

Chapter 11: Economic Development

Introduction

This chapter provides information and requirements governing the use of KCDBG funds for economic development activities. It specifically discusses the eligible activities and national objective documentation, legal agreements and public benefit standards mandated for economic development projects. It also briefly addresses the other types of implementation requirements that may accompany an economic development project.

Section 11-A. Eligible Activities and National Objectives

Economic development projects involve activities that are designed to create new jobs, retain existing employment opportunities, stimulate private investment and revitalize or facilitate the growth and diversification of the local economy. In DLG's economic development program, there are three emphases:

42 U.S.C. 5305(a) and 24 CFR
570.482

- ✓ Working with small commercial businesses with less than 5 employees with technical assistance and financial support to grow a locally based economy in a new fashion;
- ✓ Expanding employment opportunities for persons from low- and moderate-income families through assistance to industrial or commercial clients by creating and/or retaining jobs; and
- ✓ Benefiting low- and moderate-income families through other means such as job training and support services.

Eligible Activities

The CDBG statute and regulations recognize five key ways that economic development maybe undertaken:

- ✓ **Special economic development undertaken by/for public and nonprofit entities.** These are economic development projects undertaken by nonprofit entities and grantees (public entities). These activities are typically funded under DLG's Traditional Economic Development Program. DLG's Non-Traditional Economic Development Program may provide funds for related support services such as job training, child care, peer support, counseling and transportation.
- ✓ **Economic development undertaken by neighborhood-based and other nonprofit organizations.** These are activities designed to assist in neighborhood revitalization or community economic development and are carried out by certain types of organizations. These activities are funded under DLG's Traditional and Non-Traditional Economic Development Programs. The types of organizations eligible to carry out activities under this part include the following:
 - Neighborhood-based nonprofit organizations;
 - Local development corporations;
 - Nonprofit organizations serving the development needs of non-entitlement areas (e.g., development districts); and

- Entities organized under section 301(d) of the Small Business Investment Act of 1958.

In addition to the requirement that the organization be eligible as one of the organizational types listed above, the entity must be carrying out neighborhood revitalization or community economic development projects.

- ✓ **Special economic development undertaken by for-profit entities.** These are economic development projects undertaken by for-profit entities. These activities are typically funded under DLG's Traditional Economic Development Program.

All of the activities above are subject to requirements related to the public benefit test generated due to the expenditure of KCDBG funds. See Section B of this chapter for a further discussion of these requirements.

Additional economic development activities that are also eligible under the KCDBG program include:

- ✓ **Microenterprise development.** These are activities designed to foster the development, support and expansion of microenterprise businesses. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

24 CFR Part 570.482(c)

- Eligible microenterprise activities include the provision of:
 - One-on-one and classroom technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
 - General support to owners of microenterprises and persons developing microenterprises;
 - Training and technical assistance or other support services to increase the capacity of grantees or subrecipients to carry out microenterprise activities using performance based measures; and
 - Loans and other assistance to persons owning or developing a microenterprise. A "person developing a microenterprise" refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business, which will be a microenterprise at the time it is formed.

- ✓ **Public facilities.** These are public works activities, typically infrastructure, that support economic development endeavors. These activities involve the acquisition, construction, reconstruction, or installation (including design features and improvements that promote energy efficiency) of public works or facilities (except for buildings for the general conduct of government), and site or other improvements.

Ineligible Activities

In 2006, HUD published a final rule on the prohibition of using CDBG funds for "job pirating" activities. The prohibition applies to projects that involve the following:

- ✓ The funding will assist in the relocation of a plant, a facility or operation; and

- ✓ The relocation is likely to result in a significant loss of jobs (anything more than 500 jobs or .1 percent job loss to a local area between 25-500 jobs) in the area from which relocation occurs.

This prohibition does not apply to assisting a business that starts a new operation in a new location which is unrelated to current operations and then later reduces operations. This prohibition also does not affect non-profits which do business assistance. Activities that involve the Uniform Relocation Assistance and Real Property Acquisition Act (URA) or assistance to microenterprises are also exempt from this rule. Finally, the prohibition does not apply to businesses that purchase property or equipment in one area and then move to another location.

Grantees should consult with DLG to ensure that “job pirating” activities are not funded with CDBG.

Meeting a National Objective

As discussed in Chapter 1, projects must not only be eligible under the CDBG rules, they must also meet a national objective. DLG makes initial determinations regarding eligibility and national objective compliance at the time grant applications are reviewed; however, grantees with approved projects must maintain documentation to show that the national objective requirements were actually met by the completion of each project.

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There are three national objectives with the primary one being benefit to low- and moderate-income persons (LMI). Within the LMI national objective, there are four categories and the one typically used for economic development projects is job creation and retention. Other LMI options that could be used are discussed at the end of this section.

42 U.S.C. 5305(c)(1)

LMI Job Creation/Retention

A job creation/retention activity is one that creates or retains permanent jobs, of which 51 percent or more are held by persons from low- and moderate-income families.

