.

Grantee also agrees to comply with the methods for collection, transmission and storage of information as described in 2 C.F.R 200.335.

The Department and duly authorized officials of the state and federal government will have full access to, and the right to examine, audit, excerpt and/or transcribe, any of the Grantee's records pertaining to all matters covered by this contract.

§4.07 Reports.

The Grantee will submit semiannual reports to the Department, in such form as the Department may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form as the Department may prescribe, at the occasion of grant closeout. All semiannual reports must be submitted to the Department no later than thirty (30) days following the end of the reporting period. All final performance and financial reports must be submitted to the Department no later than ninety (90) days after the end date of the time of performance specified in §1.02 of this contract.

As required in §1.04, the Grantee must submit to the Department, prior to closeout of the grant, two copies of the final planning products resulting from the Project.

Additionally, as referenced in §2.07, prior to grant closeout, the Grantee must submit documentation demonstrating the actions that were taken to affirmatively further fair housing during the course of the grant, and as referenced in §2.10, the Grantee must submit documentation demonstrating the LEP services provided by Grantee during the course of the grant.

§4.08 Cost Principles; Audits; and Post-Closeout Adjustments and Continuing Responsibilities.

Grantee is responsible for the efficient and effective administration of the CDBG funds provided to Grantee under this contract. Grantee agrees to administer the CDBG funds in a manner consistent with this contract, HUD's administrative requirements for the CDBG program, and with the provisions of the Department's Administration Manual, and with all federal (and state) laws, regulations, and executive orders applicable to the CDBG-assisted Project.

Audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, (which have been adopted by HUD through 2 C.F.R. Part 2400) as now in effect, and as such law may be amended during the term of this contract. Generally Accepted Government Auditing Standards (GAGAS) must be followed.

Grantee is required by 2 C.F.R 200.512 to submit the required audit reporting package to the Federal Audit Clearinghouse ("FAC") within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

Audit costs are an allowable general administration cost subject to limitations established by the applicable law, and the Department.

The closeout of this grant does not affect the right of the Department or duly authorized officials of the state and federal government to disallow costs and recover funds from the Grantee on the basis of a later audit or other review. In other words, the obligation of the Grantee to return any funds due as a result of an audit is not affected by closeout of this grant.

§4.09 Conflict of Interest.

The Grantee will comply with the conflict of interest prohibitions set forth for the CDBG program at 24 C.F.R. 570.489, 2 C.F.R. 200.318, and Grantee's written standards of conduct covering conflicts of interest submitted to the Department, as required by §2.05 of this contract. In the event prohibited conflicts of interest arise, Grantee must inform the Department of such conflicts of interest. Exceptions to the prohibition may be granted, on a case-by-case basis, by the Department.

§4.10 Applicability to Subrecipients and Contractors.

The provisions of the contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will remain fully obligated under the provisions of this contract.

Any such subrecipient or contractor of the Grantee must be authorized to transact business in the State of Nebraska. All subrecipients and contractors are expected to comply with all Nebraska Secretary of State and Department of Revenue registration requirements, including any registration requirements pertaining to types of business entities (e.g. person, partnership, foreign or domestic limited liability company, association, or foreign or domestic corporation or other type of business entity). Construction contractors are expected to meet all applicable requirements of the Nebraska Contractor Registration Act and provide a current, valid certificate of registration to the Grantee for Grantee's records.

Upon request of the Department, the Grantee will submit copies of written agreements executed between the Grantee and any subrecipients or contractors relating to the Project.

§4.11 Funding Source Recognition.

Prior to referring to the Project or Project activities in publications, the Grantee will inform the Department, and if requested by the Department, include a reference to the CDBG funding made available for the Project.

§4.12 Intellectual Property.

If the Project results in any copyrightable material or inventions, the Department and/or the State of Nebraska 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.

§4.13 Religious Activities.

The Grantee agrees that CDBG funds provided under this contract will not be utilized for inherently religious activities prohibited by 24 C.F.R. 570.200(j), such as worship, religious instruction, or proselytization.

