

CHAPTER 5 – CDBG CONTRACT

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

Caution:

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

Notice of Approval Letter

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

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

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

CDBG Contract

The grantee will receive two copies of the CDBG Contract (see Attachment 1 for a sample contract) after receiving the Notice of Approval. This is the contract between the Department and the grantee. The grantee should thoroughly review the terms and conditions of the contract with its attorney.

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

The grantee has one month to sign both copies of the CDBG Contract and send both copies to the following address:

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

Terms

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

Each grantee is responsible for adhering to all the terms of their CDBG Contract. A substantial number of regulations, acts and statutes apply to the grant. It is a good idea to understand all the requirements of the contract.

Special Conditions for Release of Funds

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

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

Typical Special Conditions for Release of Funds

Grantee Information Sheet

Documentation that the Grantee has completed and returned this form.

Environmental Review

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

Authorization to Request Funds

Documentation that the Grantee has completed and returned this form.

Financial Management

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

Procurement Standards and Code of Conduct

Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 24 C.F.R. Part 85 and 24 C.F.R. Part 570.

Excessive Force Certification

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

Fair Housing

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

Implementation Schedule

Completion and submission to the Department of this form.

Disclaimer: The above list represents a list of typical standard special conditions, however all CDBG Contracts are tailored to a specific project with unique standard conditions. The Special Conditions for Release of Funds in the CDBG Contract must be satisfied before the Notice of Release of Funds will be issued for that project.

Forms and samples to assist in completing special condition requirements are available from the Department's website.

Federal and State Requirements

In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the grantee agrees to comply with: the Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 C.F.R. Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved Project.

The grantee must gain understanding of all the requirements that they are agreeing to comply with. The following is meant as a summary of some of the requirements and not a complete coverage of the responsibilities of CDBG grantees.

CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS

Title VI of the Civil Rights Act of 1964

Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974

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

Age Discrimination Act of 1975

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

Section 504 of the Rehabilitation Act of 1973

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

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

Americans with Disability Act

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

Executive Order 11246

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

Executive Order 11063, As Amended by Executive Order 12259

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

Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988

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

ENVIRONMENTAL STANDARDS AND PROVISIONS

(For more information on environmental requirements see Chapter 6 – Environmental)

Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35

National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58

Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the grantee must also submit environmental certifications to the Department when requesting that funds be released for the project.

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

EPA List of Violating Facilities.

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

Flood Insurance

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

Historic Preservation

The grantee will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:

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

LABOR STANDARDS AND PROVISIONS

(For more information on labor standards requirements see Chapter 9 – Construction & Labor Standards)

Davis-Bacon Act

Section 2 of the June 13, 1934 Act Popularly Known as The Copeland Anti-Kickback Act

Contract Work Hours and Safety Standards Act

Section 3 of the Housing and Urban Development Act of 1968

Fair Labor Standards Act of 1938

Affirmatively Furthering Fair Housing

Grantees must certify that they will take affirmative action to further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of new action be undertaken by the grantee, not just passive compliance with existing laws and ordinances. The requirement is not limited to those grantees with a housing activity, but must be undertaken by all grantees.

Fair housing is generally thought of as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex, or national origin. Local governments, because of their influence and power, are in the most effective position to promote fair housing.

Grantees as a Special Conditions requirement must inform the Department of actions they will undertake to further fair housing. Some suggested actions are:

- Adopt a fair housing ordinance with means of enforcement.
- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies or practices.
- Support and participate in educational programs coordinated with local realtors, home builders, and mortgage lenders designed to provide information on fair housing rights.
- Provide housing referral and counseling services which assist minorities, women, and the handicapped seeking housing within the grantee's jurisdiction. Encourage local employers to cooperate in efforts to find housing for their employees and to promote equal housing choices within the community.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups in undertaking fair housing informational or technical assistance seminars in your community or region.
- Use the Equal Housing Opportunity logo on official letterhead and prominently display posters, logo and informational material on fair housing and periodically print a notice in local newspaper that the grantee is an active supporter of fair housing laws. (NOTE: This is considered a standard, minimal action step and by itself will not meet the affirmative action requirements unless the grantee is a village and first time recipient of CDBG funds).
- Host a Fair Housing Month (April) event.