24 CFR 570.483(b)(4)

- ✓ For job creation activities, the grantee and the assisted business(es) must document that permanent jobs have been created, and that at least 51 percent of the jobs, computed on a full-time equivalent (FTE) basis, involve the employment of low- and moderate-income persons.
- ✓ For job retention activities, the grantee must document that the jobs would actually be lost without the CDBG assistance, and that either or both of the following conditions apply with respect to at least 51 percent of the jobs:
 - The job is known to be held by a LMI person; or
 - The job can reasonably be expected to turn over within the following two years and that it will be filled by an LMI person upon turnover.

In addition, job creation and retention activities trigger the Community Planning and Development (CPD) Outcome Performance Measurement System. Specifically, additional data collection and reporting is required regarding the job classifications, the number of jobs with health care benefits and, for job creation only, the number of persons served who were formerly unemployed immediately prior to holding the job.

A prior written commitment to hire or retain LMI persons must be on file for each assisted business. The business must also provide a hiring plan that details the number of jobs to be created/retained, the number of jobs held or to be filled by LMI persons, a description of the job, any special skills or training required and the timetable for hiring. The plan must indicate who will be responsible for hiring, collecting required data, and training to be provided.

As a general rule, each assisted business shall be considered individually for purposes of determining if at least 51 percent of the jobs created or retained will be for LMI persons. However, when CDBG funds are used to acquire, develop or improve real property (e.g., an industrial park), the 51 percent requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property as a direct result of the CDBG assistance.

When counting jobs, the following policies apply:

- ✓ Part-time jobs must be converted to full-time equivalents (calculated on the basis of 2,000 hours per year).
- ✓ Only permanent jobs may be counted.
- ✓ Transferred jobs (those that involve one employee moving from one location to another) may not be counted.
- ✓ Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.

Tip: The documentation required for demonstrating compliance with the job creation/retention national objective is different for jobs/businesses located in areas meeting certain poverty levels and for employees living in those areas. Contact DLG or review the Guide to National Objectives and Eligible Activities for State CDBG Programs for more information.

The grantee is required to monitor the progress of the assisted business in fulfilling the hiring and LMI job requirements. The business should maintain employee surveys and Equal Employment Opportunity (EEO) information, along with payrolls or employee lists from each phase in a business's hiring plan, to document compliance with KCDBG requirements. It is recommended that these records be maintained separately from a business's individual personnel records and reported to the grantee on a regular basis.

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/library/deskguid

The business must continue to collect income verifications and other required information for all applicants and employees until they reach the number of jobs promised in the hiring plan and the jobs are monitored or verified by DLG. The form to collect and document this information is provided as attachment 11-1. When all jobs have been created or retained, DLG may monitor the hiring and LMI job documentation at the business. The business must maintain KCDBG records for a period of five years after the recipient's final grant close-out has been completed.

Attachment 11-1: Employee Survey Form

Attachment 11-2: Employee Characteristics Summarization

Other LMI Options

Another national objective used for economic development is low- and moderate-income area benefit. This national objective may be used when the activity will benefit a LMI area. For example, if the grantee is funding a grocery store in a neighborhood that is at least 51 percent

LMI, that project may qualify under the area benefit national objective. If this national objective is used, the grantee must document the service area of business and then demonstrate through Census or survey data that at least 51 percent of the residents are LMI.

Microenterprise activities may be undertaken under the low-and moderate-income limited clientele national objective only if the owner of the business is LMI (i.e., has income at or below 80 percent of the area median income). In these cases, the grantee must document the income of the business owner. (The business employees may be non-LMI.)

Some Non-Traditional Economic Development projects support LMI workers with job training and placement or other support services such as peer support, counseling, child care and transportation. This could also include public/service facilities in support of economic development activities. This type of project may qualify under the low- and moderate-income limited clientele national objective. To meet this national objective, generally, at least 51 percent of the persons benefiting from the activity must be low- and moderate-income. For additional ways to meet the LMI limited clientele national objective, contact DLG.

Finally, economic development projects may occasionally be undertaken under the slum and blight national objective. Use of this national objective is limited and will be reviewed by DLG on a case-by-case basis.

Section 11-B. Agreements, Loan/Lease Documents, Security Requirements and Closings

Legally Binding Agreements

Economic development projects must involve a Legally Binding Agreement to further detail the minimum requirements of each respective party involved in the project. A sample agreement is provided as Attachment 11-3.

Attachment 11-3: Sample Legally Binding Agreement

In some instances, the grantee may be passing the grant through a third party entity (i.e., a subrecipient) such as a local development corporation or an industrial authority. In those projects, an agreement must also be entered into with the third party entity. A tri-party agreement can be used in instances where a subrecipient is participating in the project. A subrecipient is a nonprofit or public entity (other than the grantee) that is selected to play one or more roles in the project.

The grantee has some latitude in negotiating the best arrangement possible with the subrecipient and the assisted business provided they are within the confines of the grant agreement. The grantee must also develop specific procedures and requirements necessary to guarantee its security.

