

**MEMORANDUM OF AGREEMENT  
FOR  
PURCHASE OF SERVICES**

THIS AGREEMENT is made by and between the City of Madison, Wisconsin, a municipal corporation, hereinafter referred to as the "City" and Madison Area CLT Corporation of Madison, Wisconsin, hereinafter referred to as "Contractor."

WHEREAS, the City of Madison has received a grant No. B-2001-MC-55-0005 of Community Development Block Grant Funds pursuant to the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the City's 2001 Budget, approved by the Common Council on November 14, 2000, and the City's Action Plan dated December, 2000, and approved by the U.S. Department of Housing and Urban Development in January, 2001, included the amount of \$321,180 for services to be purchased from the Contractor; and,

WHEREAS, it is agreed that these services are proper functions of City government, but that they can be provided more economically and effectively through a Purchase of Services Agreement; and,

WHEREAS, the Contractor warrants that it and its agents and employees are willing and able to perform such services upon the terms and conditions set forth herein and has designated Mary Myers as its agent and contracting officer with primary responsibility for the performance of this Agreement;

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

|  
**THE CONTRACT DOCUMENT**

Besides the Memorandum of Agreement, this Agreement includes the following Attachments which are attached hereto and incorporated herein by reference, all of which constitute one agreement;

1. Scope of Services to be performed by the Contractor;
2. Budget, Method of Payment, and Reimbursement Request Form;
3. Program Report forms;
4. Board of Directors of the Contractor;
5. Conflict of Interest Requirements;
6. Lobbying Certification;
7. Environmental Review Regulations;

8. Uniform Administrative Requirements and Cost Principles;
9. Equal Opportunity Accessibility, Fair Housing, Section 3, and Minority Business Enterprise Requirements;
10. Affirmative Action Requirements;
11. Requirements Regarding Lead-Based Paint;
12. Certificate of Exemption From Federal Fair Labor Standards, or;
- 12A. Federal Labor Standards Provisions;
13. Statement of Constitutional Prohibition Relative to Religious Activities;
14. Displacement, Relocation, and Acquisition (if applicable);
15. Program Income (if applicable);
16. City requirements regarding vulnerable populations (if applicable);
17. City requirements regarding living wage (if applicable).

## II SCOPE OF SERVICES

Contractor shall perform services for the City as specified in the Scope of Services and any amendments thereto. This Agreement shall become effective upon execution by the Mayor, on behalf of the City of Madison. Expenses for services performed pursuant to the Scope of Services, but before the execution of this Agreement, may be reimbursed by the City, but in no case shall any payment be made by the City pursuant to this Agreement for services performed before May 15, 2001 or after December 31, 2001. All services shall be performed in compliance with the applicable budget, attached to the Agreement. The Contractor further agrees to furnish all information, reports, and recommendations regarding the services provided under this Agreement as requested by the City including, but not limited to, financial statements and reports, reports of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Contractor receives the City's written request, unless the parties agree in writing on a longer period.

In addition, the Contractor will respond to questions regarding the community's need for the Contractor's services and related services and the cost of such services, including questions from officials, as defined in Sec. 2.40 (2)(i), MGO.

In addition, the Contractor agrees to make its staff and records available to employees of the City of Madison, the U.S. Department of Housing and Urban Development and the Comptroller General at any time.

III  
SPECIAL PROVISIONS

It is the intent of the parties that all services performed pursuant to this Agreement will be performed within the corporate limits of the City of Madison for the benefit of Madison residents.

IV  
PERSONNEL ASSIGNED

The Contractor agrees that all service activities will be performed and coordinated by its agents and employees, and that these services shall include the production of required reports in a form approved by the City.

In the event of the death, disability, removal or resignation of any of the Contractor's agents or employees, so that the Contractor is unable to coordinate and perform the service activities herein agreed upon, this Agreement may be terminated at the option of the City pursuant to the provisions of Section VII of this Agreement. It is agreed that all of the Contractor's agents and employees, who are performing services pursuant to the terms of this Agreement, are employees and agents of the Contractor, and not of the City, and that they will not at any time represent themselves to be employees or agents of the City. In case the agent named on Page One of this Agreement is replaced by another for any reason, the Contractor will notify the City in writing within three (3) working days of the time the first agent terminates his or her agency.

The Contractor agrees that it will comply with all applicable federal, state, and local laws and regulations, including but not limited to tax withholding, Fair Labor Standards, F.I.C.A., Worker's Compensation, Unemployment Compensation, Fair Employment, and Affirmative Action, and that it will maintain insurance coverage adequate to cover all Worker's Compensation liability.

V  
INDEMNIFICATION AND INSURANCE

The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property including loss of use thereof, arising from, in connection with, caused by or resulting from the Contractor's and Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligent acts of the City, its agents, or its employees.

The Contractor agrees that in order to protect itself and the City under the indemnification agreement set forth in the paragraph above, it will at all times during the term of this Agreement, keep in force and effect, comprehensive general liability insurance, including, but not limited to contractual liability, personal injury, bodily injury and property damage, and auto liability insurance coverage, issued by a company or companies authorized to do business in the State of Wisconsin, with liability coverage provided for therein in the amount of \$1,000,000 combined single limits. The coverage afforded shall apply as primary with the City

named as additional insured. The insurer shall give thirty (30) days advance written notice of cancellation, non-renewal, or material change during the terms of this agreement. Upon execution of this Agreement, the Contractor shall furnish the City with a Certificate of Insurance and, upon request, certified copies of the requested insurance policies.

## VI AMENDMENT

This Agreement may be amended at any time by mutual agreement of the parties, expressed in writing.

No oral statement of any person, and no written statement of any one other than the City's Community Development Grants Supervisor or his/her designee shall modify or otherwise affect the terms and conditions of this agreement.

## VII TERMINATION

This Agreement may be terminated at any time by written, mutual agreement of the parties, provided all applicable laws and regulations are complied with.

The City shall have the right at its option to terminate this Agreement and be free from all obligations hereunder in the event that the Contractor is in default or violates any of the terms, conditions, assurances, or certifications of this Agreement.

In the event of such default or violation by the Contractor, the City shall send to Contractor by certified mail a Notice of Demand to Cure Default, explaining the nature and extent of the default or violation. The Contractor shall cure or remedy said violation or default within ten (10) working days after receipt of said Notice, unless a longer time is agreed upon by both parties in writing. In case the default is not cured or remedied within ten (10) working days or a longer time agreed upon, the City may exercise its option to terminate this Agreement upon five (5) days written notice.

The City shall also have the right at its option to terminate this Agreement and be free from all obligations hereunder upon the happening of any one of the following events, upon five (5) days written notice:

1. The death, disability, removal or resignation of such key employee or agent of the Contractor, so that the Contractor is unable to perform according to the terms of this Agreement.
2. The occurrence of any event beyond the control of either party to this Agreement which renders it impossible to continue performance pursuant to this Agreement.