Release of Funds

After receiving a Notice of Release of Funds and incurring eligible costs, the grantee may request CDBG funds from the Department. The grantee must complete and send to the Department a Request for CDBG funds only as funds are needed for the project. CDBG funds will be disbursed electronically to the grantee's bank account generally within two weeks if the request contains no errors. The grantee has only 10 working days to spend CDBG funds following receipt.

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

Amendments/Extensions

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

Grantees must request approval from the Department for **any** modification or amendment to the CDBG contract. When submitting the request for approval, the grantee must complete and

submit the CDBG Contract Amendment Request Form to the Department along with any attachments required by the Department.

Common amendment requests include:

1. Changes to the budget
2. Extensions of the contract end date
3. Decreases in proposed accomplishments
4. Amendments to housing program guidelines

The Department will review amendment requests using the following factors:

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

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

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

Additional items may be required to accompany the submission of the CDBG Contract Amendment Request Form depending on the type of amendment request. Common types of amendment requests and the items required to accompany the request are detailed on the following page. For other types of contract amendments, please contact your program representative at the Department to determine what information will be required to process your request.

Below is a list of the common types of contract amendments and the attachments required to be submitted to the Department along with the CDBG Contract Amendment Request Form.

1. Changes to the budget

Attachment 1: Letter from the Chief Elected Official including:

1. Certification that the local governing body has approved the budget amendment;
2. Identification and reasons for the proposed budget amendment; including
 - a. Changes to the nature of the project requiring the amendment
 - b. Steps being taken to avoid any future amendment requests for the same reasons

3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.
4. If the amendment includes a new activity, certification that the activity meets the national objective

Attachment 2: Minutes from the public hearing held on the proposed amendment

Attachment 3: If the budget amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity

Attachment 4: Certification of re-evaluation of the environmental assessment (this form is included in Chapter 6 – Environmental Review)

2. Extensions of the contract end date

Attachment 1: A letter from the Chief Elected Official stating the following

1. Certification that the local governing body has approved the extension;
2. Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;
 - b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this extension, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

3. Decreases in proposed accomplishments

Attachment 1: A letter from the Chief Elected Official stating the following

1. Certification that the local governing body has approved the decrease in proposed accomplishments;
2. Identification and reasons for the proposed amendment; including
 - a. Changes to the nature of the project requiring the amendment;
 - b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this decrease, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

4. Amendments to housing program guidelines

Attachment 1: Letter from the Chief Elected Official stating the following:

1. Certification that the local governing body has approved the amendment to the housing program guidelines;
2. Identification and reasons for the proposed amendment;
3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.

Attachment 2: If the housing program guidelines amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity

Attachment 3: A complete copy of the proposed revised housing program guidelines

The CDBG Contract Amendment Request Form is available on the Department's website at: <http://www.neded.org/content/view/107/239/>.

STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 08-PW-000
[CFDA #14.228]

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

RECITALS:

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

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

C. The authorized use of CDBG funds is premised upon, and conditioned on, the Grantee fulfilling a CDBG national objective as a result of the CDBG-assisted activity. One of the three specified national objectives in the Act (and in the CDBG regulations) is benefiting low-to-moderate income ("LMI") persons.

1. Such LMI benefit national objective is usually satisfied in the context of community development projects involving public facilities or public improvements by demonstrating the projects serve a primarily residential area having at least 51% LMI residents. This subcategory of LMI benefit is referred to as LMI Area Benefit.
2. Sometimes the LMI benefit national objective may be satisfied when the public facilities or public improvements will be used for activities designed to benefit a particular group of persons (at least 51% of whom are LMI persons), rather than everyone in an area generally. This subcategory of LMI benefit is referred to as LMI Limited Clientele.

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

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

1. The subcategory of LMI benefit being utilized for the Project is:

LMI Area Benefit —or— LMI Limited Clientele.

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

AGREEMENT:

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

PART I: TERMS AND CONDITIONS.