There are basically three requirements of a Legally Binding Agreement. It must set forth:

- ✓ Basic activities as established in Exhibits A, B and C of the grant agreement;
- ✓ Provisions required in Section 7 of the grant agreement and any other applicable provisions; and
- ✓ A statement that the agreement is contingent upon release of funds thereby avoiding any environmental review concerns.

When entering into an agreement with a business, a resolution establishing the authority of person(s) to enter into the legally binding agreement on behalf of the business must be attached to the agreement. A sample resolution is provided in Attachment 11-4.

Attachment 11-4 Sample
Resolution of Authority

The opinion of the grantee's legal counsel must accompany all legal documents. The certification to be used for this purpose is provided as Attachment 11-5. The grantee's legal counsel opinions may be combined into one document but must be clearly applicable to all legal documents. At a minimum, legal counsel must certify the authority of each party to sign, state that the document constitutes a valid and legally enforceable contract under the laws of the Commonwealth, and indicate that all documents are in conformance with the grant agreement.

Attachment 11-5 Sample
Certification of Legally Binding
Agreements and Loan/Lease
Documents

Loan/Lease Documents

The Legally Binding Agreement does not incorporate a loan/lease agreement that provides the financial terms of a project and any other special conditions. Therefore, loans/leases must be executed by separate agreement. In fact, draft loan/lease and security documents must be submitted as evidentiary material at the grant agreement stage of the process.

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Loan/lease documents must contain:

- ✓ Rate and term of loan/lease;
- ✓ Payment terms, default provisions;
- ✓ Any special conditions attached to the loan/leases;
- ✓ Any other provisions deemed appropriate by legal counsel; and
- ✓ A call provision allowing collection of CDBG funds for failure to meet job projections.

Grantees should be aware that there are several different types of leases. An operating lease is a traditional lease whereby the party leasing the property (lessee) from the owner of the property (lessor) pays the lessor a fee for use of the property. A capital lease allows the lessee to record the property as an asset because of certain conditions of the lease (e.g., ownership of the property will transfer to the lessee at the end of the lease term).

As stated previously, the opinion of the grantee's legal counsel must accompany all legal documents (use Attachment 11-5). In addition, loan/lease documents must be filed with the county clerk.

Security

Security for the loan is a very serious matter that can cause numerous problems if not done properly. An important consideration is that the loan be secured as soundly as possible and that the repayment schedule and payment procedures are understood clearly by both the debtor and the grantee. The bank or attorney should be able to produce a repayment (amortization) schedule with principle and interest clearly delineated. Grantees should follow the grant agreement in terms of monthly and annual repayment requirements.

The security documents must describe property to be mortgaged or offered for lien in as much detail as available and clearly identify the position for which security is offered.

- ✓ Mortgages against real property must contain, at a minimum:
 - A legal description of the property,
 - Certification of ownership, and
 - Identification of any claims against the property.
- ✓ Equipment liens must contain the same information as mortgages except that the legal description is to include the make, model number and serial number of each item of equipment being used as security.

Security agreements must be filed with the county clerk and other appropriate local or state agencies.

Loan Closings

If the economic development project involves a loan to a business, a loan closing must be held for presentation of the check to an appropriate company representative. At loan closing, promissory notes, loan agreements, mortgages or other appropriate documents must be signed. Signed security documents must be immediately recorded unless specific collateral cannot be identified by serial number or model number (such as equipment not yet delivered). In such instances, alternate security must be approved by DLG prior to the draw of funds.

Documents must be prepared by an attorney and be accompanied by certification containing at a minimum, the following information:

- ✓ Real Property Transfer
 - Title indicating the property is free and clear for transfer as offered;
 - Any deed limitations, covenants or restrictions applicable to the property;
- ✓ Security Documents
 - Certification that property records have been researched;
 - Certification that the collateral position(s) required is available; and
 - Certification that the KCDBG loan is not subordinated below the level required by the grant agreement.

DLG must be notified in advance of the grantee's intent to close a loan. All required evidence and documents must be submitted with the request for payment. At that time, the grantee must declare a tentative closing date. Since Automated ClearingHouse (ACH) transfers occur on the 15th and 30th of the month, loan closings should be held on these dates or within a five day period after these dates of the month. DLG staff may attend loan closings to verify that documents are signed and filed.

A desk closing can be conducted if all legal documents are signed, filed and submitted to DLG prior to the release of funds. All security documents must be recorded in the county courthouse to assure proper lien filing. This includes lease documents, especially those that are to be capitalized.

Section 11-C. Public Benefit

The CDBG Statute and regulations require that activities undertaken under the Traditional Economic Development and Non-Traditional Economic Development Programs have a financial analysis conducted in accordance with HUD and DLG guidelines to determine the feasibility and viability of the project and parties involved.

42 U.S.C. 5305(a)(14) – (17) and 570.482(e) and (f)

Information would be submitted as a part of the application package and will be reviewed by DLG.

Tip: Applicants should not negotiate the final loan terms with the third party for-profit business. Consult with DLG before negotiating. Any pre-negotiated terms are subject to change by DLG.