The parties agree that if this Agreement is terminated for any reason, the City will pay for services completed but not yet paid for at the time of termination. Subject to this limitation, the Contractor will return to the City within 30 calendar days any CDBG funds unexpended at the time of the termination. If the Contractor acquires any asset with CDBG funds and subsequently ceases to use the asset for the purposes described in this Agreement, the Contractor agrees to: (i) pay to the City the fair market value of the asset; (ii) transfer control of the asset to the City;

or (iii) follow written disposition instructions provided by the Community Development Grants Supervisor.

The Contractor agrees that no CDBG funds received pursuant to this Agreement will be expended in any manner which violates this Agreement, or to perform any services other than those specified in the Agreement.

The Contractor shall be liable to the City for any such expenditure of CDBG funds contrary to this Agreement, and agrees to repay the amount of any such expenditure to the City on or before December 31, 2001. In the alternative, the City may withhold any payments to the Contractor for the purpose of set-off. If the violation is discovered after December 31, 2001, Contractor agrees to repay the City within thirty (30) days after receiving the City's written request for repayment.

## VIII ASSURANCES AND CERTIFICATIONS

The Contractor makes the following assurances and certifications as part of this Agreement:

1. It possesses legal authority to enter into this Agreement; a resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the execution of this Agreement, including each and every part thereof, and directing and authorizing the person identified in the introduction as the agent of the Contractor to act in connection with this Agreement and to provide all required reports and such additional information as may be required.
2. It will involve consumers of service and other community agencies in the planning and evaluation of related activities and programs. It will maximize use of available resources of all kinds, including but not limited to, grants, donations, bequests, contributions of housing, program and office supplies and equipment, and volunteer time.  
  
It will cooperate with other community agencies and establish a comprehensive and reliable evaluation of all aspects of its housing and community development program, which may include fiscal, management, and performance audits. Such cooperative evaluation may require articulation and measurement of program objectives, documentation of performance from current records, and cooperation with City efforts to improve the collection and accuracy of performance data.  
  
It will plan services performed pursuant to this Agreement to maximize benefit to low and moderate income families and/or to aid in the prevention or elimination of slums or blight. The term, "low and moderate income persons", as defined in 24 CFR 570.3, shall be used throughout this Agreement to designate those individuals, families, and households who meet the income requirements as promulgated by HUD.
3. It will comply with all applicable laws, statutes, ordinances, administrative rules and orders of the City of Madison, State of Wisconsin, and Federal Government.

4. It will comply with the provisions of the Hatch Act requiring that no funds provided under this Agreement shall pay for lobbying or political activities, as set forth in Attachment 6. Further, the Contractor agrees to abide by the Madison ordinances regarding lobbying and registration, per MGO 2.40.
5. It shall comply with the Conflict of Interest Ordinance of the City of Madison and of the Department of Housing and Urban Development regulations as set forth in Attachment 5 and in 24 CFR 570.611.
6. It will comply with environmental review regulations of the U. S. Department of Housing and Urban Development, as set forth in Attachment 7 and 24 CFR 570.604, before the Contractor, or its agents, commit funds or take any action which would affect any structure or property within the City of Madison in any way.
7. It will comply with the local financial statement reporting requirements and the "Uniform Administrative Requirements and Cost Principles" as set forth in Attachment 8, 24 CFR 570.502 and 24 CFR 570.610. These local requirements set forth standards of financial review and/or audits which are distinguished by amounts of Federal funds expended within any fiscal year, and require the submission of different reports to the CDBG Office within particular time periods after the close of the contractor's fiscal year.

The Contractor shall send the CDBG Office any required audits, schedules, reports, or management letter, in accordance with the requirements of Attachment 8.

The Contractor will respond, in writing, within 30 days of the issuance of the audit to any findings or significant weaknesses mentioned in either the audit, the management letter, or any supplemental report which the Contractor receives from the auditor.

Additional supplemental schedules to those required in Attachment 8, which may be required, will be detailed in the Scope of Services. The Contractor shall retain financial records, supporting documents, statistical records, and environmental review records, and all other records pertinent to the services purchased pursuant to this Agreement for a period of four (4) years from the date of the submission of the City's annual performance report, except as follows:

- (a) Records that are the subject of any litigation, claim or audit findings shall be retained for three years or until such litigation, claim or audit findings have been resolved, whichever is later.
  - (b) Records for real property and equipment which was acquired in whole or part with Federal funds shall be retained for three years after final disposition of the property.
8. It will enforce the "equal opportunity," "accessibility" and "Section 3" and "minority business/women business enterprise" requirements set forth in Attachment 9, and the Affirmative Action Requirements set forth in Attachment 10, insofar as they are applicable to services performed pursuant to this Agreement. It will comply with all of the applicable requirements of Madison General Ordinance,

Section 3.72 "Non-Discrimination Based Upon Disability", during the life of this contract.

9. It will comply with the Lead-Based Paints requirements set forth in Attachment 11, insofar as they are applicable to services performed pursuant to this Agreement.
10. It will enforce the "Federal Fair Labor Standards Provisions" set forth in Attachment 12A, or the Certification for Exemption for Federal Fair Labor Standard, set forth in Attachment 12, insofar as they are applicable to services performed pursuant to this Agreement.
11. It will comply with the statement of the Constitutional Prohibition wherein CDBG funds may not be used for religious activities as set forth in Attachment 13 and 24 CFR 570.200(j).
12. It will enforce the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and related U.S. Department of Housing implementing regulations as set forth in Attachment 14 and 24 CFR 570.606 insofar as they are applicable to services performed pursuant to this Agreement.
13. It will comply with the Program Income requirements set forth in Attachment 15 and 24 CFR 570.500, 570.504 and the Cash Management Regulations 24 CFR 570.503(b)(3) insofar as they are applicable to revenues generated pursuant to this Agreement.
14. It will comply with the "vulnerable populations" requirements set forth in Attachment 16 and City resolution 53,279.
15. It agrees to pay all employees employed by the Contractor in the performance of this contract, whether on a full-time or a part-time basis, a base wage of not less than the City minimum hourly wage as required by Section 4.20, Madison General Ordinances. (Applicable to contracts in excess of \$5,000.) The minimum hourly wage in January, 2001, is \$9.02 per hour for persons covered by the ordinance.
16. It will credit the City of Madison Community Development Block Grant Office and will include the CDBG logo in all its documents, publicity newsletters, brochures or site signs regarding the funded activities. The Contractor shall post signs crediting the City CDBG Office at Project Sites involving construction or rehabilitation.
17. Contractor acknowledges that nothing contained in this Agreement or any contract between the Contractor and the City, nor any act by the City, or any of the parties, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third-party beneficiary, principal or agent, limited or general partnership, or joint venture, or of any association or relationship involving the City.

IX  
MAINTENANCE OF EFFORT

It is understood and agreed that the level of services, activities and expenditures by the Contractor, in existence prior to the initiation of services hereunder, shall be continued and not be reduced in any way as a result of this Agreement except for reductions unrelated to the provisions or purposes herein stated. It is further understood and agreed that the program funded through this Agreement will not result in the displacement of employed workers, impair existing contracts for services or result in the substitution of funds allocated under this Agreement for other funds in connection with work which would have been performed even in the absence of this Agreement.

