

Chapter 5: Contracting

Introduction

Once goods and services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This chapter provides general guidance concerning the compliance aspects of contract administration.

Section 5-A. General Contract Requirements

As with all contractual obligations, the grantee is advised to seek the advice of legal counsel regarding rights, duties, obligations and liabilities arising from legal arrangements. DLG is also available to provide general, non-legal advice concerning contracting requirements.

Tip: Grantees are not required to obtain advance approval of contracts from DLG. However, DLG will review contracts during scheduled monitoring and compliance assistance visits to ensure compliance with CDBG and other Federal and state requirements.

General Contract Contents

Contracts involving the use of KCDBG funds must include the following provisions to ensure compliance:

- ✓ **General Administrative Provisions** including effective date of the contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract, and procedures for contract amendment.
- ✓ **A Scope of Services** including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, and specification of materials.
- ✓ **Method of Compensation** including fee or payment schedules, retainage, rates and maximum amounts payable. All contracts using KCDBG funds must have a not-to-exceed clause.
- ✓ **Terms and Conditions** - Consistency of the contract with the requirements of the grant agreement between DLG and the grantee. This is particularly true of those terms and conditions that involve the scope of project, implementation schedules, and method and amount of payments. In other words, the relevant terms and conditions of the grant agreement between DLG and the grantee should be reflected in subsequent contracts between the grantee and the entities they hire to provide services for the project.
- ✓ **Special Conditions/Specific Provisions** - Inclusion of specific contract provisions may be required by state and Federal law. These provisions are dependent on a combination of:
 - Whether the contract is for construction or non-construction services (e.g., professional services such as administration, surveying, legal, etc.),
 - The dollar value of the contract, and
 - Statutory mandates.

24 CFR Part 85.36(l)

Section 5-B. Contract Provisions

Non-Construction Contracts

The Contract for Professional Services (Attachments 5-1 and 5-2) should be used when contracting for non-construction (professional) services paid for with KCDBG funds. The grantee should carefully review the citations included in Part II to determine specifically which provisions are appropriate for its non-construction contracts.

Attachment 5-1: Contract for Professional Services – Part I

Attachment 5-2: Contract for Professional Services – Part II (required non-construction language)

Construction Contracts

A construction contract must include all items included in the bid package as well as the standard contract terms and conditions, contractor certifications, and bond and insurance forms. Because this is a legal document, the grantee is required to consult legal counsel and obtain a signed letter certifying that the counsel has reviewed and approved the documents.

Note: Neither the cost-plus-a-percentage nor percentage-of-construction cost methods of contracting are allowed.

The grantee should be concerned with both the body of the contract as well as the compliance requirements that are frequently included as exhibits to the base contract. The following must be included in the contract text:

- ✓ Parties to the agreement;
- ✓ Project location;
- ✓ Scope of services;
- ✓ Financial commitments;
- ✓ Starting and ending dates;
- ✓ Performance schedule and milestones;
- ✓ Contract representatives (grantee, contractor, subcontractor(s));
- ✓ Conflict of interest;
- ✓ Reporting requirements;
- ✓ Suspension clause;
- ✓ Incorporation of attached requirements;
- ✓ Payment schedule and contract cost;
- ✓ Signatures; and
- ✓ General Conditions

Additional clauses required by the Federal government (e.g., labor standards requirements) must also be incorporated in the contract. They require specific language, which must be inserted verbatim into the contract. The KCDBG Contract Documents Guide, which is available on DLG's website, provides the relevant clauses and information on the dollar value of the contracts to which they apply. These paragraphs generally advise contractors that they must

comply with specific Federal laws pertaining to the environment, fair housing, labor, and other laws attached to the KCDBG legislation.

Tip: Grantees must have a full, bound copy of each executed contract in its files for review by DLG. All conditions must be contained within the contract document.

Subcontracting

An important labor standards component is proper subcontracting. Prime contractors are required to hire only eligible subcontractors (i.e., that are not on the Excluded Parties List; refer to Chapter 4). Prime contractors must also execute a subcontract document with each subcontractor containing labor standards and other required provisions, such as equal opportunity and general conditions. This subcontract agreement is required for all subcontractors wishing to participate in a KCDBG project.

An example of a subcontract agreement with the required language is provided in Attachment 5-3. A copy of the executed subcontract agreement should be obtained and filed prior to or upon receipt of the first subcontractor payroll for that respective subcontractor.

Attachment 5-3: Subcontract Form

Note: The executed subcontract document must be on file before subcontractor pay requests can be processed. Work closely with the prime contractor to track the subcontractors and ensure that copies of subcontracts are obtained.

Section 5-C. Bonding Requirements

Bonds are negotiable instruments required from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the grantee to protect against situations that may arise. Some of these situations include:

KRS 45A.435

- ✓ Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- ✓ Laborers or subcontractors are not being paid for work and are suing the grantee to recover their loss; or
- ✓ Payment of liquidated damages is required, arising from labor standards violations.

24 CFR 85.36(h) or 84.48(c)

State law requires that, for project contracts over \$25,000, contractors must secure a performance bond for 100 percent of the contract price as it may be increased and a payment bond for 100 percent of the original contract price. Federal bonding requirements are triggered when contracts exceed \$100,000 in value, per 24 CFR 85.36(h) or 84.48(c).

The circumstances that dictate the specific assurances, certifications, or other provisions in any given contract can be complex. Grantees should consider contacting DLG or legal counsel for guidance in this area.

Section 5-D. Subrecipient Agreements

It is not uncommon for grantees to carry out project activities through a subrecipient. A subrecipient is defined as a public or private nonprofit agency, authority, or organization, or

other eligible entity, that is provided CDBG funds to carry out eligible activities on behalf of the grantee.

The most likely scenario under which a grantee would opt to utilize a subrecipient is when the grantee wishes to “support” certain eligible activities that are either being carried out or are the primary responsibility of some agency outside of the grantee. In effect, the grantee’s goals coincide with the subrecipient’s, and it makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities and/or duplicate services.

It is crucial to stress the importance of the grantee-subrecipient relationship. The grantee is not absolved of its responsibilities by utilizing a subrecipient to carry out project activities; in fact, many of these responsibilities cannot be undertaken by anyone other than the grantee, such as environmental determinations and requesting funds from DLG. Further, all KCDBG requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, etc.).

When is an Entity not Considered a Subrecipient?

An organization or individual is not considered a subrecipient if the entity is:

Chapter 4: Procurement

- ✓ A contractor procured according to the requirements described in Chapter 4;
- ✓ A homeowner or landlord of an apartment building receiving a rehabilitation loan or grant;
- ✓ A nonprofit or for-profit entity receiving relocation payments and other relocation assistance;
- ✓ A for-profit business receiving a loan for a special economic development project; or
- ✓ A public agency of the grantee, designated by the grantee, to administer a CDBG project.

There may be additional nonprofit organizations that are not considered subrecipients. These are certain types of nonprofits authorized under section 5305.(a)(15) of the CDBG statute that carry out community economic development, neighborhood revitalization or energy conservation projects. A grantee should contact DLG if they are uncertain regarding the status of a particular organization.

Written Agreements with Subrecipients

In order to protect the grantee, and to ensure the subrecipient’s compliance with all relevant requirements, the relationship between the two entities must be formally defined through a written agreement (or contract). Such an agreement’s purposes are to clearly establish the terms and conditions under which the KCDBG funding is provided and establish a legal basis for action if those terms and conditions are not met. A sample agreement that can be used as the basis for a subrecipient agreement is provided as Attachment 5-4.

This agreement must contain the following minimum provisions:

Attachment 5-4: Legally Binding Agreement

- ✓ **Scope of Work** – In sufficient detail to provide a sound basis for evaluating performance, a schedule and a budget.
- ✓ **Records and Reporting** – Specifying the records that must be maintained and reports which must be submitted in order for the grantee to meet its own record keeping and reporting responsibilities.

- ✓ **Program Income** (if applicable) – Subrecipients may be allowed to retain program income for use in specified eligible activities during the life of the agreement. If the grantee allows the subrecipient to retain program income, the agreement must specify which activities may be undertaken with those funds.
- ✓ **Administrative Requirements** – Specifically requiring compliance with all applicable uniform administrative mandates.
- ✓ **Program Requirements** – Specifying compliance with KCDBG requirements and other state and Federal overlay requirements (labor, affirmative action, etc.), except that the subrecipient may not assume the grantee’s environmental responsibilities.
- ✓ **Conditions for Religious Organizations** – Where applicable, the conditions prescribed by HUD for the use of KCDBG funds by religious organizations.
- ✓ **Suspension and Termination** – Specifying the conditions for convenience and cause. 24 CFR 85.44
- ✓ **Reversion of Assets** – Stipulating that, on the expiration of the agreement, the subrecipient must transfer to the grantee any KCDBG funds on hand and any accounts receivable attributable to KCDBG funds. This must also include provisions designed to ensure that any real property acquired or improved in whole or in part with KCDBG funds in excess of \$25,000 is either:
 - Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement, or longer if stipulated by the grantee; or
 - Disposed of in a manner that results in the grantee being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-KCDBG expenditures. (Reimbursement is not required after five years from closeout.)
- ✓ **Cessation of the Subrecipient** – Providing remedies and procedures in the event of the subrecipient ceases to exist.
- ✓ **Standard Provisions** – Required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.). See Section B of this chapter. Section 5-B: Specific Contract Provisions

Section 5-E. Public Agency Contracts

Grantees are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the grantee. Such designation is a non-procurement action by which the grantee may obtain services through non-competitive negotiations with another public agency (e.g., water/sewer or industrial authority that is a separate legal and financial entity from the grantee). (Note that this does not apply to administration by Area Development Districts.) See Chapter 4: Procurement for applicable procurement requirements. Chapter 4: Procurement

Once the negotiations are complete, a contractual agreement must be executed. This agreement designates the scope of services, roles and responsibilities of each party, the time of performance and cost for such services. The contract must also contain the specific contract provisions found in the KCDBG Contracts Document Guide available on DLG’s website.