There are two types of requirements related to public benefit. First, there are requirements related to the ratio and use of public and private funds (underwriting) and second, there are requirements related to the jobs or goods and services benefits of the KCDBG-funded activity. Each of these is described below.

Ratio and Use of Public and Private Funds

The Federal CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. These guidelines are designed to assist grantees in underwriting economic development projects and in determining which projects are financially viable and will result in the most efficient use of CDBG funds.

24 U.S.C 570 Appendix A - Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.

The use of the guidelines provided as an appendix to the Federal CDBG regulations at 24 CFR Part 570 is required. In other words, grantees must use either the guidelines provided in the regulations or an equivalent set of guidelines.

There are several underwriting criteria that grantees should follow. Each of these criteria is discussed below.

Leverage and Use of KCDBG Funds

Under the KCDBG Program, the impact of CDBG must be maximized and the use of the KCDBG funds must be reasonable. In general, the grantee should clearly establish that there is a need for the investment of public resources.

DLG requires that to demonstrate the need to use KCDBG funds, the grantee must show that all other public and private sources of funds have been reviewed and applied to the project (as feasible). Typically, projects that are eligible for KCDBG funding have a financing gap once all other sources are analyzed.

A financing gap is determined as follows:

- ✓ Step 1: Determine the budget.
- ✓ Step 2: Calculate the amount of debt the project can support.
- ✓ Step 3: Compute the amount of equity the project can generate or the owner has available.

If the budget is greater than/equal to the sum of debt plus equity, then there is a financing gap. If the budget is less than the sum of debt plus equity, there is no financing gap and, therefore, no need for public investment.

Funding Commitments

Before KCDBG funds are disbursed, ensure that all debt and equity are firmly committed to the project.

All other sources of funds do not have to be in place prior to application. However, the authorization of a KCDBG grant or loan may be made contingent upon conventional financing.

DLG wants to avoid the risk of approving and disbursing funds to finance a portion of the project without sufficient funds from other sources to complete the development.

Reasonable Costs

All costs under the KCDBG program must be reasonable and must demonstrate the efficient and effective use of funds. DLG will review the project budget to ensure that proposed costs are reasonable. Applicants should review this budget prior to submission of the application.

If the budget is overstated it would be unwise to devote scarce public resources to the project as this surplus usually ends up as an unintended fee to a developer or entrepreneur.

Conversely, if the budget is understated, the quality of the project may be adversely affected which could also reduce income available for debt service. In extreme cases, the project may go unfinished.

Applicants can control these risks in the following ways:

- ✓ Receive project quotes from independent third parties;
- ✓ Cost certify;
- ✓ Compare subject with cost of comparable projects;
- ✓ Use guaranteed contracts, performance bonds or letters of credit; and
- ✓ Use retainages for contractor's fee, developer's fee or leasing reserve.

Reasonable Return

The financial benefit the business receives should approximate a market return. Applicants should review the pro-formas and other information submitted by the third party business and ensure that return is reasonable. DLG will not fund projects where KCDBG funds are subsidizing an excess return to the business.

Reasonable rates of return will vary by location and project type. Applicants needing guidance on reasonable rates of return are encouraged to contact DLG.

Project Feasibility

KCDBG will review all economic development applications to ensure that projects appear feasible and are likely to succeed. Applicants should conduct a similar analysis prior to submission of the application.

Once an applicant has established the need for public funds, it must estimate repayment terms. If the terms are too harsh, the survival of the economic development venture is jeopardized. If the terms of repayment are too lenient, the public funds will overly compensate the project. As noted above, financing terms should not be finalized until DLG approves of the project.

KCDBG Funds Disbursed Pro Rata

As a general rule, KCDBG funds should be disbursed proportional to the percentage of the project they fund. For example, if KCDBG funds are 20 percent of the project, KCDBG funds should not exceed 20 percent of the aggregate proceeds disbursed. One exception might be if funds are allocated to acquisition and the property must be purchased first.

Program Income/Miscellaneous Revenue

Economic development activities funded by CDBG typically generate repayments. In some cases, repayments of CDBG are considered program income and subject to all CDBG and related requirements. Certain activities by nonprofit development entities that qualify under Section 105(a)(15) of the CDBG statute are exempt from the program income requirements and thus those funds are considered miscellaneous revenue. Both types of funds can be placed in a revolving loan fund IF the DLG provisions governing such are met. Refer to Chapter 3 for more information on the definition and use of program income, including revolving funds.

24 CFR 570.489
Chapter 3: Financial Management

Public Benefit Standards

When CDBG funds are used for economic development projects under statutory sections 5305(a) (14), (15) and (17), the Federal CDBG rules require the application of specific Public Benefit Standards. The Public Benefit Standards are really a “cost per job” or “cost per goods and services” calculation used to determine if the CDBG financial assistance is appropriate. Use of these standards is mandatory.

The Public Benefit calculation must be done before the economic development activities are undertaken, and is separate from the national objective requirement that 51 percent of the jobs actually created or retained be taken by LMI persons.