X  
MAXIMUM COMPENSATION

The Contractor agrees to accept as full payment for services rendered, in a manner satisfactory to the City, the lesser of the following: (1) the total of the amounts mentioned on Page One of this Agreement; OR (2) the amount of cash expenditures made by the Contractor for purposes of carrying out the services hereunder. It is expressly understood and agreed that in no event shall the total compensation to be reimbursed hereunder exceed the total of the sums mentioned on Page One of this Agreement.

XI  
SEVERABILITY

It is mutually agreed that, in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all the other provisions of this Agreement remain in full force and effect.

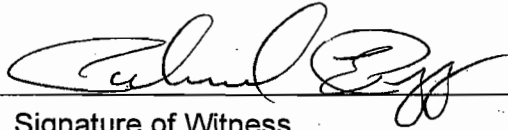
XII  
CHOICE OF LAW

This Agreement shall be governed by and construed under the laws of the State of Wisconsin.

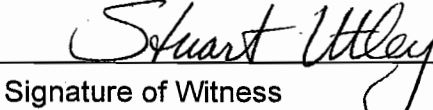


IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

Signed this 12 day of June, 2001.


  
Signature of Witness

Richard E. Pegg  
Name of Witness (Print)

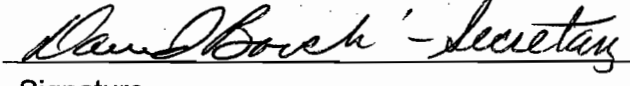
  
Signature of Witness

Stuart Utley  
Name of Witness (Print)

MADISON AREA CLT CORPORATION

By:   
Signature

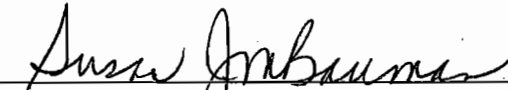
Susan K. Day, President  
Name and Title (Print)

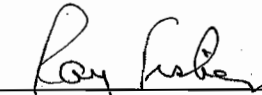
  
Signature

DAVID BORSKI - SECRETARY  
Name and Title (Print)

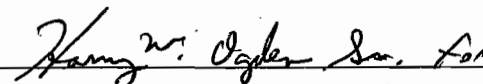
Signed this 9th day of July, 2001.

CITY OF MADISON, WISCONSIN  
a municipal corporation

By:   
Susan J.M. Bauman, Mayor

  
Ray Fisher, City Clerk

Approved:

  
Dean Brasser, City Comptroller

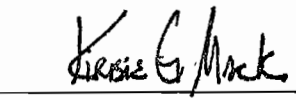
Approved as to Form:

  
Eunice Gibson, City Attorney 7/2/01

Approved:

  
Hickory Hurie,  
Community Development Grants Supervisor

Approved

  
Kirbie Mack  
Affirmative Action Director

## ATTACHMENT 1

### Madison Area CLT Troy Gardens Acquisition SC02- KA022-CDB01

#### **COMMUNITY PROBLEM/CONCERN:**

The Northside has a need for additional single-family homes that would be affordable to low or moderate-income persons. In addition, there is a need to assist in the development of community gardens space that can be used by LMI families. There is a large parcel of land owned by the State of Wisconsin, which would be suitable for both the development of single-family housing and continued use as gardens space. The land has recently been made available for sale to the CLT. The neighborhood would like to see the land developed as affordable housing and gardens space.

#### **MAJOR GOAL AND OBJECTIVE OF THE CDBG PROJECT:**

The primary goal of the project is to acquire the property on Troy Dr. This will promote the development of the parcel for the provision of affordable housing and maintain its availability as community gardens space.

#### **TARGET POPULATION**

This program will serve up to 30 low or moderate income households who will purchase the houses developed by the CLT, and provide for community gardening and open space for use by additional LMI families.

#### **PROGRAM ACTIVITIES AND TIME LINE**

The CLT will use the CDBG funds to acquire the land from the State of Wisconsin by July 31, 2001. Subsequently the CLT will enter into a ground lease with another non-profit for the gardens space, and grant an open space easement to another non-profit to maintain the open space nature of the parcel.

The assistance to the CLT will be provided in the following manner:

- a. \$162,845 of the assistance shall be provided as a long-term, deferred payment loan for the purchase of the gardens and open space portion of the parcel. This loan shall be due and payable upon the transfer or change in use of the assisted property. The amount due will be based upon the greater of either 100% of value of the property at the time of the transfer or change in use, or the original amount of assistance;
- b. \$155,835 of the assistance is provided as a short-term loan. The loan is for the acquisition of the 4.9-acre portion of the property to be developed as residential sites and is due and payable upon the receipt by the Madison Area CLT of the contract for the \$748,000 of EDI funds from the City of Madison.
- c. \$2,500 of the assistance will be a developer's fee for the parcel.

The CLT shall require the manager of the gardens space to provide a report on the users of the space by Jan 10, 2002, using Attachment 3 - demographic information, of this contract.

The CDBG Office shall have receive a copy of the conservation easement for the parcel and shall have the right to review and comment on the document. The conservation easement must be approved by the CDBG Office prior recording with the Dane County Register of Deeds.

### **Special Conditions Regarding Environmental Review:**

During the course of this review the following environmental issues were identified and will require specific measures discussed below to mitigate the problems:

1. Phase I and Limited Phase II Environmental Assessments completed for this site identified PAH concentrations in the soil above approved residential levels in an area of the site proposed for both community gardens and residential housing.

2. A Phase I Cultural Assessment of the site indicated the possibility of three earthen structures and recommended that additional testing of these areas be completed for more conclusive findings.

Mandatory conditions of approval for this project will require that the identified soil contamination be resolved in a manner satisfactory to the appropriate State regulating agency (Dept. of Natural Resources or Dept. of Commerce) through either removal and disposal of affected soil, providing a direct contact barrier, or other alternatives, depending on final determination of the extent of the contamination. A letter verifying compliance with State standards shall be provided to the CDBG Office.

In addition, following completion of the Phase II Cultural Assessment, the Land Trust shall be required to provide documentation to the CDBG Office from the State Historic Preservation Office that the plans for both the Garden and Housing Development projects will not have any adverse effect on potentially historic sites on the property.

### **Minority Business Enterprise**

This contract is covered by a Federally established goal, which encourages the City to spend 11.3% of its CDBG funds on contracts with minority business enterprise firms. In order to assist in the achievement of these national and local goals described in Attachment 9, the Contractor shall make good faith efforts to utilize a minimum of 11.3% of its non-personnel, non-space cost CDBG-funded budget to hire or purchase services from minority business enterprises in the implementation of this project. The Contractor shall report monthly on its usage of MBE's on Attachment 3. The Contractor is expected to use the MBE Directory of the City of Madison or the State of Wisconsin in obtaining bids or estimates for the purchase of goods or services, such as office supplies, consultant services, or construction services.