§4.14 Title, Use and Disposition of Property, Supplies and Equipment; Insurance.

Grantee agrees to comply with the provisions of 2 C.F.R. 200.311 through 200.316 regarding title, use and disposition of property, supplies, and equipment.

In accordance with 2 C.F.R. 200.310, Grantee agrees to, at a minimum, provide insurance coverage for real property and equipment acquired or improved with CDBG funds that is equivalent to the insurance Grantee provides for Grantee's other property.

§4.15 Anti-Lobbying.

To the best of the Grantee's knowledge and belief:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Grantee, 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; and
- (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, Grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

§4.16 Waivers; and Assignment of Interest.

No conditions or provisions of this contract can be waived unless approved by the Department in writing. The Grantee will not assign or transfer any interest in this contract to any other party without the written consent of the Department.

§4.17 Non-Waiver of Rights.

The Department's failure to insist upon the strict performance of any provision of this contract, or failure to exercise any right based upon breach, will not constitute a waiver of any rights under this contract.

§4.18 Severability.

If any provision of this contract, or its application to any person or circumstances, is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions of this contract.

§4.19 Early Termination.

The Department may terminate this contract for any reason upon sixty (60) days written notice to Grantee. This contract may also be terminated in whole or in part, prior to the completion of Project activities, when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. In the event of mutual termination, the parties must agree on the termination conditions, including effective date and the portion to be terminated.

The Grantee will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Department will make funds available to the Grantee to pay for allowable expenses incurred before the effective date of termination.

§4.20 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or failure to use the grant

for only those purposes set forth, the Department may take the following actions (which are additional to other default remedies specified elsewhere in this contract):

- (a) Suspension. After notice to the Grantee, suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate.
- (b) Termination. Terminate the contract in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the terms and conditions of the contract. The Department will promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Grantee or recoveries by the Department under contracts terminated for cause will be in accord with the legal rights and liabilities of the parties. Payments and recoveries may include, but are not limited to, payments allowed for costs determined to be in compliance with the terms of this contract up to the date of termination. The Grantee will return to the Department all unencumbered funds. Further, any costs previously paid by the Department which are subsequently determined to be unallowable through audit and closeout procedures may be recovered from present grant funds or deducted from future grants.

§4.21 Termination Due to Loss of Funds.

This contract will terminate in full or in part, at the discretion of the Department, in the event the Department suffers a loss of funding or termination of the federal funds which permit it to fund this grant. In the event the Department suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination, or if a change in funding is required, setting forth the change in funding.

§4.22 State of Nebraska Non-Liability/Hold Harmless.

The Grantee will hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any activities or services performed by the Grantee itself, or by their officials, officers, employees, agents, or associates under this contract.

§4.23 Entire Agreement, Binding Effect, and Counterparts.

This instrument, along with any attachments, the approved Application, and those items incorporated by reference, contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

This agreement will be binding upon, and will inure to the benefit of, the successors, assigns, and legal representatives of the parties.

This agreement, or any amendment of this agreement, may be signed in any number of counterparts, each of which will be an original, but all of which taken together will constitute one agreement (or amendment, as the case may be).

§4.24 Governing Law.

This agreement shall be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of; the State of Nebraska.

§4.25 Verification of Work Eligibility Status for New Employees.

The Grantee is required and hereby agrees to use a federal immigration verification system to determine

the work eligibility status of new employees physically performing services within the State of Nebraska. In this context, "new employees" means employees hired on or after the effective date of this contract. A "federal immigration verification system" means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

This contractual obligation to verify work eligibility status for new employees physically performing services within the State of Nebraska also applies to any and all subcontractors utilized by the Grantee in performing this contract. The Grantee will be responsible to the Department for enforcing this requirement with Grantee's subcontractors.

A failure by the Grantee to adhere to these requirements is a violation of the statutory requirements in Neb. Rev. Stat. §4-114 and as such will be deemed a substantial breach of this contract which could result in the Department declaring Grantee to be in default on the contract.