The grantee is strongly advised to enter a performance agreement with the business(es) that specifies the hiring commitments and time frames and that holds the business responsible for repayment of any CDBG funds required due to a failure to fulfill CDBG hiring requirements. At its option, DLG may require such a performance agreement as a condition of funding.

There are two types of public benefit standards that the grantee may use. The dollars per job test is available to any economic development project. The goods and services test is available to economic development projects that provide goods and services to a LMI community. When a project both creates jobs and provides goods and services, grantees may document benefit under either option.

Calculating Dollar per Job Public Benefit

The dollar per job public benefit calculation begins by determining the total number of jobs to be created or retained as a result of the activity for each particular business for which the activity is principally being undertaken. When counting jobs within each applicable business for public benefit purposes, include all jobs to be directly created or retained as a result of each economic development activity.

The total “CDBG cost per job” is then calculated by dividing:

- ✓ The total dollar amount of CDBG funds to be spent for the activity, by

- ✓ The total number of permanent jobs created or retained by the business for which the project is principally being undertaken.

Total number of jobs is based upon full-time equivalents (FTEs). For DLG, full-time is based upon 2,000 hours per year. If a permanent, part-time job is created, the grantee must determine the proportion of an FTE that is created. For example, a half time person is .5 FTEs.

It is DLG's policy not to allow grantees to expend more KCDBG than \$20,000 per job created or retained.

Public Facilities Projects With Per Job Cost of \$10,000 or Less and Job Tracking

Sometimes KCDBG funds are used for public facility activities that are designed to create jobs. An example of this might be a water/sewer line constructed for an industrial park.

When the KCDBG cost of the project is \$10,000 or less per job, the public benefit standards are not triggered. If the cost exceeds \$10,000 per job, the standards are triggered. Note that in addition to the public benefit standards, the national objectives are calculated differently depending on whether the project exceeded \$10,000 per job. If this is the case, the grantee is required to complete an assessment plan/restrictive covenant requiring job reporting recorded on properties benefiting from the infrastructure improvement. It must cover any other business for a one-year period.

24 CFR 570.483(b)(4)(vi)(F)

Calculating Goods and Services Public Benefit

The second option for proving a sufficient public benefit is to show that goods and services are being provided to LMI families in a local service area. Thus, this public benefit option is only provided to those projects where the business will sell goods or services to the public. This generally means that the activity will be retail in nature.

This test is calculated by first determining the number of people living in the service area of the business. The grantee must then determine the portion of those people who are LMI. The grantee then divides the KCDBG expenditure by the total number of LMI people in the service area to obtain an estimate of the KCDBG dollars per LMI person receiving goods or services.

If the KCDBG expenditure per LMI person exceeds \$350 per LMI person, the project is generally deemed to have an insufficient public benefit.

Documenting Public Benefit

Public benefit calculations are included as a part of the KCDBG application. However, grantees must maintain files detailing their compliance with these requirements. In general, grantee files should contain:

- ✓ Documentation of the amount of KCDBG funds received;
- ✓ Documentation of the basis for the estimated number of jobs to be created/retained or the number of LMI families in the service area; and
- ✓ Documentation of the calculation showing that the applicable public benefit standard was met.

Section 11-D. Applicability of Other Requirements

Economic development projects funded by DLG are subject to the range of requirements established in the other chapters of this manual. This section briefly highlights how these requirements are applied to economic development activities. For more detail about these requirements, please see the other chapters of this manual.

Project Administration

In general, all of the requirements explained in Chapter 1 apply to economic development. Of particular interest for economic development are the submission requirements prior to release of funds. For these projects in addition to all standard submission items, grantees must submit:

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- ✓ The legally binding commitments between subrecipients, participating parties and the grantee itself.
- ✓ Loan or lease agreements (as applicable), including the rate and term of loan or lease, payment terms, default provision, and any special conditions. The documents must contain a call provision should the project fail to meet the job requirements or other grant conditions.
- ✓ Security documents (as applicable), including describing the property to be mortgaged and the lien position.
- ✓ Certification by legal counsel for the above documents, including certifying to the authority of each party to sign, that the contract is legally enforceable, and that the documents are in accord with the grant agreement.
- ✓ Grantee Revolving Fund Guidelines (as applicable).

In addition, HUD's performance measurement data collection requirements apply to economic development projects. Specifically, activities qualifying under the job creation and retention national objective must report jobs by job classifications, such as whether the person filling the job were previously unemployed, and whether the job includes healthcare benefits. The job classifications are provided as Attachment 11-6 to this chapter. Refer to Chapter 1 for additional information and forms on performance measurement.

Attachment 11-6:
Job Classifications for
Performance Measurement

Environmental Review

No KCDBG funds for economic development may be drawn down or committed until the environmental review is completed. Grantees must follow all rules described in Chapter 2.

Chapter 2: Environmental Review
24 CFR Part 58

Depending upon the type of economic development project, different levels of environmental review may be required. For example, Non-Traditional projects that provide job training are likely to be exempt from environmental review. On the other hand, Traditional projects where a business will receive funding and where it will construct an industrial facility may require an environmental assessment.