### **ANTICIPATED ACCOMPLISHMENTS OF THE CDBG PROJECT**

By July 31, 2001 the Madison Area CLT will complete the acquisition of the property on Troy Drive referred to as the Troy Gardens parcel.

**ATTACHMENT 3**

**2001 PROGRAM REPORT FORM**

**Sponsoring Agency:** Madison Area CLT

**Project Name/#:** Troy Gardens Acquisition SC02-26KA022-CDB01

**Report Period:** From: \_\_\_\_\_ To: \_\_\_\_\_

**Fund Source:** CDBG

Specific Project Objectives	# of Units Completed this Period												# of Units Completed Year to Date	# of Units Required	
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec			
A. Provide information on the Environmental Issues to resolve concerns															
B. Acquire Land Provide CDBG Office with mortgages and promissory notes for the parcels.															
C. Enter into agreement for management of the gardens space which contains reporting demographic requirement															
D. Provide CDBG Office with copy of the conservation easement															
E.															
F.															
<b>G. MBE Usage:</b> <u>Firm Name</u>	<u>Address</u>												<u>IRS #</u>	<u>Amount Spent</u>	



**Madison Area CLT Corp.  
Directors and Officers  
July 2000 - June 2001**

**Dawne BAILEY**  
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**Rich PEGG (Treasurer)**  
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**Char TORTORICE**  
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**Stuart UTLEY**  
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[utleys@firstweber.com](mailto:utleys@firstweber.com)

## ATTACHMENT 5 (CDBG)

### **CONFLICT OF INTEREST REQUIREMENTS**

The Contractor hereby agrees to comply with the provisions of 24 CFR 570.611, City of Madison General Ordinances Section 3.47(5), and Sec. 946.13 Wis. Stats. regarding conflict of interest.

Among the major requirements of 24 CFR 570.611 are the following:

1. Applicability.
  - a. In the procurement of supplies, equipment, construction, and services by the City and Contractors, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.
  - b. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of 24 CFR 570.611 shall apply. These cases include the acquisition and disposition of real property and the provision of assistance by the City or by its Contractors to individuals, businesses, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation).
2. Conflicts Prohibited. No persons described in paragraph 3 below who exercise or have exercised any functions or responsibilities with respect to activities assisted under this Agreement or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract or agreement with respect there to either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
3. Persons Covered. The conflict of interest provisions of paragraph 2 of this Attachment apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, of any designated public agencies, or of Contractors which are receiving funds under this Agreement.
4. Exceptions: Threshold Requirements. Upon the written request of the City, HUD may grant an exception to the provisions of paragraph 2 of this Attachment on a case-by-case basis when it determines that such an exception will serve to further the purposes of the CDBG Program and the effective and efficient administration of the City's program or project. An exception may be considered only after the City has provided the following:
  - a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - b. An opinion of the City's attorney that the interest for which the exception is sought would not violate State or local law.
5. Factors to be Considered for Exceptions. In determining whether to grant a requested exception after the City has satisfactorily met the requirements of paragraph 4 of this

Attachment, HUD shall consider the cumulative effect of the following factors, where applicable:

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- b. Whether an opportunity was provided for open competitive bidding or negotiations;
- c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- e. Whether the interest or benefit was present before the affected person was in a position as described in paragraph 2 of this section;
- f. Whether undue hardship will result either to the City or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- g. Any other relevant considerations.

#### **METHOD FOR REQUESTING EXCEPTION FROM CONFLICT OF INTEREST REQUIREMENTS**

In order for the City to efficiently deal with a Contractor's request for an exception to the conflict of interest regulations, the Contractor shall submit the following to the CDBG Office prior to commitment of CDBG funds:

1. A cover letter describing the a) perceived conflict, b) the actions taken to resolve the conflict and issues related to Factors to be Considered for Exceptions (paragraph 5 above).
2. A copy of the loan/investment committee and/or Board meeting minutes showing the conflict was publicly disclosed.
3. A letter from the Contractor's attorney stating that in his or her opinion such conflict does not violate State or local law.

The Contractor shall not commit any CDBG funds until the conflict has been resolved and the City has received a letter of formal exception from the Department of Housing and Urban Development. Under the terms of this Agreement, any such commitment prior to HUD approval will not be honored by the City.

#### **ADDITIONAL REQUIREMENTS**

Annually for the term of the contract:

1. Each Contractor must submit a list of their Board of Directors or investor group to the CDBG Office, and maintain on-site membership lists for any sub-committees to the Board and Conflict of Interest Disclosure Forms completed by each Board or sub-committee member.



2. The Contractor shall:

- a. Hold a training session with its Board or comparable, appropriate decision-making group, and any sub-committee explaining the Federal requirements regarding Conflict of Interest and each member's responsibilities and rights under those regulations.
- b. Distribute a copy of this Attachment to each member, subcommittee member, potential loan or investment recipient, supplier or Contractor.
- c. Maintain, on site, copies of the minutes from each Board or corporate meeting, or any meeting at which the investment or use of CDBG funds is discussed.
- d. Incorporate into each loan or investment information package, application, contract, and closing documents, a full copy of the conflict of interest regulations contained in the contract with the City.

**ATTACHMENT 6** (CDBG)

**CERTIFICATION FOR THE CDBG ENTITLEMENT PROGRAM  
PROHIBITION OF USE OF FEDERAL FUNDS FOR LOBBYING  
(APPLICABLE ONLY TO AGREEMENTS IN EXCESS OF \$100,000)**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The Contractor, by entering into this Agreement, hereby certifies to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
3. The Contractor will require that these provisions be included in the award documents for all subawards in excess of \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

## **ATTACHMENT 7 (CDBG)**

### **ENVIRONMENTAL REVIEW REGULATIONS**

The City may not commit HUD assistance funds under this Agreement until it has complied with the environmental review regulations at 24 CFR Part 58. The City's environmental review shall include, but not be limited to, ascertaining the project's effect on: noise, thermal, and man-made hazards; historic properties; floodplains; and air and water pollution.

In fulfillment of the above:

- a. The City will conduct an environmental review to ascertain the environmental status of the project and the types of procedures (the conditions), if any, the Contractor must follow in order to comply with the intent of the National Environmental Policy Act of 1969, and applicable Federal and City regulations.
- b. The City will not release funds for projects which require an Environmental Assessment or an Environmental Impact Statement, nor will the Contractor obligate CDBG funds on the project until the City has obtained a certification for the release of CDBG funds from HUD. The City will notify the Contractor of such a certification and will outline either within Attachment 1 of this Agreement, or in a subsequent written communication, the conditions, if any, for environmental compliance.
- c. The Contractor agrees to notify the CDBG Project Manager of newly discovered conditions or changes in the project which would affect the status of the project in regard to applicable federal and City regulations.
- d. The Contractor will allow inspection of the project by the City or its agents and shall fully cooperate with the City.

## **ATTACHMENT 8 (CDBG)**

### **UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES (PRIVATE, NON-PROFIT AGENCIES)**

The Contractor shall comply with the requirements of 24 CFR 570.502 , the applicable portions of 24 CFR Part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations", and OMB Circular A-133 "Audits of States, Local Governments, and Nonprofit Organizations" and its implementing regulations.