A summary of the direct and indirect charges to be reimbursed under the contract, and the basis on which these charges are calculated, should be provided to the grantee with each payment request. Time sheets documenting staff time spent on the project should also be maintained.

Section 5-F. Intergovernmental and Cooperative Agreements

Intergovernmental and cooperative agreements can be used by local jurisdictions to assist in the development, operation, and/or management of KCDBG projects.

- ✓ An intergovernmental agreement typically involves two or more units of local governments who enter into an agreement to apply jointly for KCDBG funding.
- ✓ A cooperative agreement is often used when a local governmental entity applies for a grant to construct public facilities or improvements and decides to have another government entity own, operate, and/or maintain the improvements once they are completed.

At a minimum, intergovernmental agreements and cooperative agreements should:

- State that the parties have agreed to cooperate in undertaking the project;
- Delineate the responsibilities and authorities of each party with respect to the administration of the grant and continuing ownership, operation and maintenance of facilities if applicable; and
- Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

Section 5-G. Reporting Requirements

HUD Form 2516 Contract and Subcontract Activity Report (Attachment 5-5) must be completed by the grantee and submitted to DLG by September 15 of each year. (DLG is then required to submit these reports to HUD by October 1.) The form is also available for downloading from DLG's website.

Attachment 5-5: Contract and
Subcontract Activity Report
<http://www.dlg.ky.gov/downloads>

Grantees should only report on contracts executed during the report period, including both professional and construction contracts. Once all contracts have been reported, the grantee should write "No additional contracts to be awarded" on the activity report.

Attachments

- ✓ Attachment 5-1: Sample Contract for Professional Services – Part I
 - ✓ Attachment 5-2: Sample Contract for Professional Services – Part II
 - ✓ Attachment 5-H Sample Subcontract Form
 - ✓ Attachment 5-I : Sample Legally Binding Agreement
 - ✓ Attachment 5-Í : HUD Form 2516 Contract and Subcontract Activity Report
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Attachment 5-1:
Sample Contract for Professional Services – Part I

CONTRACT FOR PROFESSIONAL SERVICES
Community Development Block Grant Program
(Sample)

PART 1 – AGREEMENT

This Contract for professional services is by and between the CITY OF _____, State of Kentucky (hereinafter called the "City"), acting herein by _____, Mayor, hereunto duly authorized, and Envirodynamics Incorporated, a corporation organized under the laws of the State of Kentucky (hereinafter called the "Consultant"), acting herein by _____, President, hereunto duly authorized:

WITNESSETH THAT:

WHEREAS, the City has entered into an agreement with the State of Kentucky for the implementation of a Community Development Block Grant (CDBG) program pursuant to Title I of the Housing and Community Development Act of 1974; and

WHEREAS, the City desires to engage the Consultant to render certain technical assistance services in connection with its Community Development program:

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of Consultant

The City hereby agrees to engage the Consultant, and the Consultant hereby agrees to perform the following Scope of Services:

2. Scope of Services

The Consultant shall, in a satisfactory and proper manner, perform the following services:

- A. Prepare Environmental Review Record for All Activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation for Request for Release of Funds, and acquiring adequate documentation. For activities, which are not exempt from Environmental Assessments, an Environmental Assessment will be prepared. For activities, which are exempt and/or categorically excluded from Environmental Assessments, prepare a written Finding of Exemption, which should identify the project or Activity, and under which of the categories of exemption it falls. Also include documentation of compliance with requirements of historic preservation, floodplains and wetlands, and other applicable authorities.
- B. Coordinate with the community the Request for Payments to ensure consistency with the State Account procedures established for the KCDBG program.
- C. Ensure that the community has an acceptable financial management system as it pertains to finances of the KCDBG program. An acceptable system includes, but is not limited to, cash receipts and disbursement journal and accompanying ledgers, the cash control register, and should conform to generally accepted principles of municipal accounting.
- D. Establish project files in local government office. These must demonstrate compliance with all applicable Federal, State and local regulations. Monitor

project files throughout the programs to ensure they are complete and that all necessary documentation is being retained in the community's files.

- E. If applicable to the program, assist grant recipients in complying with regulations governing land acquisition (real property, easements, rights of way, donation of property, etc.).
- F. Prepare all bid documents and supervise the bidding process consistent with State and Federal Regulations.
- G. Secure the applicable wage decision from the State and include it in bid specifications.
- H. Prepare construction contracts which comply with Federal regulations.
- I. Obtain determination of contractor and subcontractor eligibility from the State.
- J. Check weekly payrolls to ensure compliance with wage decisions. Conduct onsite interviews and compare the results with appropriate payrolls.
- K. Monitor construction to ensure compliance with Equal Opportunity and Labor Standard provisions.
- L. Make progress inspections and certify partial payment requests.
- M. Make a final inspection and issue a final certificate of payment.
- N. Prepare closeout documents to include Program Completion Report, Final Wage Compliance Report and Certificate of Completion.

Services in each of the above work areas shall be performed under and at the direction of the Director, City Department of Community Development, or his designated representative.

3. Time of Performance

The services of the Consultant shall commence on July 1, _____ and be provided on a per-day basis as requested by the Director of Community Development or his designated representative. Such services shall be continued in such sequence as to assure their relevance to the purposes of this Contract. In any event, all of the services required and performed hereunder shall be completed no later than July 1, _____.

4. Access to Information

It is agreed that all information, data, reports, records and maps as are existing, available and necessary for the carrying out of the work outlined above, shall be furnished to the Consultant by the City and its agencies. No charge will be made to the Consultant for such information, and the City and its agencies will cooperate with the Consultant in every way possible to facilitate the performance of the work described in this Contract.

5. Compensation and method of Payment

The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$_____ for all services required. All contract work will be performed on a time and materials basis. Consultant time for principals and staff will be provided at their respective rate of compensation.

In addition to compensation for staff time, the City will compensate the Consultant for his expenses in performing contract tasks. Expenses reimbursement shall not exceed the cost of travel in the lowest practicable class of service by common carrier, and will not exceed \$_____per diem for sustenance expenses.

The Consultant shall submit monthly invoices to the City for payment. These invoices shall summarize the number of person-days provided in performing assigned tasks, and shall list the travel and per diem expenses incurred in the preceding month. Invoices shall be submitted by the tenth day of each month for the time and expenses allocated during the previous month. The City will make payment to the Consultant within twenty (20) days after the receipt of each invoice. The Consultant agrees to keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to the performance of contract work. Such records shall be kept in the offices of the Consultant and shall be made available to the City for inspection and copying upon request.

6. Ownership Documents

All documents, including original drawings, estimates, specifications, field notes and data are the property of the City. Consultant may retain reproducible copies of drawings and other documents.

7. Professional Liability

Consultant shall be responsible for the use of reasonable skill and care befitting the profession in the preparation of particular drawings, plans, specifications, studies and reports and in the designation of particular materials for the project covered by this Contract.

8. Indemnification

The Consultant shall comply with the requirements of all applicable laws, rules and regulations in connection with the services of Consultant and shall exonerate, indemnify and hold harmless the City, its officers, agents and all employees from and against them and local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and Income Tax laws. Further, Consultant shall exonerate, indemnify and hold harmless the City with respect to any damages, expenses or claims arising from or in connection with any of the work performed under this Contract by Consultant. This shall not be construed as a limitation of the Consultant's liability under the Contract or as otherwise proved by law.

9. Terms and Conditions

This Contract is subject to the provisions titled, "Part II – Terms and Conditions," attached hereto and incorporated by reference herein.

10. Address of Notices and Communications

(Name), Director
Department of Community Development
City Hall, Room 202
(City), KY 01111

(Name), President
(Company Name)
(Address)
(City, State, Zip)

11. Captions

Each paragraph of this Contract has been supplied with a caption to serve only as guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

12. Authorization

This Contract is authorized by City Resolution _____, adopted _____, _____, copies of which are attached hereto and made a part hereof.

ATTEST:

CITY OF _____

By: _____
(Name), Mayor

Date: _____

(Name of Company)

By: _____
(Name), President

Date: _____

Attachment 5-2:
Sample Contract for Professional Services – Part II

CONTRACT FOR PROFESSIONAL SERVICES

PART II – TERMS AND CONDITIONS

1. Termination of Contract for Cause

If through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenant, agreements or stipulations of this Contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the City, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Consultant, and the City may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the City from the Consultant is determined.

2. Termination for Convenience of the City

The City may terminate this Contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the City as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply.

3. Changes

The City may, from time to time, request changes in the scope of services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the City and the Consultant, shall be incorporated in written amendments to this Contract.

4. Personnel

- A. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All of the services required hereunder will be performed by the Consultant or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.
- C. None of the work or services covered by this Contract shall be subcontracted without the prior approval of the City. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

5. Assignability

The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto: provided, however, that claims for money by the Consultant from the City under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City.