Grantees are encouraged to carefully read Chapter 2 as it applies to their specific project and consult with DLG regarding any questions.

Financial Management

Chapter 3 provides an overview of the financial management requirements. In addition to all of the standard financial requirements, grantees of economic development projects must follow specific procedures pertaining to agreements, leases, loan documents and security. Refer to Section B of this chapter for more information.

Chapter 3: Financial Management

Procurement and Contracting

Certain economic development activities may trigger procurement requirements. For example, if a grantee or a subrecipient is directly undertaking an economic development construction project, the hiring of that construction contractor is subject to the procurement requirements stated in Chapter 4. However, procurement requirements do not apply to private, for-profit entities receiving CDBG assistance though costs must be reviewed to ensure reasonableness and eligibility.

Chapter 4: Procurement
Chapter 5: Contracting

Grantees should also review Chapter 5 to ensure that all contracting provisions are met including ensuring the inclusion of all applicable required provisions in contract documents.

Labor Standards

As noted in Chapter 6, the Federal and state labor standards provisions may be triggered for KCDBG projects. For economic development projects, this will typically occur when there will be construction in the activity. For example, the grantee might provide funds for construction of infrastructure to a facility or to finance purchase of equipment and its installation.

Chapter 6: Labor Standards and
Construction Management

Specifically, Davis Bacon and the Copeland Anti-Kickback Acts will be triggered for any economic development activity where the construction contract exceeds \$2,000. When CDBG funds are used in whole or in part to finance equipment, the applicability of wage rates to the installation cost must be determined. An equipment analysis must be completed, in which all items of equipment are included along with an explanation of related installation/modification costs. Please contact DLG if assistance is needed in making this determination.

In addition to these requirements, other related requirements may also apply to the economic development project, including:

- ✓ Section 3;
- ✓ Equal Opportunity;
- ✓ The Contract Work Hours and Safety Standards Act; and
- ✓ Various Kentucky laws.

Grantees are encouraged to carefully read Chapter 6 and consult with DLG to determine if Davis Bacon and other labor standards requirements are triggered for individual economic development activities.

Acquisition and Relocation

The Uniform Relocation Assistance and Real Property Acquisition Act (URA) may be triggered for some economic

Chapter 7: Acquisition
Chapter 8: Relocation,
Displacement and One-for-One
Replacement
HUD Handbook 1378

development activities. Chapters 7 and 8 discuss these requirements in detail.

The acquisition requirements of the URA may apply to the purchase of sites or properties for economic development activities. If the grantee will use or threaten to use its power of eminent domain, it must comply with the involuntary sales requirements set out in the URA and in Chapter 8 of this manual. These requirements include advisory services, appraisals, review appraisals, and payment of just compensation.

This involuntary acquisition process is less common for economic development activities. However, it may occur in instances such as when a grantee wishes to undertake commercial revitalization of a specific area and thus will acquire all sites in that area. See Chapter 7 for more detailed information about when the involuntary sales procedures are required.

In the instance when a private entity (such as a business) will buy property or when a grantee is buying property but not under threat of eminent domain, the voluntary sales transaction requirements are used. Under these instances, a voluntary sales notice is submitted to the seller informing him or her that the buyer party either does not have the power of eminent domain (businesses) or will not use its power of eminent domain (grantees) in purchasing the property. See Chapter 7 for more information about voluntary sales.

Relocation can be triggered by economic development activities. See Chapter 8 for more details on relocation requirements.

Fair Housing & Equal Opportunity

The fair housing and equal opportunity requirements described in Chapter 9 apply to economic development projects in the same way that they apply to other types of KCDBG activities. Grantees should ensure compliance with the requirements stated in Chapter 9.

Chapter 9: Fair Housing and Equal Opportunity

Amendments and Close-Out

Economic development projects follow the standard DLG requirements for grant amendments. Grantees should review Chapter 12 for more information on the amendment process.

Chapter 12: Amendments and Monitoring

In preparing the Project Completion Report at close-out, there are certain special requirements that apply to economic development projects. These requirements may be found in Chapter 13.

Chapter 13: Project Close-Out

- ✓ As noted above, the grantee must document jobs created and/or retained if that is the national objective used. It is the grantee's responsibility to determine specific statistical information on those persons benefiting from the project.
- ✓ The grantee must also document the investment of other funds into the project. The investment may include private investment, public investment, and program income. For each area, the grantee will give the source of investment, use, amount per grant agreement, and amount invested to date. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, cancelled checks, etc. A certification from the company's treasurer and president may also suffice for the documentation.