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

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

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

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

Requests by the Grantee for reimbursement of project administration expenses will not be paid by the Department unless a CDBG Certified Administrator is identified and available to conduct administration of the project, at the time of each request for reimbursement of administration expenses, with this requirement applicable at all times through project completion (including final project reports). As a cross reference, note that §2.10 requires a CDBG Certified Administrator to achieve the initial Release of Funds for the project.

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

§1.02 Time of Performance.

The period covered under this contract will be 24 months from [date]. The termination date of this contract will be [date]. All of the required activities and services, except for administration and audit, will be completed by or before this date.

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

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

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

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

§2.01 Grantee Information Sheet.

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

§2.02 Environmental Review.

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

§2.03 Authorization to Request Funds Form.

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

§2.04 Financial Management.

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

§2.05 Procurement Standards.

Documentation evidencing adoption of procurement standards equivalent to those established in 24 C.F.R. §85.36 and in 24 C.F.R. §570.489.

§2.06 Excessive Force Certification.

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

§2.07 Fair Housing.

Documentation that the Grantee has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

§2.08 Implementation Schedule.

Completion, and submission to the Department, of the Nebraska CDBG Grantee Implementation Schedule form.

§2.09 Other Special Conditions.

None.

§2.10 CDBG Certified Administrator Required.

Documentation must be submitted to the Department identifying the CDBG Certified Administrator the Grantee will use for the project. The Department's Nebraska Community Development Block Grant Program Administration Manual contains details about the certification process.

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

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

§3.01 Sources and Uses of Funds.

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

The Sources and Uses of Funds table above reflects:

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

[An example illustrates this point: If the anticipated cost of an activity such as the acquisition of equipment was \$100,000, with \$40,000 to be from CDBG funds as the source, and \$60,000 to be from the Grantee as the source—but the actual cost of the machinery turned out to be \$90,000—then the 40% ratio limits CDBG funding to \$36,000, rather than the \$40,000 originally anticipated.]

- The proportionality (derived by computation, not expressly shown) of funding from all funding sources, for each activity and for the project in total. Disbursement of CDBG funds will be made only on a pro rata basis with all other funding sources, for each activity and for the project in total. CDBG funds will not be the first funds invested in the project—but rather—CDBG funds will flow into the project in proportion to all other funding sources.

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Program Income.

Program income is regulated by the provisions of 24 C.F.R. §570.489(e). The text of this regulation should be consulted for definitions and for other guidance concerning program income.

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

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

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

§4.02 Matching Requirements.

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

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

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

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

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

§4.04 Designation of Officials to Execute Contract and Amendments.

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

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

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

§4.05 Grantee Compliance with CDBG Regulations Generally, and Particularly Regarding Uniform Administrative Requirements.

The Grantee will comply with 24 C.F.R. Part 570, including particularly the Uniform Administrative Requirements set forth in 24 C.F.R. §570.502, or any reasonably equivalent procedures and requirements that the Department may prescribe.

§4.06 Record Keeping.

The Grantee agrees to keep such records as specified in 24 C.F.R. §570.506, *Records to be Maintained*, and any other records as the Department may reasonably require. The Grantee agrees to keep such records so as to allow the Department to perform a 24 C.F.R. §570.492, *State's review and audits*.

All records pertinent to this grant and work undertaken as part of the project, will be retained by the Grantee for a period of ten (10) years after notification by the Department that the grant has been closed. If any claim, litigation, or audit is initiated before the expiration of the ten-year period, the records must be retained until all claims, litigation, or audits have been resolved.

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

§4.07 Reports.

The Grantee will submit semiannual reports to the Department, in such form as the Department may prescribe, pertaining to the activities undertaken as a result of this contract. The Grantee will also be required to submit a final performance and financial report, in such form and within such times as the Department may prescribe, at the occasion of grant closeout.

§4.08 Audits.

Audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended, and the Office of Management and Budget (OMB) Circular A-133. Generally Accepted Government Auditing Standards

(GAGAS) must be followed. If the Grantee meets the requirement for a Program-specific audit as defined in OMB Circular A-133, Department approval for such a Program-specific audit is required and audit procedures established by the Department will be followed.