6. Reports and Information

The Consultant, at such times and in such forms as the City may require, shall furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

7. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

8. Copyrights and Patents

Any copyrightable work resulting from this Agreement is available to the author for such, but the City and the Kentucky Department for Local Government reserve the option for unlimited use and license to such work. Any discovery or invention shall be reported promptly to the City and the Kentucky Department for Local Government for the determination as to whether patent protection should be sought and how the rights of any patent shall be disposed of and administered in order to protect the public interest.

9. Compliance with Local Laws

The Consultant shall comply with applicable laws, ordinances and codes of the State and local governments.

10. Access to Records

The Consultant shall maintain accounts and project records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available to the City, the Kentucky Governor's Office for Local Development Commonwealth of Kentucky Finance & Administration Cabinet, Commonwealth of Kentucky Auditor of Public Audits, Commonwealth of Kentucky Legislative Research Commission, U.S. Department of Housing and Urban Development, the U. S. Department of Labor, and the Comptroller General of the United States, or any of their duly authorized representatives. These parties shall have access to any books, documents, papers and records of the Consultant, which are directly pertinent to the project for the purpose of making audit, examination, excerpts and transcriptions. All records shall be maintained for five years after project closeout.

11. Title VI, Civil Rights Act of 1964

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

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

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

13. Age Discrimination

The Contractor shall comply with the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age. 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 funded in whole or in part with Federal funds.

14. Section 504

The Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which extends the prohibitions against discrimination to individuals with disabilities.

15. Conflict of Interest Clauses

Interest of Members of a City

No member of the governing body of the City and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

Interests of Other Local Public Officials

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.

Interest of Consultant and Employees

The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his

services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

16. "Section 3" Compliance

- A. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work and purchase of services and supplies in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability that would prevent them from complying with these requirements.
- C. The Consultant will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment training.
- D. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a *finding* that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor 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 subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors

and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Equal Opportunity Clause (Contracts above \$10,000)

During the performance of this Contract, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.
- B. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
- C. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- D. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the City's Department of Housing and Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the Consultant's noncompliance with the non-compliance clause of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and

the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Consultant will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the City's Department of Housing and Community Development may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City's Department of Housing and Community Development, the Consultant may request the United States to enter such litigation to protect the interests of the United States.

Attachment 5-' :
Sample Subcontract Form

ATTACHMENT 5-3

SUBCONTRACT FORM

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____, Herein called "PRIME CONTRACTOR," acting through its (Corporate Name of Owner _____, and (Title of Authorized Official) _____

STRIKE OUT (a corporation) (a partnership)

INAPPLICABLE (an individual doing business as _____

TERMS _____

Of _____, County of _____, and State of _____
Hereinafter called "SUBCONTRACTOR"

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the PRIME CONTRACTOR, the SUBCONTRACTOR hereby agrees with the PRIME CONTRACTOR to commence and complete the construction as described as follows:

hereinafter called the project, for the sum of _____ Dollars (\$ _____) and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Subcontract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, Supplemental General Conditions and Special Conditions of the Subcontract, the plans, which include all maps, plats, blue prints and other drawings and printed or written explanatory matter thereof, the specifications and contract documents therefore as prepared by _____, herein entitle the Architect/Engineer, and as enumerated in Paragraph 1 of the Supplemental General Conditions, all of which are made a part hereof and collectively evidence and constitute the contract.

The SUBCONTRACTOR hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the PRIME CONTRACTOR and to fully complete the project within _____ consecutive calendar days thereafter. The SUBCONTRACTOR further agrees to pay, as liquidated damages, the sum of \$ _____ for each consecutive calendar day thereafter as hereinafter provided in Paragraph 17 of the General Conditions.

The PRIME CONTRACTOR agrees to pay the SUBCONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 22, "Payments by Prime Contractor," of the General Conditions.

IN WITNESS THEREOF, the parties to these presents have executed this subcontract in _____() counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal)
ATTEST

Prime Contractor

By

(Secretary)

(Witness)

(Title)

(Seal)

(Subcontractor)

By

(Secretary)

(Witness)

(Title)

(Address and Zip Code)

NOTE: Secretary of the Prime Contractor should attest. If Subcontractor is a corporation, Secretary should attest.

BONDING REQUIREMENTS

Construction project bids estimated to exceed \$25,000 must include bidder security. An acceptable form of bidder security is a bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.

Construction contracts or subcontracts exceeding \$25,000 must include:

- a. A performance bond on the part of the contractor for 100 percent of the contract price as it may be increased. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- b. A payment bond on part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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GENERAL CONDITIONS
Including Federal Labor Standards Provisions

1. Subcontract and Subcontractor Documents

The project to be constructed and pursuant to this Subcontract will be financed with assistance from the Kentucky Community Development Block Grant Program and is subject to all applicable Federal laws and regulations.

The plans, specifications and addenda, hereinafter enumerated in Paragraph 1 of the Supplemental General Conditions on page 30, shall form part of this Subcontract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Subcontract Documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

2. Definitions

The following terms as used in this contract are respectively defined as follows:

- A. "Owner": The governmental unity (city or county) with whom the contract is made by the Prime Contractor.
- A. "Prime Contractor": A person, firm or corporation with whom the contract is made by the Owner.
- A. "Subcontractor": A person, firm or corporation supplying labor and materials or only labor for work at the site of the project for, and under separate contract or agreement with, the Prime Contractor.
- A. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Prime Contractor and any Subcontractor.

3. Additional Instructions and Detail Drawings

The Subcontractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract. The additional drawings and instructions thus supplied to the Subcontractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Subcontractor shall carry out the work in accordance with the additional detail drawings and instructions.

4. Materials, Services and Facilities

- A. It is understood that except as otherwise specifically stated in the Subcontract Documents, the Prime Contractor shall provide and pay for all water, light, power, transportation, superintendence, temporary construction of every nature and all other services and facilities of every nature whatsoever

necessary to execute, complete and deliver the work within the specified time.

- A. Any work necessary to be performed after regular working hours, on Sunday or Legal Holidays, shall be performed without additional expense to the Owner.

5. Subcontractor's Title to Materials

No materials or supplies for the work shall be purchased by the Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Subcontractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.

6. Inspection and Testing of Materials

- a. All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the Subcontract.
- b. Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

7. "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any materials, article or equipment of other manufacturers and vendors which will perform adequately to the duties imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed, is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Subcontractor without the Architect/Engineer's written approval.

8. Copyrights and Patents

Any copyrightable work resulting from this Agreement is available to the author for such, but the City and the Kentucky Governor's Office for Local Development reserve the option for unlimited use and license to such work. Any discovery or invention shall be reported promptly to the City and the Kentucky Governor's Office for Local Development for the determination as to whether patent protection should be sought and how the rights of any patent shall be disposed of and administered in order to protect the public interest.

9. Surveys, Permits and Regulations

Unless otherwise expressly provided for in the specifications, the Owner will furnish the Prime Contractor all surveys necessary for the execution of the work.

Unless otherwise stated, the Prime Contractor shall procure and pay all permits, licenses and approvals necessary for the execution of this Subcontract.

10. Subcontractor's Obligations

The Subcontractor shall and will, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this Subcontract, within the time herein specified, in accordance with the provisions of this Subcontract and said specifications and in accordance with the plans and drawings covered by this Subcontract any and all supplemental plans and drawings, and in accordance with the directions of the Prime Contractor and/or Architect/Engineer as given from time to time during the progress of the work. He shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required.

The Subcontractor shall observe, comply with, and be subject to all terms, conditions, requirements and limitations of the Subcontract and specifications, and shall do, carry on and complete the entire work to the satisfaction of the Prime Contractor, Architect/Engineer and the Owner.

11. Weather Conditions

In the event of temporary suspension of work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Subcontractor will protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Subcontractor to protect his work, such materials shall be removed and replaced at the expense of the Subcontractor.

12. Protection of Work and Property – Emergency

The Subcontractor shall at all times safely guard the Owner's property from injury or loss in connection with this Subcontract. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Subcontractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract or by the Owner, the Prime Contractor or another Subcontractor.

In case of an emergency which threatens loss or injury of property, and/or safety of life, the Subcontractor will be allowed to act, without previous instructions from the Prime Contractor or Architect/Engineer, in a diligent manner. He shall notify the Prime Contractor and Architect/Engineer immediately thereafter. Any claim for compensation by the Subcontractor due to such extra work shall be promptly submitted to the Prime Contractor for approval.

The amount of reimbursement claimed by the Subcontractor on account of any emergency action shall be determined in the manner provided in Paragraph 15 of the General Conditions.

13. Inspection

The authorized representatives and agents of the Kentucky Governor's Office for Local Development and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

14. Reports, Records and Data

The Subcontractor shall submit to the Prime Contractor such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Prime Contractor may request concerning work performed or to be performed under this Subcontract.

15. Superintendence by Prime Contractor

At the site of the work the Prime Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Prime Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Prime Contractor's payroll.

16. Changes in Work

No changes in the work covered by the approved Subcontract Documents shall be made without having prior written approval of the Prime Contractor. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

(a) Unit bid prices previously approved.

(b) An agreed lump sum.

(c) The actual cost of

(1) Labor, including foremen.

(2) Materials entering permanently into the work.

(3) The ownership or rental cost of construction plant and equipment during the time of use on the extra work.

(4) Power and consumable supplies for the operation of power equipment.

(5) Insurance.

(6) Social Security and old age and unemployment contributions.