Attachments

- ✓ Attachment 11-1: Sample Employee Survey Form
 - ✓ Attachment 11-2: Sample Employee Characteristics Summarization
 - ✓ Attachment 11-3: Sample Legally Binding Agreement
 - ✓ Attachment 11-4: Sample Resolution of Authority
 - ✓ Attachment 11-5: Sample Certification of Legally Binding Agreements and Loan/Lease Documentation
 - ✓ Attachment 11-6: Job Classifications for Performance Measures
-

**Attachment 11-1:
Sample Employee Survey Form**

Sample Economic Development

EMPLOYEE SURVEY

*For
Administrative/Company
Use*

Over: _____
LMI: _____
VL: _____
XL: _____

Benefiting Community _____

Name _____

Address _____

Phone _____

Demographic Information

1. **Race**
- White _____
 - Black/African American _____
 - Asian _____
 - American Indian/Alaskan Native _____
 - Native Hawaiian/Other Pacific Islander _____
 - American Indian/Alaskan Native & Other _____
 - Asian & White _____
 - Black/African American & White _____
 - American Indian/Alaskan Native & Black/African American _____
 - Other Multi-Racial _____

Ethnicity Non-Hispanic _____ Hispanic _____
 United States Citizen _____ Nationalized Citizen _____ Lawfully Present Alien _____

2. Female Head of Family: Yes _____ No _____
3. Age _____
4. Job Classification _____
5. Annual/Hourly Wage _____
6. Brief Description of Duties _____
7. Number of Persons in Family _____
8. Status of employment prior to this position: _____ employed _____ unemployed

Total Gross Annual Family Income: In the column showing the number of people in your family, check (only one) income range that totals the gross annual family income.

Total Gross Annual Family Income (SAMPLE)								
1 person	Below 8,000	<input type="checkbox"/>	8,000 to 13,350	<input type="checkbox"/>	13,350 to 21,400	<input type="checkbox"/>	Above 21,400	<input type="checkbox"/>
2 persons	Below 9,150	<input type="checkbox"/>	9,150 to 15,300	<input type="checkbox"/>	15,300 to 24,450	<input type="checkbox"/>	Above 24,450	<input type="checkbox"/>
3 persons	Below 10,300	<input type="checkbox"/>	10,300 to 17,200	<input type="checkbox"/>	17,200 to 27,500	<input type="checkbox"/>	Above 27,500	<input type="checkbox"/>
4 persons	Below 14,450	<input type="checkbox"/>	11,450 to 19,100	<input type="checkbox"/>	19,100 to 30,500	<input type="checkbox"/>	Above 30,500	<input type="checkbox"/>
5 persons	Below 12,400	<input type="checkbox"/>	12,400 to 20,650	<input type="checkbox"/>	20,650 to 33,000	<input type="checkbox"/>	Above 33,000	<input type="checkbox"/>
6 persons	Below 13,300	<input type="checkbox"/>	13,300 to 22,150	<input type="checkbox"/>	22,150 to 35,450	<input type="checkbox"/>	Above 35,450	<input type="checkbox"/>
7 persons	Below 14,200	<input type="checkbox"/>	14,200 to 23,700	<input type="checkbox"/>	23,700 to 37,900	<input type="checkbox"/>	Above 37,900	<input type="checkbox"/>
8 persons	Below 15,150	<input type="checkbox"/>	15,150 to 25,200	<input type="checkbox"/>	25,200 to 40,350	<input type="checkbox"/>	Above 40,350	<input type="checkbox"/>

NOTE: These are sample incomes only. Insert the appropriate incomes for your community in place of those shown.

I hereby certify that the above information is true and accurate to the best of my knowledge and fully understand this information could be subject to verification by the city/county, the State or HUD. Falsifying this information could result in payback of CDBG funds

Signature

Date

Interviewer

**Attachment 11-2:
Sample Employee Characteristics Summarization**

SAMPLE - EMPLOYEE CHARACTERISTICS SUMMARIZATION

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

(Date)

(Name of Executive Director)
(Agency Name)
(Address)
(City, State, Zip)

Dear: _____:

Listed below is a summarization of the employee characteristics required to be reported in accordance with the _____ (Name of Company) _____ Community Development Block Grant. A distribution of these characteristics by employee is attached.

Date of Report: _____ Number of Employees: _____

CHARACTERISTICS

Income:

Low to Moderate	#	___	%	___
Low	#	___	%	___
Extremely Low	#	___	%	___

Race:

White	LMI	#	___	%	___
	Total	#	___	%	___
Black	LMI	#	___	%	___
	Total	#	___	%	___
Asian	LMI	#	___	%	___
	Total	#	___	%	___
American Indian/ Alaska Native	LMI	#	___	%	___
	Total	#	___	%	___
Native Hawaiian/ Other Pacific Islander	LMI	#	___	%	___
	Total	#	___	%	___
White & Black	LMI	#	___	%	___
	Total	#	___	%	___
White & Asian	LMI	#	___	%	___
	Total	#	___	%	___
White & American Indian/Alaska Native	LMI	#	___	%	___
	Total	#	___	%	___
Black & American Indian/Alaska Native	LMI	#	___	%	___
	Total	#	___	%	___
Other Multi-Racial	LMI	#	___	%	___
	Total	#	___	%	___

Female Head of Household:

LMI	#	___	%	___
Total	#	___	%	___

Sex:

Male	LMI	#	___	%	___
	Total	#	___	%	___

Female

LMI	#	___	%	___
Total	#	___	%	___

Ethnicity:

Hispanic/Latino	LMI	#	___	%	___
	Total	#	___	%	___

If you have any questions, please feel free to contact me.