It is understood and agreed that the Contractor is obligated to comply with all of the regulations specified above, whether or not they are set forth in this Agreement. HUD and the City have identified the following major requirements for monitoring purposes.

#### **Financial and Program Management**

1. The Contractor's Financial Management Systems shall provide:
  - A. Accurate, current, and complete disclosure of the financial results of each grant in accordance with Federal reporting requirements. HUD requires reporting on an accrual basis but the Contractor need not establish an accrual accounting system;
  - B. Records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, income, and interest;
  - C. Effective control over, and accountability for, all funds, property, and other assets;
  - D. Comparison of actual outlays with budgeted amounts for each grant;
  - E. Written procedures to minimize the time elapsing between the transfer of funds from the City of Madison and the disbursement by the Contractor;
  - F. Written procedures for determining reasonableness, allocability and allowability of costs in accordance with the provisions of OMB Circular A-122, Cost Principles for Non-Profit Organizations; and
  - G. Accounting records including cost accounting records that are supported by source documentation.
2. Non Federal Financial Reports and Audits:
  - A. Contractors expending \$300,000 or more in Federal funds, from all sources, in a fiscal year shall submit the following to the CDBG Office within nine months of the end of its fiscal year:
    1. A single or program audit conducted in accordance with the requirements of the Government Auditing Standards and OMB A-133 "Audits of Institutions of Higher Education and Other Non-Profit Institutions," which shall include:
      - a. A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, and a schedule of revenues and expenditures of CDBG office funds by program, including a

bridging schedule if the contract year and the Contractors fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and identify the exact amount of CDBG Office funds expended for a program; other revenue should not be combined within a program description of expenses.

- b. A schedule of all real property assets; including an itemized list of all debt against each property and the terms of that debt.
  - c. The CDBG Office Schedule of Findings and Questioned Costs. (Exhibit 1 to Attachment 8)
2. A copy of the management letter received from the auditor and the agency response to the management letter.
- B. Contractors expending less than \$300,000 in Federal funds, from all sources, in a fiscal year shall submit the following:

For an agency which has an annual certified audit completed:

1. A copy of their annual certified audit, within 30 days of completion: which shall include the following schedules:
  - a. Report on the Internal Control structure.
  - b. Report on compliance with Laws, Regulations, Contracts and Grants. The City of Madison requires that the auditor plan the compliance audit such that OMB Circular A-122 is considered material to the financial statements taken as a whole. The auditor will determine:
    - i. Whether direct and indirect cost allocation plans are reasonable and acceptable.
    - ii. That costs are necessary and reasonable and were allocated according to the cost allocation plan.
    - iii. That the costs charged to the contract are based on actual costs incurred and are supported by accounting records and documents.
  - c. A schedule of all revenues and expenditures by program and revenue source, that reconciles costs for the contract period, and a schedule of revenues and expenditures of CDBG office funds by program, including a bridging schedule if the contract year and the Contractors fiscal year do not coincide. NOTE: This schedule should break out the revenues and expenses by funding source and identify the exact amount of CDBG Office funds expended for a program; other revenue should not be combined within a program description of expenses
  - d. A schedule of all real property assets; including an itemized list of all debt against each property and the terms of that debt.
  - e. The CDBG Office Schedule of Findings and Questioned Costs (Exhibit 1 to Attachment 8)

2. A copy of the management letter received from the auditor, and the agency response to that letter.

Agencies which do not have annual audits completed may be requested by the CDBG Office to have an audit completed at CDBG Office expense.

**UNDER NO CIRCUMSTANCES WILL THE CDBG OFFICE REIMBURSE A FUNDED AGENCY FOR ANY COSTS RELATED TO AN AUDIT UNLESS THE AGENCY IS BEING AUDITED IN ACCORD WITH THE SINGLE AUDIT ACT AND OMB CIRCULAR A-133.**

3. Allowable Costs

- A. Allowability of costs will be determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations".

**Property Standards**

1. Real Property means land, including improvements, structures, and appurtenances thereto, but excludes movable machinery and equipment
  - A. Title to real property acquired with Federal funds shall vest in the contractor subject to the condition that the Contractor shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without the approval of the City and/or HUD.
  - B. When the real property acquired with Federal funds is no longer needed for the purposes of the agreement the Contractor shall request written disposition instructions from the City.
2. Equipment: means tangible non-expendable personal property including exempt property charged directly to the award and having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
  - A. Title to equipment acquired in whole or in part with Federal funds shall vest in the Contractor, subject to the conditions of 24 CFR 84.34.
  - B. The Contractor shall use the equipment acquired with Federal funds for the authorized purpose of the project as long as it is needed and shall not encumber the equipment without the approval of the City and/or HUD.
  - C. The Contractor's property management records for equipment acquired with Federal funds shall include the following:
    1. A description of the equipment;
    2. Manufacturer's serial number, model number, or other identification number;
    3. Source of the equipment, including grant or other agreement number;
    4. Whether title vests in the agency;
    5. Acquisition date and cost;

6. Percentage of Federal participation in cost of the equipment;
  7. Location, use, condition of property;
  8. Unit acquisition cost; and
  9. Disposition date, including sales price or the method used to determine fair market value;
- D. A control system shall be in place to insure adequate safeguards to prevent loss, damage or theft of the equipment.
  - E. A physical inventory of the equipment acquired with Federal funds shall be conducted and the results reconciled with the equipment records at least every two years.
  - F. When equipment acquired in whole or in part with Federal funds is no longer needed for the purposes of the agreement the contractor shall request written disposition instructions from the City.
  - G. The Contractor shall implement adequate maintenance procedures to keep the equipment in good condition.

### **Procurement Standards**

#### **1. Responsibilities**

The Contractor is the responsible authority, without recourse to HUD or the City regarding the settlement of all contractual and administrative issues arising out of procurement entered into in support of the award or other agreement

#### **2. Codes of Conduct**

The Contractor will establish a written code of conduct governing the performance of its employees engaged in the award and administration of contracts. The code of conduct shall address the conflict of interest requirements of this contract and the acceptance of gifts.

#### **3. Competition**

The Contractor shall conduct all procurement in a manner to provide to the maximum extent practical, open and free competition. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Contractor, price, quality, and other factors considered. The Contractor must obtain prior written approval from CDBG before basing any award on any factor other than low price.