17. Extras

Without invalidating the Subcontract, the Owner may order extra work or make changes by altering, adding to or deducting from the work, the subcontract sum being adjusted accordingly, and the consent of the Surety being first obtained where necessary or desirable. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal, and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the Owner or its Architect/Engineer, acting officially for the Owner, and the price stated in such order. These provisions may be imposed on the Subcontractor at the option of the Prime Contractor.

18. Time for Completion and Liquidated Damages

The Subcontractor agrees that work to be completed under this subcontract shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Prime Contractor and the Subcontractor, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

19. Correction of Work

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture and methods of construction for the purposes for which they are used. Should they fail to meet his approval they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Subcontractor at his own expense. Rejected materials shall immediately be removed from the site. If, in the opinion of the Architect/Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the Subcontract and Contract Documents, the compensation to be paid to the Subcontractor hereunder shall be reduced by such amount as in the judgment of the Prime Contractor shall be equitable.

20. Subsurface Conditions Found Different

Should the Subcontractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications, he shall immediately give notice to the Prime Contractor of such conditions before they are disturbed.

21. Claims for Extra Cost

No claim for extra work or associated cost shall be allowed unless the same was done in pursuance of a written order of the Prime Contractor approved by the Architect/Engineer and the Owner. When work is performed under the terms of subparagraph 15(c) of the General Conditions, the Subcontractor shall furnish satisfactory bills, payrolls and vouchers covering all items of cost.

22. Right of Owner to Terminate Subcontract

In the event that any of the provisions of this Subcontract are violated by the Prime Contractor, or by any of his Subcontractors, the Owner may serve written notice upon the Prime Contractor and the Surety of its intention to terminate the Subcontract, such notices to contain the reasons for such intention to terminate the Subcontract. and unless within ten (10) days after the serving of such notice upon the Prime Contractor, such violation or delay shall cease and satisfactory arrangement of correction be made, the Subcontract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Prime Contractor and the Surety shall have the right to take over and perform the Subcontract; provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Prime Contractor and the Prime Contractor and his Surety shall be liable to the Owner for any excess cost occasioned by the Owner thereby, and in such event the Owner may take possession of and utilize in completing the work, such materials, appliances and plant as may be on the site of the work and necessary therefore.

The Owner may terminate this Subcontract at any time by giving at least ten (10) days notice in writing to the Subcontractor. If the Subcontract is terminated by the Owner as provided herein, the Subcontractor will be paid for the time provided and expenses incurred up to the termination date. If the Contract is terminated due to the fault of the Subcontractor, the above paragraph relative to termination shall apply.

23. Payments by Prime Contractor

The Prime Contractor shall pay the Subcontractor, not later than the- day following each payment to the Prime Contractor, the respective amount allowed the Prime Contractor on account of the work performed by his Subcontractors to the extent of each Subcontractor's interest therein.

24. Insurance

The Subcontractor shall not commence work under this Subcontract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Prime Contractor.

- (a) Compensation Insurance: The Subcontractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of his employees to be engaged in work at the site of the project under this Subcontract, unless such employees are covered by the protection afforded by the Prime Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Subcontract is not protected under the Workmen's Compensation Statute, the Subcontractor shall provide adequate employers liability insurance for the protection of such of his employees as are not otherwise protected.

- (b) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Prime Contractor shall either (1) require each of the Subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in the Supplemental General Conditions, or (2) insure the activities on his policy.
- (c) Scope of Insurance and Special Hazards: The insurance required under subparagraph (b) hereof shall provide adequate protection for the Subcontractors, respectively, against damage claims which may arise from operations under this Subcontract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this Subcontract as enumerated in the Supplemental General Conditions.
- (d) Proof of Carriage of Insurance: The Subcontractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

25. Contract Security

The Subcontractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices as security for the faithful performance of this Subcontract and also a payment bond in an amount not less than one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, territorial or local laws, as security for the payment of all persons performing labor on the project under this Subcontract and furnishing materials in connection with this Subcontract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law.

26. Assignments

The Subcontractor shall not assign the whole or any part of this Subcontract or any moneys due or to become due hereunder without written consent of the Prime Contractor.

27. Mutual Responsibility of Contractors

If, through acts of neglect on the part of the Subcontractor, any other Contractor or any Subcontractor shall suffer loss or damage on the work, the Subcontractor agrees to settle with such other Contractor or Subcontractor by agreement or arbitration if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Prime Contractor, who shall indemnify and save harmless the Owner against any such claim.

28. Separate Contracts

The Subcontractor shall coordinate his operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Subcontractor shall keep informed of the progress and the detail work of other Contractors and shall notify the Architect/Engineer immediately of lack of progress or defective workmanship on the part of other Contractors. Failure of a Subcontractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective workmanship by others shall be construed as acceptance by him of the status of the work as being satisfactory for proper coordination with his own work.

29. Architect/Engineer's Authority

The Architect/Engineer shall give all orders and directions contemplated under this Subcontract and specifications relative to the execution of the work. The Architect/Engineer shall determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this Subcontract and shall decide all questions which may arise in relation to said work and the construction thereof. The Architect/Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said Subcontract and specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the Subcontractor to receive any money or payment for work under this Subcontract affected in any manner or to any extent by such question.

The Architect/Engineer shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute.

In the event that the project does not involve the use of an assigned Architect/Engineer, the owner shall assume full authority for assigned duties contained herein.

30. Use of Premises and Removal of Debris

The Subcontractor expressly undertakes at his own expense:

- (a) To take every precaution against injuries to persons or damage to property.
- (b) To store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other Contractors.
- (c) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- (d) To clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance.
- (e) Before final payment to remove all surplus material, false-work, temporary structures, including foundations thereof, plant of any

description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition.

- (f) To effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the Architect/Engineer, not to cut or otherwise alter the work of any other Contractor.

31. Conflicting Conditions

Any provisions in any of the Subcontract Documents which may be in conflict or inconsistent with any of the paragraphs in these General Conditions shall be void to the extent of such conflict or inconsistency.

32. Notice and Service Thereof

Any notice to the Subcontractor from the Owner relative to any part of this Subcontract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Subcontractor at his last given address or delivered in person to the said Subcontractors or his authorized representative on the work.

33. Provisions Required by Law Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this Subcontract shall be deemed to be inserted herein and the Subcontract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Subcontract shall forthwith be physically amended to make such insertion or correction.

34. Protection of Lives and Health

The Subcontractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described in Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No.75, Saturday, April 17, 1971 Title 29 – Labor - shall be observed and the Subcontractor shall take or cause to be taken, such additional safety and health measures as the Contracting Authority may determine to be reasonably necessary. The Subcontractor shall include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

35. Interest of Member of or Delegate to Congress

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Subcontract or to any benefit that may arise

therefrom, but this provision shall not be construed to extend to this Subcontract if made with a corporation for its general benefit.

36. Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Subcontract or in any part hereof. No officer, employee, architect, attorney, engineer or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this Subcontract or in any part thereof, any material supply contract, subcontract, insurance contract or any other contract pertaining to the project.

37. Photographs of the Project

If required by the owner or the Prime Contractor, the Subcontractor shall furnish photographs of the project, in the quantities and as described in the Supplemental General Conditions.

38. Suspension of Work

Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Subcontractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay with such determination.

39. Access to Records

The Subcontractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Subcontract and such other records as may be deemed necessary by the City/County to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available to the City, the Kentucky Governor's Office for Local Development, Commonwealth of Kentucky Finance & Administration Cabinet, Commonwealth of Kentucky Auditor of Public Audits, Commonwealth of Kentucky Legislative Research Commission, U.S. Department of Housing and Urban Development, the U. S. Department of Labor, and the Comptroller General of the United States, or any of their duly authorized representatives. These parties shall have access to any books, documents, papers, and records of the Subcontractor which are directly pertinent to the project for the purpose of making audit, excerpts and transcriptions. All records shall be maintained for five years after project closeout.

Note: Articles 39 and 40 are reprinted from Federal documents. Provisions contained therein are binding upon the Subcontractor as referred to as the Contractor.

40. Federal Labor Standards Provisions (HUD-401 0,2-84)

Applicability

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

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

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

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

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

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

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

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

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

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

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal Contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

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

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

subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

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

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper 1 apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3.
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

(iii) The contractor or subcontractor shall make the records required under paragraph A.3(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant 20 CFR Part 5.12.

4. (i) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on

the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

5. Compliance with Copeland Act Requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.
6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clause contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.
7. Contract Termination; Debarment. A breach of contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR Part 5.12.
8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1,3, and 5 are herein incorporated by reference in this contract.
9. Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U. S. Department of Labor, or the employees or their representatives.
10. (i) Certification of Eligibility .By entering into this contract, the contractor certified that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

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

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C.1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions," provides in part: "Whoever, for the purpose of ...influencing in any way the action of such Administration ...makes, utters, or publishes any statement, knowing the same to be false ...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."
11. Complaints, Proceedings, or Testimony by Employees.
 - A. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other

manner discriminated against by the Contractor or subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under Contract to his employer.

B. Contract Work Hours and Safety Standards Act (over \$100,000). As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

- (1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; Liability For Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.
- (3) Withholding For Unpaid Wages and Liquidated Damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

C. Health and Safety

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).
- (3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

41. Anti-Kickback Act

Attachment to Federal Labor Standards Provisions, So-Called "Anti-Kickback Act" and Regulations Promulgated Pursuant Thereto by the Secretary of Labor. United States Department of Labor. Title 18, U.S.C., Section 874 (HUD-4010, 2-76) (Replaces section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C., Section 276B) pursuant to the Act of June 25, 1948, 62 Stat. 862).