§4.26 Debarment, Suspension, And Ineligibility; Universal Numbering System and Registration Requirements.

By executing this contract, the Grantee certifies, represents, and warrants that Grantee and all subrecipients or contractors to be used by Grantee in performing this contract are not debarred, suspended, proposed for debarment, placed in ineligibility status, or voluntarily excluded from covered transactions by HUD or any other federal agency under the provisions of Executive Order 12549 "Debarment and Suspension" and 24 C.F.R. Part 24 (government debarment and suspension regulations). Grantee agrees to immediately notify the Department if Grantee or any of Grantee's subrecipients or contractors become sanctioned or debarred. Grantee acknowledges that suspension or debarment of Grantee (and use by Grantee of suspended or debarred subrecipients or contractors) is cause for termination of this contract.

Grantee agrees to comply with requirements established by the Office of Management and Budget ("OMB") concerning participation in the Dun and Bradstreet Data Universal Numbering System ("DUNS"), registration with the Federal System for Awards Management ("SAM"), and maintenance of such participation and registration.

§4.27 Mandatory Disclosures.

As required by 2 C.F.R. 200.113, Grantee must immediately disclose, to the Department, or to HUD or other appropriate authorities (with a copy to the Department), all violations of federal criminal law involving fraud, bribery or gratuity violations potentially affecting the use of CDBG funds provided under this contract.

§4.28 Force Majeure.

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Department may grant relief from performance of the contract if the Grantee is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the Grantee. To obtain release based on a Force Majeure Event, the Grantee shall file a

written request for such relief with the Department. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

§4.29 Drug Free Workplace.

Grantee certifies that it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Grantee agrees to provide a copy of its drug free workplace policy at any time upon request by the Department.

§4.30 Notice.

Except as otherwise expressly specified herein, all notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth in the Application or in this contract, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or four (4) calendar days following deposit in the mail.

§4.31 Survival.

The terms of §1.01, §1.03, §1.04, §3.01, §4.01, §4.05, §4.06, §4.07, §4.08, §4.10, §4.11, §4.12, §4.14, §4.22, §4.24, §4.30, §4.31, and Part V. of this contract (and other terms of this contract that by their nature should survive the termination or expiration of this contract), shall survive any expiration or termination of this contract.

PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

The Grantee agrees to comply with the Department's and HUD's administrative requirements for the CDBG program, and with the provisions of the Department's Administration Manual, and with all federal (and state) laws, regulations, and executive orders applicable to the CDBG-assisted Project, including, but not limited to:

- Housing and Community Development Act of 1974, as amended ("HCDA").
- 24 C.F.R. Part 570.
- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.
- Clean Air Act and Federal Water Pollution Control Act, as amended.
- Federal Restrictions on the use of the power of eminent domain.
- The Davis-Bacon Act (and related requirements).
- Contract Work Hours and Safety Standards Act (and related requirements).
- Copeland "Anti-Kickback" Act (and related requirements).
- Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act, and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968; and 24 C.F.R. Part 135.
- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- The requirement in the HCDA to affirmatively further fair housing.
- 2 C.F.R. Part 200, The Federal Funding Accountability and Transparency Act, and related federal requirements.
- Byrd Anti-Lobbying Amendment (and related acts and requirements).
- The Equal Employment Opportunity Act; The Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002); The Immigration Reform and Control Act of 1986; and The Americans with Disabilities Act of 1990; the Nebraska Fair Employment Practices Act; and related

acts and requirements.

- Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act); the Age Discrimination Act of 1975; Section 504 of the Rehabilitation Act of 1973; The Housing for Older Persons Act of 1995; and related acts and requirements.
- Nebraska Uniform Energy Efficiency Standards, §§81-1608 to 81-1626.