#### **4. Procurement Procedures**

A. The Contractor shall have written procurement procedures which provide the following minimum procedural requirements:

1. Unnecessary items shall not be purchased;

2. Where appropriate, an analysis of lease and purchase alternatives is done to assure the most economical and practical procurement.
  3. Set forth all requirements and other factors to be used in evaluating bids or proposals.
- B. Positive efforts shall be made to utilize small businesses, minority owned businesses and women owned businesses.
  - C. The type of procuring contract used shall be that which is determined by the Contractor to be in the best interests of the program or project involved.
  - D. Positive efforts shall be made to utilize small businesses, minority owned businesses and women owned businesses.
  - E. The type of procuring contract used shall be that which is determined by the Contractor to be in the best interests of the program or project involved.
    - i. Competitive negotiation. The Contractor may use competitive negotiation as a method of procurement in cases where proposals are requested from a number of sources and the request for proposals is publicized. Other standards must be used to obtain an acceptable price including solicitation from an adequate number of qualified sources to permit reasonable competition, the identification of significant evaluation factors, the establishment of a mechanism for technical evaluation of the proposals received, and the award of the proposal most advantageous to the procuring party, price and other factors considered.
    - ii. Non-competitive negotiation. (Note: The use of non-competitive negotiation for procurement will require the specific approval of the CDBG Coordinator and the HUD Milwaukee Office.)

### **Cost and Price Analysis**

Some form of cost or price analysis shall be made or documented with every procurement action.

### **Procurement Records**

Procurement records and files for purchases in excess of the small purchase threshold shall include at a minimum the following:

1. Basis for contractor selection,
2. Justification for lack of competition when competitive bids or offers are not obtained, and
3. Basis for award cost or price.

### **Contract Provisions**

The Contractor shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all of its contracts:

1. Requirement to take affirmative steps to utilize Minority Business Enterprises (MBE's) when possible.



2. In contracts in excess of the small purchase threshold, provisions that allow for administrative, contractual and legal remedies when the subcontractor violates the contract terms;
3. Provisions for termination for cause, termination by the Contractor, and termination for circumstances beyond the Contractor's control;
4. Where the subcontract exceeds \$100,000 or is a Davis-Bacon covered project exceeding \$25,000, the Contractor shall require a bid guarantee equal to 5% of the bid price, and a payment bond and a performance bond each for 100% of the contract price;
5. Provisions for compliance with federal equal employment opportunity laws and regulations;
6. For construction contracts in excess of \$2,000 and involving commercial construction or eight or more residential units, a provision requiring compliance with the Copeland Anti-Kickback Act (18 USC 874){and} (40 USC 276c) and with the Davis-Bacon Act (40 USC 276a et seq.);
7. For contracts in excess of \$100,000 involving the employment of laborers or the mechanics, a provision requiring compliance with the Contract Work Hours and Safety Standards Act (40 USC 327 through 333);
8. For contracts involving the performance of experimental, developmental, or research work, a provision requiring compliance with 37 CFR part 401 "Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements;"
9. For contracts in excess of \$100,000, a provision requiring compliance with the "Clean Air Act" (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);
10. The requirements of the Drug Free Workplace Act of 1988 (42 U.S.C. 701);
11. Notice of Reporting Requirements;
12. Retention and access requirements of records;
13. The requirements of the Energy Policy and Conservation Act;
14. Compliance with City Affirmative Action requirements;
15. Compliance with Section 3 requirements if contract is construction related and over \$100,000;
16. Compliance with the prohibition of use of Federal funds for lobbying for contracts in excess of \$100,000; and
17. The prohibition on contracting with parties who have been debarred or suspended by HUD. The Federal Debarred Contractors List can be accessed via the Internet at <http://epls.arnet.gov>.

**CDBG OFFICE REQUIRED**  
**Schedule of Findings and Questioned Costs**  
**For Year Ended \_\_\_\_\_**

Name of Agency \_\_\_\_\_

**Summary of Auditor's Results**

- |  |  |
|--|--|
| 1. Was a Single Audit required?  | Yes <input type="checkbox"/> No <input type="checkbox"/>                     |
| What dollar threshold was used to distinguish between Type A and Type B programs as defined by the Single Audit? (If applicable.)  | \$ _____   |
| 2. Type of auditor's report issued?  |  |
| 3. Internal control over financial reporting:  |  |
| a. Were material weakness(s) identified?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| b. Were reportable condition(s) identified not considered to be material weaknesses?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| c. Was noncompliance material to the financial statements noted?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 4. Internal control over major programs:   |  |
| a. Were material weakness(s) identified?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| b. Were reportable conditions(s) identified not considered to be material weaknesses?  | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 5. Was the indirect cost allocation plan reasonable and acceptable per OMB-A122?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 6. Were the actual costs reasonable and allocated appropriately per OMB-A122?  | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 7. Were the costs allocated to the CDBG Office contracts based on costs incurred, and are they supported by records and documents?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 8. Were any audit findings disclosed that are required to be reported in accordance with Circular A-133, Section .510(a)? (If A-133 Audit conducted, include CFDA No. and amount.) | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 9. Include an identification of all Federal Revenue Sources and dollar amounts by program. (Include State of WI pass-through funds.)   |  |
| 10. List Any Financial Statement Findings.   |  |
| 11. List Any Federal and State Award Findings and Questioned Costs   |  |
| 12. Does the auditor have substantial doubt as to the auditee's ability to continue as a going concern?  | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 13. Does the audit report identify any additional audit issues related to the Agency's CDBG Office grants/contracts?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 14. Does the audit include the schedule of revenues and expenditures by program and revenue source?  | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 15. Does the audit include the schedule of CDBG Office funds expended by program?  | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 16. Does the audit include the schedule of real property assets and the debt recorded against each property?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |
| 17. Was a Management Letter or other document conveying audit comments issued as a result of this audit?   | Yes <input type="checkbox"/> No <input type="checkbox"/> (If Yes, describe.) |

Name and signature of partner: \_\_\_\_\_

Date of report: \_\_\_\_\_

## **ATTACHMENT 9 (CDBG)**

### **EQUAL OPPORTUNITY, ACCESSIBILITY, FAIR HOUSING, SECTION 3, AND MINORITY BUSINESS ENTERPRISE REQUIREMENTS**

#### **I. Non-Discrimination**

Consistent with Federal regulations, the Contractor may not, directly or through contractual licensing or other arrangements, take any of the following actions on the grounds of race, national origin, color, religion, or sex:

1. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity;
2. Provide any facilities, services, financial aid or other benefits which are different, or are provided in a different form, from that provided to others under the program or activity;
3. Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to receipt of any service or benefit under the program or activity;
4. Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;
5. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions which individuals must meet in order to be provided any facilities, services or other benefit provided under the program or activity;
6. Deny an individual an opportunity to participate in a program or activity as an employee;
7. Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;
8. Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;
9. Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or
10. Deny a person the opportunity to participate as a member of planning or advisory boards.

In determining the site or location of housing, accommodations, or facilities, the Contractor may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin,

religion, or sex. The Contractor may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Section 109 and of this Attachment.

Specifically, the Contractor hereby agrees to comply with the following as applicable:

- A. The requirements of the Fair Housing Act (42 U.S.C. 3601-et seq) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 USC 2000d (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;
- B. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
- C. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60;
- D. The requirements of City of Madison Equal Opportunities Ordinance 3.23;
- E. The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (if this Agreement exceeds \$200,000 and provides assistance for the construction, conversion or rehabilitation of housing) that --
  1. 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.
  2. The parties to this Agreement agree to comply with the provisions set forth in 24 CFR Part 135. As evidenced by the execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment which would prevent them from complying with the part 135 regulations.
  3. The Contractor will send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for employment or training 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.
  4. The Contractor will include this Section 3 clause in every subcontract in excess of \$100,000 for work in connection with the project and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this paragraph E, upon a finding that the subcontractor is in violation of 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 regulations in 24 CFR Part 135.