Kickbacks from Public Works Employees

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, 62 Stat. 862, 63 Stat. 108, Stat. 967, 40 U.S.C., section 276c).

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of

buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements.

Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term "this part", as used in the regulations hereinafter set forth, refers to Part 3 last above mentioned. Said regulations are as follows.

Title 29 – Labor; Subtitle A – Office of the Secretary of Labor, Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by loans or grants from the United States.

Section 3.1 – Purpose and scope

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with Federally-assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No.14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Section 3.2 – Definitions.

As used in the regulations in this part:

- (a) The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State

agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a "building" or "work" within the meaning of the regulations in this part.

- (b) The terms "construction," "completion," or "repair" mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.
- (c) The terms "public building" or "public work" include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.
- (d) The term "building or work financed in whole or in part by loans or grants from the United States" includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term does not include building or work for which Federal assistance is limited solely to loan guarantees or insurance.
- (e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or work financed in whole or in part by loans or grants from the United States is "employed" and receiving "wages," regardless of contractual relationship alleged to exist between him and the real employer.
- (f) The term "any affiliated person" includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary or otherwise, and an officer or agent of such corporation.
- (g) The term "Federal agency" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

Section 3.3 – Weekly statement with respect to payment of wages

- (a) As used in this section, the term "employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.
- (b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by 29 CFR Parts 3 and 5 during the

preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be on form WH 348, "Statement of Compliance," or on an identical form on the back of WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

- (c) The requirements of this section shall not apply to any contract of \$2,000 or less.
- (d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

(29 F.R. 95, Jan. 4 1964, as amended at 33 FR 10186, July 17, 1968)

Section 3.4 – Submission of weekly statements and the preservation and inspection of weekly payroll records.

- (a) Each weekly statement required under SS 3.3 shall be delivered by the contractor or subcontractor within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.
- (b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

Section 3.5 – Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor.

- (a) Any deduction made in compliance with the requirements of Federal, State or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing *either* from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met: (1) The deduction is not otherwise prohibited by law; (2) it is either: (i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or (ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; (3) no profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and (4) the deductions shall serve the convenience and interest of the employee.
- (e) Any deduction contribution toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- (f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- (h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- (i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- (j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and Part 431 of this title. When such a deduction is made the additional records required under SS 516.27(a) of this title shall be kept.

Section 3.6 – Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under SS 3.5. The Secretary may grant permissions whenever he finds that:

- (a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
- (b) The deduction is not otherwise prohibited by law;
- (c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work to be done, and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and
- (d) The deduction serves the convenience and interest of the employee.

Section 3.7 – Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under SS 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application shall be in writing and shall be addressed to the Secretary of Labor.
- (b) The application shall identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions only on specific, identified contracts, except upon a showing of exceptional circumstances.
- (c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of SS 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.
- (d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

Section 3.8 – Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of SS 3.6; and shall notify the applicant in writing of his decision.

Section 3.9 – Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under SS 3.6 are prohibited.

Section 3.10 – Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand. or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Section 3.11 – Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see SS 5.5(a) of this subtitle.

SUPPLEMENTAL GENERAL CONDITIONS
Including Equal Opportunity Provisions

1. Enumeration of Plans, Specifications and Addenda
2. Stated Allowances
3. Special Hazards
4. Contractor's and Subcontractor's Public Liability, Vehicle Liability and Property
Damage Insurance
5. Photographs of Project
6. Schedule of Occupational Classifications and Minimum Hourly Wage Rates
7. Special Equal Opportunity Provisions
8. Certification of Compliance with Air and Water Acts
9. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention
10. Energy Efficiency
11. Access to Records
12. Wage Rate Determination(s)
13. Contract Work Hours and Safety Standards Act

1. Enumeration of Plans, Specifications and Addenda

Following are the Plans, Specifications and Addenda which form a part of this Contract, as set forth in paragraph 1 of the General Conditions, "Contract and Contract Documents":

DRAWINGS

General Construction:	Nos. _____
Heating and Ventilating:	Nos. _____
Plumbing:	Nos. _____
Electrical:	Nos. _____
	Nos. _____
	Nos. _____

SPECIFICATIONS:

General Construction:	Page _____ to _____, inclusive
Heating and Ventilating:	Page _____ to _____, inclusive
Plumbing:	Page _____ to _____, inclusive
Electrical:	Page _____ to _____, inclusive
	Page _____ to _____, inclusive
	Page _____ to _____, inclusive

ADDENDA:

No. _____	Date _____	No. _____	Date _____
No. _____	Date _____	No. _____	Date _____

2. Stated Allowances

Pursuant to Paragraph 36 of the General Conditions, the Contractor shall include the following cash allowances in his proposal

(a) For _____ (Page _____ of Specifications)	\$ _____
(b) For _____ (Page _____ of Specifications)	\$ _____
(c) For _____ (Page _____ of Specifications)	\$ _____
(d) For _____ (Page _____ of Specifications)	\$ _____
(e) For _____ (Page _____ of Specifications)	\$ _____
(f) For _____ (Page _____ of Specifications)	\$ _____

3. Special Hazards

The Subcontractor's Public Liability and Property Damage Insurance shall provide adequate protection against the following special hazards:

4. Subcontractor's Public Liability, Vehicle Liability and Property Damage Insurance

As required under paragraph 23 of the General Conditions, the Subcontractor's Public Liability Insurance and Vehicle Insurance shall be in an amount not less than \$_____ for injuries, including accidental death, to any one person, and subject to the same limit for each person, in an amount not less than \$_____ on account of one accident, and Subcontractor's Property Damage Insurance in an amount not less than \$_____.

The Subcontractor shall either (1) require each of his Subcontractors to procure and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type and in the same amounts as specified in the preceding paragraph, or (2) insure the activities of his Subcontractors in his own policy or (3) be insured on the policy of the Prime Contractor.

5. Photographs of Project

As provided in paragraph 36 of General Conditions, the Subcontractor will furnish photographs in the number, type and stage as enumerated below:

6. Schedule of Occupational Classifications and Minimum Hourly Wage Rate as required under paragraph 39 of the General Conditions.

Given on pages_____, _____, and

Note: Articles 7 and 8 are reprinted from federal documents. Provisions contained therein are binding upon the subcontractor as referred to as the contractor.

7. Special Equal Opportunity Provisions

A. 3-Paragraph Equal Opportunity Clause for Activities and Contracts Not subject to Executive Order 11246, as Amended (applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under)

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

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by contracting officer setting forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, or sex or national origin.
3. Contractors shall incorporate forgoing requirements in all subcontracts.

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

1. Section 202 Equal Opportunity Clause

During the performance of this Contract, the Contractor agrees the following:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.
- f. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Contractor will include the provisions of the sentence immediately preceding paragraph a. and the provisions of paragraphs a. through f.

in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance.

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) (applicable to contract/subcontracts exceeding \$10,000)
 - a. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications", set forth herein.
 - b. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority
Participation

(Insert Goals)

Goals for Female
Participation

(Insert Goals for
Current Year)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the Contract, the Executive

Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

- c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; and the geographical area in which the contract is to be performed.
 - d. As used in this notice, and in the contract resulting from the solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).
3. Standard CDBG Assisted Employment Opportunity Construction Contract Specifications (Executive Order 11246)
- a. As used in these specifications:
 - (1) "Covered area" means the geographical area described in solicitation from which this Contract resulted.
 - (2) "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority.
 - (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).
 - (c) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands).
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
 - (5) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

- (6) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plant approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the plan goals and timetables.
- (7) The Contractor shall implement the specific affirmative action standards provided in paragraphs 10a through p of these specifications. The goals set forth in the solicitation form which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors- performing contracts in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting, its goals in each craft during the period specified.
- (8) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- (9) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- (10) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort

to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- (a) Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- (b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- (c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- (d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 10b above.

- (f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- (g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
- (h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- (i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- (j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

- (k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - (l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - (m) Ensure that seniority practices job classifications work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy under the Contractor's obligations under these specifications are being carried out.
 - (n) Ensure that all facilities and company activities are non-segregated except that separate or single-use toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - (p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- (11) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (10a through p). The efforts of a contractor association, joint contractor-union, contractor- community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 10a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- (12) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the

Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- (13)The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- (14)The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- (15)The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Employment Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (16)The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 10 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity .If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (17)The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- (18)Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that s/he does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that s/he does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. S/he certifies further that s/he will not maintain or provide for employees any segregated facilities at any of his/her establishments, and s/he will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Employment Opportunity Clause of this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, *transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. S/he further agrees that (except where he/she has obtained identical certifications. from proposed Subcontractors for specific time periods) he/she will obtain identical certification from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed Subcontractors (except where proposed Subcontractors have submitted identical certifications for specific time periods).

* Parking lots, drinking fountains, recreation or entertainment areas.

D. Title VI Clause, Civil Rights Act of 1964

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

E. Section 109 Clause, Housing and Community Development Act of 1974

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

F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities (over \$100,000)

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

2. The parties to this Contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Contract. The parties to this Contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract of understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
4. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where it has notice 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 Subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the Contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified in 24 CFR Part 135.