Sincerely,

(Name and Title)

**Attachment 11-3:
Sample Legally Binding 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 _____, 2____, 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 (DLG), 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 _____, 2____. 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 _____, 2_____:

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 _____, 2_____.

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 _____, 2____.

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.

14. **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.
7. **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.
8. **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 State of Kentucky. By execution of this agreement, the Non-Profit (and/or) Participating Party agrees to submit to the jurisdiction of the State 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.
9. **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 State 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 of 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 of 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 of Local Government, or the Department of 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 of 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.

10. **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.

7. **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.

7. **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.

14. **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.
15. **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.
16. **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.
18. **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.
19. **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.

20. **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.
21. **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.
22. **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.
23. **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.

24. **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.
25. **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.
26. **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.

27. **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.

28. **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 11-4:
Sample Resolution of Authority**

RESOLUTION OF AUTHORITY
(Sample)

CERTIFIED RESOLUTION OF THE BOARD OF DIRECTORS

OF

(Company Name)

I, _____ (Name) _____, do hereby certify that I am the duly elected and qualified Secretary of _____ (Name of Organization) _____, a corporation authorized under the laws of _____ and that the following is a true and correct copy of the resolution duly adopted by the Board of Directors in accordance with law and the by-laws of said corporation on _____ (Date) _____, and that such resolution is now in full force and effect.

It is resolved that:

_____ (Name of Organization) _____ be and is hereby authorized to enter into a Participating Agreement, a copy of which is attached hereto, with _____ (Name of Organization) _____ for the purpose of entering into a grant agreement with the Commonwealth of Kentucky, Department of Local Government.

_____ (Name) _____, President of _____ (Name of Organization) _____ is hereby appointed to enter into said Agreement and to execute all documents necessary to effectuate the closing of the Agreement.

In Witness hereof I hereunto affix my signature on this _____ day of _____, 20____.

(Name)
Secretary

**Attachment 11-5:
Sample Certification of Legally Binding Agreements
and Loan/Lease Documentation**

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.

**Attachment 11-6:
Job Classifications for Performance Measurement**

Job Classifications for Performance Measurement

1. **Officials and Managers** - Occupant requiring administrative personnel who set broad policies, exercise overall responsibility of execution of these policies, and individual departments or special phases of a firm's operations. Included Officials, Executives, middle Management, plant managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, and kindred workers.
2. **Professional** - Occupants requiring either college graduation or experience of such kind and amount as to provide a comparable background includes: accountants and auditors, airplane pilots and navigators, architects, artist chemist, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientist, registered professional nurses, professional and labor relations workers, physical scientist, physicians, social scientist, teachers, and kindred workers.
3. **Technicians** - Occupants requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education such as is offered in many technical institutes and junior colleges, or through equivalent on the job training. Include computer programmers and operators, drafters, engineering aides, junior engineers, mathematic sides, licensed practical or vocational nurses, photographers and radio operators scientific assistance, surveyors, technical illustrators, technicians (medical, dental, electronic, physical science) and kindred workers.
4. **Sales** - Occupants engaging wholly or primarily in direct selling Includes: advertising agenda and sales workers, insurance agents and brokers, real estate agents and brokers, salesworkers, demonstrators retail salesworkers, and sales clerks, grocery clerks and cashiers, and kindred workers.
5. **Office and Clerical** - Includes all clerical-type work regardless of level of difficulty, where the activities and predominately nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office helpers, office machine operators, shipping and receiving clerks, stenographers, typist, and secretaries, telegraph and telephone operators and kindred workers.
6. **Craft Worker (skilled)** - Manual workers of relatively high level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisor and lead operators (who are not members of management). Mechanic and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters(metal), motion picture projectionist, pattern and model makers, stationary engineers tailors, and kindred workers.
7. **Operatives (semi-skilled)** - Workers who operate machines or other equipment of perform other factory-type duties or intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics, plumbers, electricians, machinist, mechanics, building trades, metal working trades, printing trades, etc.). operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dress makers and sewers (except factory), dryer's furnaces workers, heaters (metal), laundry and dry cleaning,

operatives, milliners, mine operative and laborer, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, boiler tenders, truck and tractor drivers, weavers (textile), welders, and flamemetial, and kindred workers.

8. **Laborers (unskilled)** - Workers in manual occupations which generally require no special training perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, Gardeners (except farm) and ground keepers, stevedores, wood choppers, laborer performing lifting, digging mixing loading and pulling operations, and kindred workers.
9. **Service Workers** - Workers in both protective and non protective service occupation includes attendance (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, chairworkers and cleaners, cook (except house hold), counter and fountain worker, elevator operations firefighters and fire protection guards, door keepers, stewards, janitors, police officers and detectives, porters, waiters, and waitresses, and kindred workers.