5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before this Agreement 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.
6. Non-compliance with the regulations set forth in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default and debarment from future HUD-assisted contracts.

F. The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), and of 24 CFR 85.36.

Accordingly, the Contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Including qualified women's business enterprises and small and minority businesses on solicitation lists;
2. Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business;
5. Using the services and assistance of the Small Business Administration, and the Office of Minority Business Development Agency of the Department of Commerce; and
6. If any subcontracts are to be let, requiring the prime Contractor to take the affirmative steps in 1 through 5 above.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.

## **II. Nondiscrimination on Basis of Disability**

The Contractor hereby agrees to comply with the City of Madison Ordinance 3.72 "Nondiscrimination based on Disability in City Facilities and City-Assisted Programs and

Activities", and to ensure that any subcontractor who performs any part of this Agreement complies with such provisions where applicable.

The primary provisions of this ordinance require that:

- A. No otherwise qualified individual with a disability shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving City assistance or Federal financial assistance from the Department of Housing and Urban Development.
- B. Each program or activity receiving City assistance or Federal assistance shall be operated so that the program or activity when viewed in its entirety is readily accessible to and usable by persons with disabilities.
- C. The Contractor shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.
- D. The Contractor shall post notices in a format accessible to applicants, beneficiaries and other persons describing the applicable provision of City Ordinance Section 3.72, in the manner prescribed by Section 711 of the Civil Rights Act of 1964.
- E. The Contractor agrees to comply with the City Affirmative Action Department in its requests regarding compliance with Section 3.72 of City of Madison Ordinances.

### **III. Employment Provisions**

- A. No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.
- B. A Contractor shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the Contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its program.
- C. A Contractor may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless the Contractor demonstrates that the test score, or other selection criteria, as used by the Contractor is job related for the position in question.

### **IV. Accessibility**

The Contractor agrees to comply with the provisions of local, State and Federal law regarding accessibility including, but not limited to the Rehabilitation Act, the Fair Housing Amendments Act, the Architectural Barriers Act, the Americans with Disabilities Act, Madison General Ordinance 3.72, the Wisconsin Open Housing Law and all applicable implementing regulations thereto. The primary provision of Section 504 of the Rehabilitation Act of 1973, as amended, requires the following:

#### **A. Non-Housing Facilities**

##### **1. New construction.**

New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with disabilities.

**2. Alterations to facilities.**

Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that a Contractor make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the Contractor's program or activity.

**3. Existing non-housing facilities.**

A Contractor shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not:

- a. Necessarily require a Contractor to make each of its existing non-housing facilities accessible to and usable by individuals with disabilities;
- b. In the case of historic preservation programs or activities, require the Contractor to take any action that would result in a substantial impairment of significant historic features of a historic property; or
- c. Require a Contractor to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the Contractor shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

**Methods**

A Contractor may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with disabilities. A Contractor is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Contractor shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

## **B. Housing Facilities**

In addition, where housing units are being constructed or renovated the following provisions apply in the appropriate situation:

### **1. New Construction**

- a. New multifamily housing projects (including public housing projects as required by 24 CFR 8.25) shall be designed and constructed to be readily accessible to and usable by individuals with disabilities.
- b. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in 24 CFR 8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments. In addition, the entire project must comply with the design requirements of the Wisconsin Open Housing Law.
- c. The City and HUD may prescribe a higher percentage or number than that prescribed in paragraph (2) of this section for any area upon request therefore by any affected Contractor or by any State or local government or agency thereof based upon demonstration to their reasonable satisfaction of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Consolidated Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD or the City shall take into account the expected needs of eligible persons with and without disabilities.

### **2. Substantial Rehab**

If alterations are undertaken to a project (including a public housing project as required by 24 CFR 8.25(a)(2) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 shall apply. In addition, any project of 3 or more units, where more than 50% of the interior square footage is to be remodeled, must comply in total with the design requirements of the Wisconsin Open Housing Law.

### **3. Other Rehab**

- a. Alterations to dwelling units in a multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and



usable by individuals with disabilities. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a Contractor make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project. In addition, any project of 3 or more units must comply with the design requirements of the Wisconsin Open Housing Law.

- b. The City and HUD may prescribe a higher percentage or number than that prescribed in paragraph a. above for any area upon request therefore by an affected Contractor or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Consolidated Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD and the City shall take into account the expected needs of eligible persons with and without disabilities.

## **ATTACHMENT 10** (CDBG)

### **AFFIRMATIVE ACTION REQUIREMENTS**

The Contractor shall comply with the following provisions of Madison General Ordinances Section 3.58(9).

In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, familial status, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

The Contractor agrees that, within thirty (30) days after the effective date of this Agreement, the Contractor will provide to the City of Madison Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the Agreement is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Department of Affirmative Action no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the City of Madison Department of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department of Affirmative Action if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

### **Articles of Agreement**

#### **Article I**

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. 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 insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

## **Article II**

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

## **Article III**

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

## **Article IV**

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true:

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison Ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

## **Article V**

(Reserved for public works contracts)

## **Article VI**

The Contractor will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

## **Article VII**

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.

2. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

#### **Article VIII**

[This article is blank. This article applies to City Public Works projects only.]

#### **Article IX**

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article).

**ATTACHMENT 11 (CDBG)**

**REQUIREMENTS REGARDING LEAD-BASED PAINT**

Contractor will comply with the provisions of the Lead-Based Paint Poisoning Prevention Act 42 USC 3535 (d), 4821 and 4851, and its implementing regulations in 24 CFR 35, as well as State and local laws regarding lead paint.

City of Madison MGO 7.49	Applies whenever exterior painting or remodeling is being done to <u>any property</u> built before 1978.	Establishes standards for paint removal and safe work conditions.
State of Wisconsin Code HFS 163	Applies to any person performing, supervising or offering to perform or supervise a lead-based paint activity involving housing or a child-occupied facility constructed prior to 1978 (unless the property is occupied by the elderly or the disabled or is a zero-bedroom dwelling unit.)	Requires certification of all inspectors, supervisors and workers. Establishes work practice standards.
Federal Lead Paint Regulation 24 CFR, Part 35	Applies to any HUD-CPD funded activity with requirements as listed below based on type of activity.	