G. Rehabilitation Act of 1973, Section 503 Handicapped (if \$10,000 or over)

Affirmative Action for Handicapped Workers

1. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
2. The Contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

3. In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
5. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physical and mentally handicapped individuals.
6. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

H. Section 402 Veterans of the Vietnam Era (if \$10,000 or over)

Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era

1. The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based on their disability or veteran status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
2. The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this Contract and those which occur during the performance of this Contract, including those not generated by this Contract and including those occurring at an establishment of the Contractor other than the one wherein the Contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs 4 and 5.

3. Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veterans. The listing of employment openings does not require the hiring of any particular *job* applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment.
4. The reports required by paragraph 2 of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The Contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this Contract identifying data for each hiring location copies of the reports submitted until the expiration of one year after final payment under the Contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment and placement.
5. Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by the contract clause.
6. This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, Puerto Rico, Guam and the Virgin Islands.
7. The provisions of paragraphs 2, 3, 4 and 5 of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.
8. As used in this clause:
 - a. "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings are compensated on a salary basis of less than

\$25,000 per year. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment. It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government.

- b. "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening to be filled, including the District of Columbia, Guam, Puerto Rico and the Virgin Islands.
 - c. "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.
 - d. "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.
- 9. The contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - 10. In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.
 - 11. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.
 - 12. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam Era.

13. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

I. Age Discrimination Act of 1975

During the performance of this Contract, the Contractor agrees as follows: the Contractor agrees not to exclude from participation, deny program benefits, or discriminate on the basis of age.

8. Certification of Compliance with Air and Water Acts (applicable to Federally assisted construction contracts and related subcontracts exceeding (\$100,000)

Compliance with Air and Water Acts

During the performance of this Contract, the Contractor and all Subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt" Contractors and Subcontractors shall furnish to the Owner, the following:

- A. A stipulation by the Contractor or Subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the Contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the Contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraphs A through D of this section in every nonexempt subcontract and requiring that the Contractor will take such actions as the Government may direct as a means of enforcing such provisions.

9. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention

- A. Lead-Based Paint Hazards (applicable to contracts for construction or rehabilitation of residential structures)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and

Subcontractors shall comply with the provisions for the elimination of lead- based paint hazards under sub-part B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

B. Use of Explosives (modify as required)

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, State and Federal laws in purchasing and handling of explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timer, steel or rope mats. The Contractor shall notify all owners of public utility property of intention to use explosives at least eight hours before blasting is done close to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals and Safety Devices (modify as required)

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or Contract.

10. Energy Efficiency

The Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in Compliance with the Energy Policy and Conservation Act.

11. Access to Records

The Contractor shall maintain accounts and project records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both CDBG and non-CDBG shares. These records will be made available to the City, the Kentucky Governor's Office for Local Development, Commonwealth of Kentucky Finance & Administration Cabinet, Commonwealth of Kentucky Auditor of Public Audits, Commonwealth of Kentucky Legislative Research Commission, U.S. Department of Housing and Urban Development, the U. S. Department of Labor, and the Comptroller General of the United States, or any of their duly authorized representatives. These parties shall have access to any books, documents, papers and records of the Contractor, which are directly pertinent to the project, for the purpose of making audit, examination, excerpts and transcriptions. All records shall be maintained for five years after project closeout.

12. Wage Rate Determination(s)

(Appropriate wage rates shall be inserted here)

13. Contract Work Hours and Safety Standards Act

All grantees and subgrantee's contracts must contain provisions requiring compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) where construction contracts are awarded by grantees or subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts involving the employment of mechanics and laborers.

Attachment 5-(:
Sample Legally Binding Agreement

CERTIFICATION OF LEGALLY BINDING AGREEMENTS
(Sample)

Pursuant to Article _____ of the KCDBG Contract, I hereby submit the following legal opinion to the evidentiary materials required to be furnished by _____ (Name of company of individual) _____.

1. I am the attorney for the city/county of _____, recipient of the KCDBG Contract referenced above.
2. I am basing the foregoing legal opinion on the written Affidavit of _____ (Name, title, and function) _____, copies of the enclosed documents, and upon my information and belief. I do not have personal knowledge of any of the facts alleged herein.
3. **Evidence of Contracts.** Enclosed is a copy of the Agreement entered into by _____ (Name and title of city/county official) _____, the city/county of _____, as attested to by _____ (List all persons attesting to contract and titles -- both city/county officials and representatives of private parties) _____.

Also enclosed is a copy of the Ordinance authorizing the _____ (Title of city/county official) _____ to enter into a Contract with _____ (Name of company or individual) _____.

It is my opinion that _____ (Name of city/county official) _____ was authorized to enter into the Contract with _____ (Name of company or individual) _____. My opinion is based on resolution number _____, which was duly passed by the legislative body of the city/county of _____ authorizing the _____ (Title of city/county official) _____ to enter into the Contract.

It is my opinion that _____ (Name) _____ is the _____ (Title) _____ of _____ (Name of company) _____ and that s/he was authorized to enter into the KCDBG Agreement with the city/county of _____. My opinion is based upon the attached Affidavit(s) of _____ (Name(s) and title(s) of person(s) submitting Affidavit(s) _____.

It is my opinion that the above mentioned contracts are legally enforceable under the laws of this Commonwealth and conform to the provision of the Grant Agreement unless otherwise specified herein.

Optional: to be used where acquisition, lease and/or loan transactions occur

4. **Evidence of Loan/Lease Agreements.** Attached are copies of loan/lease documents _____ (to be) _____ entered into by _____ (Name and title of city/county official) _____, the _____ (city/county) _____, as listed below:
- a) Lease agreement signed and recorded between the lessor and the lessee; and/or,
 - b) Draft loan agreement between _____ the lender and _____ the debtor;
 - c) Draft mortgage document(s), promissory note(s), subordination agreement(s), security agreement(s), etc. as deemed appropriate by the _____ (city/county) _____ attorney.

Also attached is a copy of the resolution/ordinance authorizing the _____ (Title of city/county official) _____ to enter into the referenced documents with _____ (Name of company or individual) _____.

It is my opinion that _____ (Name of city/county official) _____ was authorized to enter into the above documents with _____ (Name of company or individual) _____. My opinion is based on resolution/ordinance number _____, which was duly passed by the legislative body of the city/county of _____ authorizing the _____ (Title of city/county official) _____ to enter into the documents.

It is my opinion that _____ (Name) _____ is the _____ (Title) _____ of _____ (Name of company) _____ and that he was authorized to enter into the documents with the city/county of _____. My opinion is based upon the attached Affidavit(s) of _____ (Name(s) and title(s) of person(s) submitting Affidavit(s)).

5. **Opinion on Title.** I have conducted/reviewed a title search of the referenced property expressed by _____ (Name, title of preparer) _____. It is my opinion that the conclusion(s) expressed is commensurate with the intent of the CDBG Grant Agreement.

LEGALLY BINDING AGREEMENT
(Sample)

NOTE: This sample agreement represents a format that can be adapted by the grant recipient to be used as either a two-party or three-party document depending on the particular needs of the project. The sample can be modified for use based on the provisions of the grant agreement. The sample provides a legal mechanism that can be executed between a grantee and either a for-profit corporation, nonprofit corporation, water/sewer district, or other related organization. Modification of this agreement is to be conducted in line with the content and requirements of the Grant Agreement.

This agreement entered into this _____ day of _____, 20____, by and between the _____ (Council/Fiscal Court), hereinafter referred to as the Recipient, (and/or) the _____ (Organization/District), hereinafter called the Nonprofit (and/or) the _____ (Company), hereinafter called the Participating Party. This agreement is being executed in three original contracts, each of which is deemed an original.

WHEREAS, the Recipient has entered into a Grant Agreement with the Commonwealth of Kentucky, Department of Local Government, and

WHEREAS, the payment of funds to the Recipient under the terms of the Grant Agreement is contingent upon the Nonprofit (and/or) Participating Party contracting to undertake certain responsibilities, and

WHEREAS, the funds made available under the terms of the Grant Agreement will directly benefit the Participating Party (and/or) Nonprofit,

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR (\$1.00) paid to the Nonprofit (and/or) Participating Party, and in further consideration of the mutual promises and covenants hereinafter contained, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

NOTE: **For two-party agreement include either Item 1 or 2 as appropriate.**
 For three-party agreement include both Item 1 and 2 as appropriate.

ITEM 1:

The Recipient and Nonprofit do hereby agree to carry out and perform all of the activities required of it under the terms and conditions of the Grant Agreement, which agreement is incorporated herein by reference as if copied in full.

The Nonprofit agrees as follows:

- a) To perform project activities as enumerated in Exhibit B-2 of the Grant Agreement as enumerated below:
 - i. **List activities as contained in the Grant Agreement.**
 - ii.
 - iii. **...etc.**

Include b) and c) if applicable
- b) Nonprofit shall assure that the (Loan/Lease) Agreement with the Participating Party shall contain provisions granting access to employment records by the Recipient and the Commonwealth for the sole purpose of confirming compliance with job requirements set forth in Exhibit A and CDBG benefit requirements.
- c) Nonprofit shall assure that the recapture of CDBG funds will be deposited in a Revolving Fund Account (RF). Recaptured funds will be used for activities set forth in the application dated _____, 20____. The Nonprofit shall assure compliance with proper accounting and reporting requirements related thereto. The Nonprofit shall obtain project approval from the Recipient for the expenditure of funds as specified in the RF document.

ITEM 2:

The Recipient and Participating Party do hereby agree to carry out and perform all of the activities required of it under the terms and conditions of the Grant Agreement, which agreement is incorporated herein by reference as if copied in full.