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this contract and agree to its provisions, and that it will be effective on the date when both parties have signed.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	GRANTEE→[Village/City/County] of [Anytown], Nebraska
By: _____ (Director or Designee)	By: _____ (Chief Elected Official)
_____ (Typed or Printed Name/Title)	_____ (Typed or Printed Name/Title)
_____ (Date)	_____ (Date)

SECTION 504

Responsibilities at the Local Level

The passage of the Rehabilitation Act of 1973 marked the first time in U.S. history that the civil rights of persons with disabilities were specifically protected.

The intent of the Rehabilitation Act was to end discrimination based on disability when federal funding was involved. This represented a national commitment to equal opportunity.

This law reflects an awareness that accessibility extends beyond building and buses to attitudinal prejudices. Inaccessibility in any form will lead to the limitation of full economic and social participation of citizens in any community and will limit a community's potential.

Section 504 of the rehabilitation Act of 1973, as amended, applies to all Grantees of federal funds.

The Department of Housing and Urban Development issued its procedures and policies on June 2, 1988, 15 years after Congress passed the Rehabilitation Act. These regulations require that any applicant for, or recipient of federal funds will not discriminate on the basis of handicap in employment or in programs for qualified handicapped persons.

"Handicap person" is defined as an individual who has a physical or mental impairment substantially limiting one or more major life activities, has a record of this type of impairment and is regarded as having such an impairment.

Grantees must ensure that contracts, subcontracts or agreements contain nondiscrimination clauses.

The Civil Rights Restoration Act of 1988, requires that your entire community comply with Section 504 in all operations.

Self-Evaluation

The first step determining whether a municipality meets Section 504 requirements is a self-evaluation. The assessment must include an examination of all functions of the Grantees distributing or receiving funds.

Handicapped persons and or representative organizations, as well as, any interested persons must be included in the process. The self-evaluation must include careful inspection of:

- employment and personnel policies and practices,
- the extent to which programs and activities are readily accessible usable by individuals with disabilities,
- the extent to which benefits and service delivery is free from discriminatory effects,
- the intent to which contractual arrangements are free from subjecting handicapped persons to discrimination,

An effective approach to examining service and program accessibility is to do a walk through of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility, criteria and application procedures.

Any policies and practices that are found to be contrary to Section 504 requirements must be modified

and steps taken to remedy the discrimination.

Transition Plan

When and if structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a transition plan must be completed and be made available for public inspection. The transition plan must involve disabled persons and or representative organizations. The plan must:

- identify physical obstacles in the facilities that limit program accessibility,
- describe in detail the method that will be used to make facilities accessible,
- specify a schedule to achieve full program compliance and if the plan is longer than one year identify steps to be taken during each year,
- indicate the person responsible for implementing the plan,
- identify the person or groups with whose assistance the plan was prepared.

“Accessible” under Section 504 mean ensuring that program and activities when viewed in their entirety are accessible to, and usable by individuals with handicaps.

Grantees are not necessarily required to make each existing facility or every part of an existing facility accessible, although in some cases that will be the only way to achieve accessibility.

Specifics About Communication

Communication is also an important component of accessibility. Disabilities may include a wide variety of impairments - hearing, visual, speech or mobility. Varied approaches may be required to assure effective information dissemination such as using audio and visual materials. Members of the community who have disabilities must likewise be able to communicate with the town. Auxiliary aids, such as sign language interpreter, may be required.

Grantees must ensure effective communication with persons with all types of disabilities in all activities. Where the Grantee communicates with applicants and beneficiaries by phone, a TDD is required or an equally equivalent system must be available.

Specifics About Nondiscrimination In Employment

Any federally assisted Grantee cannot legally limit, segregate or classify applicant or employees in any way that negatively affects their status or opportunities because of handicap. In pre-employment and employment activities discrimination based on a handicap must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the Grantee.

It is important to remember that the essence of Section 504 provides for equal opportunity not necessarily identical results or level of achievements. Section 504 does not require the hiring or promotion of someone simply because they have a disability.

Reasonable accommodation in employment is determined on a case by case basis. It means reasonable modifications on the job or the work place to enable a handicapped person to perform the job for which they are qualified.