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

§4.09 Conflict of Interest.

The Grantee will comply with the conflict of interest prohibitions set forth for the CDBG program at 24 C.F.R. §570.489. In the event prohibited conflicts of interest arise, exceptions to the prohibition may be granted, on a case-by-case basis, by the Department. The procedures governing such exception requests are set forth in the Department's CDBG Administration Manual.

§4.10 Applicability to Subrecipients and Contractors.

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

§4.11 Waivers; and Assignment of Interest.

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

§4.12 Non-Waiver of Rights.

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

§4.13 Severability.

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

§4.14 Termination by Mutual Agreement.

This contract may be terminated in whole or in part, prior to the completion of contract project activities, when both parties agree that continuation is not feasible or would not produce beneficial results commensurate with the further expenditure of funds. The parties must agree on the termination conditions, including effective date and the portion to be terminated.

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

§4.15 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or failure to use the grant for only those purposes set forth, the Department may take the following actions (which are additional to other default remedies specified elsewhere in this contract):

- (a) Suspension. After notice to the Grantee, suspend the contract and withhold any further payment or prohibit the Grantee from incurring additional obligations of grant funds, pending corrective action by the Grantee or a decision to terminate.

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

§4.16 Termination Due to Loss of Funds.

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

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

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

§4.18 Entire Agreement, Binding Effect, and Counterparts.

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

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

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

§4.19 Governing Law.

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

PART V: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.

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

- Housing and Community Development Act of 1974, as amended ("HCDA").
- 24 C.F.R. Part 570.
- National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.
- The Davis-Bacon Act (and related acts).
- Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Section 3 of the Housing and Urban Development Act of 1968.

- The Architectural Barriers Act of 1968 and the Americans with Disabilities Act.
- the requirement in the HCDA to affirmatively further fair housing.

ACCEPTANCE PROVISIONS.

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

<p>NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT</p> <p>By: _____ (Director or Designee)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p>	<p>GRANTEE→[Village/City/County] of [Anytown], Nebraska</p> <p>By: _____ (Chief Elected Official)</p> <p>_____ (Typed or Printed Name/Title)</p> <p>_____ (Date)</p> <p>_____ (Federal Identification Number)</p>
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SECTION 504

Responsibilities At The Local Level

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

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

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

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

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

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

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

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

Self-Evaluation

The first step determining whether a municipality meets Section 504 requirements is a self-evaluation. The assessment must include an examination of all functions of the Grantees distributing or receiving funds. Handicapped persons and or representative organizations, as well as, any interested persons must be included in the process. The self evaluation must include careful inspection of:

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

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

Any policies and practices that are found to be contrary to Section 504 requirements must be modified and steps taken to remedy the discrimination.

Transition Plan

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

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

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

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

Specifics About Communication

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

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

Specifics About Nondiscrimination In Employment

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

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

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

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

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

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

Specifics About Program Accessibility

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

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

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

Methods of improving program access in existing facilities can include:

- relocating programs to accessible facilities or accessible portions facilities.
- acquiring or building new facilities,
- selectively altering facilities,
- changing operating policies and procedures,
- assigning aides to assist beneficiaries,
- adding or redesigning equipment or furnishings,
- conducting home visits.

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

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

The Fair Housing Amendment Act (Title VII) passed in 1988, extended federal housing anti-discrimination protection to families and people with disabilities. Section 504 is often more exacting in its requirements than Title VII. The primary difference between the two is the Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit, paid for by the tenant. Section 504 provides that the landlord is responsible for making, and paying for reasonable accommodations.

Compliance And Complaints

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

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

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

Rather than having to exhaust administrative appeals a person who believes their rights have been violated under Section 504 may file in federal court. The remedy through court action may include the award of damages, back

pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

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

Special Requirements For Grantees With 15+ Employees

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

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

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

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

Initial and continuing notices must be given to the public, job applicants and employees of their rights under Section 504 and the municipality's policy against discrimination, including that reasonable accommodation will be made. Similar notice needs to be included in any municipal recruitment or information material.

The notice must include: See Attachment 3

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