The Participating Party agrees as follows:

- a) To perform project activities as enumerated in Exhibit C of the Grant Agreement as enumerated below:
 - i. **List activities as contained in the Grant Agreement.**
 - ii.
 - iii. **...etc.**
- b) To provide employment opportunity as enumerated in Exhibit A of the Grant Agreement and below:
 - i. To create/retain at a minimum _____ (_____) permanent full-time jobs.
 - ii. To assure at least fifty-one percent (51%) of the jobs will be filled by individuals from families of low- to moderate-income (LMI).
 - iii. To accept income limits for identifying LMI beneficiaries and the time period set for meeting job requirements as set out in the Grant Agreement.
- c) To maintain for a period of five years following project closeout all employment records related to the project to include but not be limited to the Employee Survey Forms, Employee Characteristics Record and Employee Characteristics Summarization.

- d) To pay the Commonwealth of Kentucky through the Recipient, an amount equal to the total CDBG grant funds received by the Recipient, except for any planning or administrative funds, should 51% of the jobs created fail to be fulfilled by individuals from LMI families as required by the Grant Agreement, Exhibit C. Failure to create the full job commitment of _____ (_____) jobs shall require repayment by the Participating Party at the rate of \$_____ per job not created.

The Nonprofit (and/or) Participating Party agrees as follows:

- a) To maintain for a period of five years following project closeout all financial records and documents relative to disbursement of any CDBG or other funds identified in and required by the Grant Agreement. Such records include, but are not limited to, ledgers, bank statements, contracts, invoices and reports.
- b) To grant access to inspect, copy, audit and examine at all reasonable times employment and financial records to any duly authorized representative of the Commonwealth, HUD, Inspector General and General Accounting Office of the United States, for a period up to five years following completion of closeout procedures.
- c) To comply with all State and Federal laws and regulations pertinent to the project.

The Nonprofit (and/or) Participating Party further agrees to the following terms and conditions:

- a) That no transfer of grant funds by the Recipient to the Nonprofit (and/or) Participating Party shall be or be deemed an assignment of grant funds, and that the Nonprofit (and/or) Participating Party shall neither succeed to any rights, benefits, or advantages of the Recipient under the terms of the hereinabove described Grant Agreement nor attain any rights, privileges, authorities or interest in or under the said agreement.
- b) That the Nonprofit (and/or) Participating Party acknowledges nothing contained in the said agreement, nor in any contract between the parties hereto, nor any act of the Commonwealth, the Recipient or any other party shall be deemed or construed to create any relationship or third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship involving the Commonwealth.
- c) That the Recipient shall not be liable to the Nonprofit (and/or) Participating Party or any party except the Commonwealth, for the completion of, or the failure to complete, any activities which are a part of the project herein contemplated, except those specified in Exhibit B, of the said Grant Agreement.
- d) None of the Nonprofit (and/or) Participating Party's designees, agents, members, officers or employees, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof, for work to be

performed in connection with the project herein contemplated at any time during or after such person's tenure with the Nonprofit (and/or) Participating Party.

- e) The obligations of the parties are totally contingent upon the obtaining of a Release of Funds from the Department of Local Government and no project activities other than environmentally exempt activities may occur until the release is achieved.
- f) Recipient, Nonprofit (and/or) Participating Party agree and accept that all applicable provisions of the Grant Agreement are incorporated into and made a part of this Legally Binding Agreement.
- g) The Legally Binding Agreement Standard Provisions attached to this Agreement as Exhibit I are considered to be an integral part of this Agreement. These provisions are subject to change from time to time as Federal laws and regulations are promulgated. The Nonprofit (and/or) Participating Party will be notified in writing if any changes occur.

City/County
Legally Binding Agreement

This Agreement being formally adopted this _____ day of _____,
20____:

Recipient:

Examined as to form and legality:

(Mayor/County Judge)

Recipient Attorney

State of Kentucky
County of _____

Subscribed, sworn to and acknowledged before me by _____,
_____(Title)_____ by and through its resolution, on this _____ day of _____,
20_____.

My Commission expires:

Notary Public

Nonprofit:

(President/Chair)

State of Kentucky
County of _____

Subscribed, sworn to and acknowledged before me by _____,
_____(Title)_____ by and through its resolution, on this _____ day of _____,
20_____.

My Commission expires:

Notary Public

City/County
Legally Binding Agreement

Participating Party:

(President/Chairman)

State of Kentucky
County of _____

Subscribed, sworn to and acknowledged before me by _____,
_____ (Title) by and through its resolution, on this _____ day of _____,
20____.

My Commission expires:

_____ _____
Notary Public

**LEGALLY BINDING AGREEMENT
EXHIBIT I
STANDARD PROVISIONS**

NOTE: The following CDBG Provisions should be used with all Legally Binding Agreements where CDBG funds are being used in whole or in part.

1. **Unexpended Grant Funds:** The Non-Profit (and/or) Participating Party agrees that it will return to the Recipient any unexpended grant funds provided by the Recipient under this Agreement.
2. **Program Income:** Briefly describe how the program income generated from CDBG funded activities will be handled.
3. **Limitation of Liability:** The Non-Profit (and/or) Participating Party will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the Recipient.
4. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this project, shall be vested in the unit of local government. When the unit of local government determines that the property is no longer required for the purposes of this project, the unit of local government must notify the Department of Local Government (DLG) and obtain approval for disposition of the property in accordance with applicable guidelines.
5. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Non-Profit (and/or) Participating Party shall be notified in writing of any such changes when they occur and they shall be incorporated in writing into this contract/agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the Non-Profit (and/or) Participating Party.

6. **Terms and Conditions:** DLG reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the Community Development Block Grant Program.

7. **Reporting Requirements:** The Non-Profit (and/or) Participating Party agrees to complete and submit all reports, in such form and according to such schedule, as may be required by DLG.
8. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five (5) years after the final close-out report.

However, if any litigation, claim, or audit is started before the expiration of the five (5) year period, then records must be retained for five (5) years after the litigation, claim or audit is resolved.

9. **Access to Records:** Records with respect to all matters covered by this agreement shall be made available for audit and inspection by DLG, HUD or their representatives.
10. **Sanctions:** If the Non-Profit (and/or) Participating Party fails or refuses to comply with the provisions set forth herein, then DLG or the Recipient may take any or all of the following sanctions: cancel, terminate or suspend in whole or in part this agreement, or refrain from extending any further funds to the Non-Profit (and/or) Participating Party until such time as the Non-Profit (and/or) Participating Party is in full compliance.
11. **Applicable Law:** In addition to the applicable Federal Laws and Regulations, this agreement is also made under and shall be construed in accordance with the laws of the Commonwealth of Kentucky. By execution of this agreement, the Non-Profit (and/or) Participating Party agrees to submit to the jurisdiction of the Commonwealth of Kentucky for all matters arising or to arise hereunder, including but not limited to performance of said agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
12. **Uniform Administrative requirements:** The Non-Profit (and/or) Participating Party shall adhere to the following administrative requirements:

Financial: Guidelines for financial and compliance audits of Federally assisted programs which are OMB Circular A-133, and OMB Circular A-87.

Procurement: The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the Recipient and the Non-Profit (and/or) Participating Party.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the Commonwealth of Kentucky or a unit of general local government or any designated public agencies or subrecipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or 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 or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted

by the Department for Local Government on a case-by-case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, subrecipient, employee or official know or perceive any breach of ethical standards or conflict of interest involving any other CDBG grant, they shall immediately notify the Department for Local Government.

Personnel: All contractors and subcontractors engaged in the project shall be fully qualified and properly licensed under State and local law to perform such services.

The Non-Profit (and/or) Participating Party shall insure that all Prime Contractors/Subcontractors are bonded and insured in accordance with State and Federal requirements.

Other Program Requirements: All activities by the Non-Profit (and/or) Participating Party shall be carried out in compliance with all Federal laws and regulations except for environmental responsibilities and review process under Executive Order 12372, which are the responsibility of the Recipient.

Suspension and Termination: In accordance with 24 CFR 85.43 suspension or termination may occur if the Non-Profit (and/or) Participating Party materially fails to comply with any terms of this Agreement, and that the Agreement may be terminated for convenience in accordance with 24 CFR 85.44.

Debarment Certification: The Non-Profit (and/or) Participating Party must verify that all contractors and subcontractors are not listed in the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions", prior to receiving Federal funds. The Non-Profit (and/or) Participating Party must require that any prime contractor or lower tier contractor with a contract valued at more than \$100,000 must also complete a debarment certification and the Non-Profit (and/or) Participating Party will keep it on file for review as outlined in records and reports. The Non-Profit (and/or) Participating Party must also check the eligibility on all contractors and subcontractors who perform work under this Agreement regardless of dollar amount.

Use of Real Property and Reversion of Assets: Upon expiration or termination of this Agreement the Non-Profit (and/or) Participating Party shall transfer on behalf of the Recipient, to the Department for Local Government, or the Department for Local Government's Assignee, any CDBG funds on hand at that time and any accounts receivable attributable to the use of CDBG funds.

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use must be approved by the Department for Local Government in writing.

Amendments: Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Non-Profit (and/or) Participating Party to the Recipient as a request for an award adjustment. Any adjustment granted by the Recipient shall be appended to this Agreement as an amendment.

13. **Copyright:** Except as otherwise provided in the terms and conditions of this contract, the Non-Profit (and/or) Participating Party paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the U. S. Department of Housing and Urban Development and DLG reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal Government and State Funded Agencies (SFA) purposes:

- A. the copyright in any work developed under this contract; and
- B. any rights of copyright to which a Non-Profit (and/or) Participating Party purchases ownership with grant support.