HUD's regulations specify that an employer is prohibited from discriminating in:

- Recruiting, advertising and processing of applications,
- Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness and rehiring,
- Rates of pay and any other forms of compensation,
- Job assignments, classifications and description, organizations structure, lines, progression and seniority lists.

A Grantee must examine its employment policies and practices as part of the detailed self-evaluation. This assessment scrutinizes employment tests and other procedures of selection to make sure that they do not screen out handicapped persons. Selection procedures must be job related and measure a person's ability not an impairment.

Specifics About Program Accessibility

Under HUD's regulations program accessibility is divided into two broad categories: non-housing and housing. The technical standards used by HUD for determining physical access in both categories is the Uniform Federal Accessibility Standards. (UFAS)

"Facility" is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. "Accessible" for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps. For housing purpose, accessible means in addition that a dwelling is on an accessible route and adaptable inside.

Non housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities. Accessibility problems will be determined once again under your self-evaluation. The focus of program access is providing your programs in the most integrated setting possible. Providing separate or different programs is illegal unless necessary to achieve equal opportunity.

Methods of improving program access in existing facilities can include:

- Relocating programs to accessible facilities or accessible portions facilities.
- Acquiring or building new facilities,
- Selectively altering facilities,
- Changing operating policies and procedures,
- Assigning aides to assist beneficiaries,
- Adding or redesigning equipment or furnishings,
- Conducting home visits.

All newly constructed multi-family, federally assisted housing project under Section 504 must have:

- A minimum of 5% of total dwelling units accessible for individuals with mobility impairments,
- An additional 2% of units accessible for persons with hearing or vision impairments,
- All units made adaptable that are on the ground level or can be reached by an elevator.

The Fair Housing Amendment Act (Title VII) passed in 1988, extended federal housing anti-discrimination protection to families and people with disabilities. Section 504 is often more exacting in its requirements than Title VII

The primary difference between the two is the Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit, paid for by the tenant. Section 504 provides that the landlord is responsible for making, and paying for reasonable accommodations.

Compliance And Complaints

HUD's Office of Fair Housing and Equal Opportunity is responsible for seeking cooperation from and providing assistance to recipients regarding compliance. FHEO may perform periodic reviews of Grantees or require reports or other information to measure your compliance, including records of program participation by individuals with handicaps.

A complaint can be made by any individual or authorized representative of that individual who believes they have been the subject of discrimination based on a disability. This complaint would be filed with FHEO. The complainant's identity will be held in confidence unless written authorization is given.

The time period for filing complaints is within 180 days of the alleged act. The Grantee will be notified by FHEO within 10 calendar days of receiving the complaint. Within 20 calendar days of this acknowledgement the complaint will be accepted, rejected or referred to the appropriate federal agency.

Rather than having to exhaust administrative appeals a person who believes their rights have been violated under Section 504 may file in federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance with requirements of Section 504 may ultimately result in the termination of or refusal to grant federal assistance.

Special Requirements For Grantees With 15+ Employees

There are several special requirements for Section 504 compliance for Grantees with 15 or more full or part time employees.

Grantees must keep a list of interested person or groups consulted in the self-evaluation process, a description of the areas examined and problems identified and a description of the modifications made and remedies taken to eliminate discriminatory policies and practices. This should remain available for public review for at least 3 years after completion.

A least one person must be designated to coordinate compliance efforts and most often it is the City Manager.

A grievance procedure must be adopted for larger municipalities incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.

Initial and continuing notices must be given to the public, job applicants and employees of their rights under Section 504 and the municipality's policy against discrimination, including that reasonable

accommodation will be made.

Similar notice needs to be included in any municipal recruitment or information material. The notice must include:

- A statement that your municipality does not discriminate on the basis of handicap status in the provision of its programs, services or personnel practices.
- The name of the program coordinator who is the responsible employee designated to coordinate the implementation of the handicapped discrimination requirements.
- Methods of notification which ensure that visually impaired and hearing impaired persons will have access to the information.