The Federal Government's rights and the DLG's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

14. **Compliance with Air and Water Acts:** Applicable to construction contracts and related subcontracts exceeding \$100,000: This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time.

- A. A stipulation by the Contractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- B. Agreement by the Contractor to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857c-8-0 and section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said section 114 and 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
- D. Agreement by the Non-Profit (and/or) Participating Party that he will include or cause to be included the criteria and requirements in paragraph (A) through (D) of this agreement, in every nonexempt subcontract and requiring that the Contractor will take such action as the State may direct as a means of enforcing such provisions.

In no event shall any amount of assistance provided under this agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

15. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as

sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- A. Including qualified small and minority businesses on solicitation lists;
 - B. Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
 - C. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;
 - D. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
 - E. Using the services and assistance of the Small Business Administration, the Kentucky Cabinet for Economic Development, the U. S. Department of Commerce and the Community Services Administration as required.
16. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Non-Profit (and/or) Participating Party under this agreement, which DLG requests to be kept confidential, shall not be made available to any individual or organization by the Non-Profit (and/or) Participating Party without prior written approval of DLG.
 17. **Prime Non-Profit (and/or) Participating Party Responsibilities:** The Non-Profit (and/or) Participating Party is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this agreement. The Recipient will consider the Non-Profit (and/or) Participating Party to be the sole point of contact with regard to contractual matters.
 18. **Subcontracting:** If any part of the work covered by this agreement is to be subcontracted, the Non-Profit (and/or) Participating Party shall identify the subcontracting entity and the contractual arrangements made therewith to the Recipient. All subcontracts must be approved by the Recipient to insure they are not debarred or suspended by the Federal or State Government and to insure the Recipient understands the arrangements.
 19. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.
 20. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.
 21. **Reporting of Fraudulent Activity:** If at any time during the term of this agreement anyone has reason to believe by whatever means that, under this or any other program administered by DLG, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be immediately reported to the appropriate authorities.

22. **Age Discrimination:** In accordance with 45 CFR, parts 90 and 91, the Non-Profit (and/or) Participating Party agrees there shall be no bias or age discrimination as to benefits and participation under this agreement.
23. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to agreement.
24. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this said contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

25. **Section 504 of the Rehabilitation Act of 1973:** The Non-Profit (and/or) Participating Party agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, in any program or activity that receives the benefits from the Federal financial assistance.
26. **Lead-Based Paint:** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. Any grants or loans made by the Non-Profit (and/or) Participating Party for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-base paint hazards under subpart B of said regulations, and the Non-Profit (and/or) Participating Party shall be responsible for the inspections and certifications required under section 35.14(f) thereof.
27. **Debarment Certification:** The Non-Profit (and/or) Participating Party must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction as outlined below.
- A. Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and is cumulative amount from all Federal funding sources).
 - B. Any procurement contract for goods and services, regardless of amount, under which the Non-Profit (and/or) Participating Party will have a critical influence on or substantive control over the transaction.
28. **Equal Employment Opportunity:** In carrying out the program, the Non-Profit (and/or) Participating Party shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Non-Profit (and/or) Participating Party must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Non-Profit (and/or) Participating Party shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Non-Profit (and/or) Participating Party shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Non-Profit (and/or) Participating Party shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program.

The Non-Profit (and/or) Participating Party will, in all solicitations or advertisements for employees by or on behalf of the Non-Profit (and/or) Participating Party, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

The Non-Profit (and/or) Participating Party will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or

workers' representatives of the Non-Profit (and/or) Participating Party's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Non-Profit (and/or) Participating Party will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State.

The Non-Profit (and/or) Participating Party will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Non-Profit (and/or) Participating Party's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Non-Profit (and/or) Participating Party may be declared ineligible for further Government contracts or Federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the State, or as otherwise provided by law.

The Non-Profit (and/or) Participating Party will include the above provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each Non-Profit (and/or) Participating Party or vendor. The Non-Profit (and/or) Participating Party will take such action with respect to any subcontract or purchase order as DLG may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Non-Profit (and/or) Participating Party becomes involved in, or is threatened with, litigation with an entity as a result of such direction by DLG, the Non-Profit (and/or) Participating Party may request DLG to enter into such litigation to protect the interest of the State.

The Non-Profit (and/or) Participating Party further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work.

29. **Federal Labor Standards Provisions:** The project or program to which the work covered by this agreement pertains is being assisted by the United States of America and the Federal Labor Standards Provisions are applicable to any construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units entered into by the Non-Profit (and/or) Participating Party. The Non-Profit (and/or) Participating Party shall include the required Federal language covering Davis-Bacon, Copeland Anti Kickback, and Contract work and Safety Standard Acts in any such contract.

Attachment 5-) :
HUD Form 2516: Contract and Subcontract Activity Report

Public Reporting Burden for this collection of information is estimated to average .50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This information is voluntary. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

Executive Order 12421 dated July 14, 1983, directs the Minority Business Development Plans shall be developed by each Federal Agency and that these annual plans shall establish minority business development objectives. The information is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) goals. The Department requires the information to provide guidance and oversight for programs for the development of minority business enterprise concerning Minority Business Development. If the information is not collected HUD would not be able to establish meaningful MBE goals nor evaluate MBE performance against these goals. While no assurances of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information request.

Privacy Act Notice - The United States Department of Housing and Urban Development, Federal Housing Administration, is authorized to solicit the information requested in this form by virtue of Title 12, United States Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. It will not be disclosed or released outside the United States Department of Housing and Urban Development without your consent, except as required or permitted by law.

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency

Check if:
PHA ☐
IHA ☐

2. Location (City, State, ZIP Code)

3a. Name of Contact Person

3b. Phone Number (Including Area Code)

4. Reporting Period
☐ Oct. 1 - Sept. 30 (Annual-FY)

5. Program Code (Not applicable for CPD programs.)
See explanation of codes at bottom of page.
Use a separate sheet for each program code.

6. Date Submitted to Field Office

Grant/Project Number or HUD Case Number or other identification of property, subdivision, dwelling unit, etc. 7a.	Amount of Contract or Subcontract 7b.	Type of Trade Code (See below) 7c.	Contractor or Subcontractor Business Racial/Ethnic Code (See below) 7d.	Woman Owned Business (Yes or No) 7e.	Prime Contractor Identification (ID) Number 7f.	Sec. 3 7g.	Subcontractor Identification (ID) Number 7h.	Sec. 3 7i.	Contractor/Subcontractor Name and Address 7j.				
									Name	Street	City	State	Zip Code

CPD:
1 = New Construction
2 = Education/Training
3 = Other

7c: Type of Trade Codes:
Housing/Public Housing:
1 = New Construction
2 = Substantial Rehab.
3 = Repair
4 = Service
5 = Project Mangt.

6 = Professional
7 = Tenant Services
8 = Education/Training
9 = Arch./Engrg. Appraisal
0 = Other

7d: Racial/Ethnic Codes:
1 = White Americans
2 = Black Americans
3 = Native Americans
4 = Hispanic Americans
5 = Asian/Pacific Americans
6 = Hasidic Jews

5: Program Codes (Complete for Housing and Public and Indian Housing programs only):
1 = All insured, including Section 8
2 = Flexible Subsidy
3 = Section 8 Noninsured, Non-HFDA
4 = Insured (Management)
5 = Section 202
6 = HUD-Held (Management)
7 = Public/Indian Housing

This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be

completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3.

A Section 3 contractor/subcontractor is a business concern that provides economic opportunities to low- and very low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 percent or more owned by low- or very low-income residents; employs a substantial number of low- or very low-income residents; or provides subcontracting or business development opportunities to businesses owned by low- or very low-income residents. Low- and very low-income residents include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms “low-income persons” and “very low-income persons” have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary

may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families. Very low-income persons means low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front.

Complete item 7h. only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts executed during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

Community Development Programs

- 1. **Grantee:** Enter the name of the unit of government submitting this report.
- 3. **Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.
- 7a. **Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.
- 7b. **Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.
- 7c. **Type of Trade:** Enter the numeric codes which best indicates the contractor's/ subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor. The "other" category includes supply, professional services and all other activities except construction and education/training activities.
- 7d. **Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic /gender character of the owner(s) and controller(s) of 51% of the business. When 51% or more is not owned and controlled by any single racial/ethnic/ gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Enter this information for each

Previous editions are obsolete.

firm receiving contract/subcontract activity only one time on each report for each firm.

Multifamily Housing Programs

- 1. **Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.
- 3. **Contact Person:** Same as item 3 under CPD Programs.
- 4. **Reporting Period:** Check only one period.
- 5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
- 7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
- 7c. **Type of Trade:** Same as item 7c. under CPD Programs.
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

- 1. **Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.
- 3. **Contact Person:** Same as item 3 under CPD Programs.
- 4. **Reporting Period:** Check only one period.
- 5. **Program Code:** Enter the appropriate program code.
- 7a. **Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.
- 7b. **Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.
- 7c. **Type of Trade:** Same as item 7c. under CPD Programs.
- 7d. **Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.
- 7e. **Woman Owned Business:** Enter Yes or No.
- 7f. **Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.
- 7g. **Section 3 Contractor:** Enter Yes or No.
- 7h. **Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.
- 7i. **Section 3 Contractor:** Enter Yes or No.
- 7j. **Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.