1. Summary of the Federal Regulations as implemented by HUD on September 15, 2000:

OPTION	
Presume lead & use safe work practices on all surfaces being disturbed	<p><u>≤ \$5,000 per unit rehabilitation &amp; pre-1978 housing</u></p> <ul style="list-style-type: none"> <li>▪ Test paint on surfaces to be disturbed using a certified lead paint tester.</li> <li>▪ Repair surfaces with LBP disturbed during rehabilitation.</li> <li>▪ Safe work practices &amp; clearance of work site, unless rehabilitation did not disturb painted surfaces of a total area of:               <ul style="list-style-type: none"> <li>Exterior &gt; 20 ft<sup>2</sup></li> <li>Interior &gt; 2 ft<sup>2</sup> in any one interior room or space</li> <li>&gt;10% total surface area of interior or exterior component.</li> </ul> </li> <li>▪ Notification:               <ol style="list-style-type: none"> <li>1. Pamphlet – <i>“Protect Your Family from Lead in Your Home”</i>;</li> <li>2. Disclosure of available information or knowledge regarding presence of lead-based paint;</li> <li>3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead;</li> <li>4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results).</li> </ol> </li> <li>▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.</li> </ul>

OPTION	
<p>Presume lead &amp; perform standard treatments (including paint repair, cover w/polyurethane, plastic, etc., soil)</p>	<p><u>\$5,000 - \$25,000 per unit rehabilitation &amp; pre-1978</u></p> <ul style="list-style-type: none"> <li>▪ Full risk assessment on unit receiving assistance <u>and</u> related common areas <u>and</u> exterior painted surfaces (includes paint testing, dust &amp; soil sampling &amp; visual evaluation) using a certified risk assessor.</li> <li>▪ Interim controls performed on identified hazards (includes paint repair, enclosing or coating chewable surfaces, covering with polyurethane, plastic, etc., and bare soil).</li> <li>▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> <li>Exterior &gt; 20 ft<sup>2</sup></li> <li>Interior &gt; 2 ft<sup>2</sup> in any one interior room or space</li> <li>&gt;10% total surface area of interior or exterior component.</li> </ul> </li> <li>▪ Clearance on unit, related common areas &amp; exterior painted surfaces.</li> <li>▪ Notification: <ol style="list-style-type: none"> <li>1. Pamphlet – <i>“Protect Your Family from Lead in Your Home”</i>;</li> <li>2. Disclosure of available information or knowledge regarding presence of lead-based paint;</li> <li>3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead;</li> <li>4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results).</li> </ol> </li> <li>▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.</li> </ul>
<p>Presume lead &amp; abate all applicable surfaces (deteriorated/ chewable &amp; any surface to be disturbed)</p>	<p><u>&gt;\$25,000 per unit rehabilitation &amp; pre-1978</u></p> <ul style="list-style-type: none"> <li>▪ Risk assessment on unit that is assisted <u>and</u> related common areas <u>and</u> exterior painted surfaces (includes paint testing, dust &amp; soil sampling &amp; visual evaluation) using a certified assessor.</li> <li>▪ Abate all interior &amp; exterior identified hazards that have been disturbed. Remove &amp; replace or encapsulate.</li> <li>▪ Interim controls (includes paint repair, enclosing or coating chewable surfaces, covering w/polyurethane, plastic, etc., and soils) performed on identified hazards on exterior that are not disturbed by rehabilitation.</li> <li>▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> <li>Exterior &gt; 20 ft<sup>2</sup></li> <li>Interior &gt; 2 ft<sup>2</sup> in any one interior room or space</li> <li>&gt;10% total surface area of interior or exterior component.</li> </ul> </li> <li>▪ Clearance on unit, related common areas &amp; exterior painted surfaces.</li> <li>▪ Notification: <ol style="list-style-type: none"> <li>1. Pamphlet – <i>“Protect Your Family from Lead in Your Home”</i>;</li> <li>2. Disclosure of available information or knowledge regarding presence of lead-based paint;</li> <li>3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead;</li> <li>4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results).</li> </ol> </li> <li>▪ Ongoing maintenance every 2 years required for HOME-assisted rehabilitation only.</li> </ul>

OPTION	
Perform paint testing & repair	<p><b>Unit Acquisition, Support Services, Operations &amp; pre-1978</b></p> <ul style="list-style-type: none"> <li>▪ Visual assessment of all painted surfaces in unit <u>and</u> related common areas <u>and</u> exterior painted surfaces to identify deteriorated paint (assessor does not need to be certified).</li> <li>▪ Paint stabilization of deteriorated lead paint (repair defective surface, remove loose paint &amp; apply new paint).</li> <li>▪ Safe work practices, unless rehabilitation did not disturb painted surfaces of a total area of: <ul style="list-style-type: none"> <li>Exterior &gt; 20 ft<sup>2</sup></li> <li>Interior &gt; 2 ft<sup>2</sup> in any one interior room or space</li> <li>&gt;10% total surface area of interior or exterior component.</li> </ul> </li> <li>▪ Clearance on unit, related common areas &amp; exterior painted surfaces.</li> <li>▪ Notifications: <ol style="list-style-type: none"> <li>1. Pamphlet – “Protect Your Family from Lead in Your Home”;</li> <li>2. Disclosure of available information or knowledge regarding presence of lead-based paint;</li> <li>3. Disclosure of test results within 15 days of receiving report or a disclosure of a presumption of lead;</li> <li>4. Notice of hazard reduction activities within 15 days after reduction activities are complete (including clearance results).</li> </ol> </li> <li>▪ Ongoing maintenance every 2 years.</li> </ul>

NOTE: Safe work practices must be completed by a State certified worker. All clearance must be done by a State certified inspector.

2. The State of Wisconsin Department of Health and Family Services (DHFS) adopted rules to reduce lead paint hazards. A summary of the major State requirements affecting CDBG projects is as follows:
  - A. All lead inspectors, project designers, risk assessors, workers and supervisors must be accredited by DHFS.
  - B. A person certified as a supervisor of lead hazard reduction must be on the site at all times when work designed to reduce lead-based paint hazards is being performed and must have her/his certification card on the premises.
  - C. All workers must be individually certified and have their certification cards on the premises.
  - D. The supervisor of the lead hazard reduction work must notify the Wisconsin DHFS a minimum of 10 days prior to commencing the work.
3. The Contractor shall conform to any local rules, including MGO 7.49, which establishes standards for paint removal and safety procedures.

**MGO 7.49  
STANDARDS FOR EXTERIOR PAINTING AND REMODELING**

(1) Scope.

Owners of buildings and structures built before 1978 shall paint or remodel or cause to be painted or remodeled any painted exterior surface of such buildings or structures in conformity with the standards set forth in this section. These standards also apply if

the age of the building or structure cannot be established by the owner to the satisfaction of the Department of Public Health.

- (a) Painting or remodeling includes but is not limited to work involving construction, alteration, repair, painting, paint removal or decorating.
- (b) A painted exterior surface means an exterior surface covered with a paint or other surface coating material.
- (c) An exterior surface may include but is not limited to walls; windows, window assemblies and trim; soffit; fascia; doors, door assemblies and trim; porch and balcony floors and ceilings; column, handrails, and guardrails; and foundations.

(2) Standards for Paint Removal Methods.

- (a) The following methods shall not be used to remove paint or other surface coating materials without the use of adequate engineering controls:
  - 1. Open flame burning;
  - 2. Power tool cleaning including but not limited to machine sanding or machined grinding;
  - 3. Open-air abrasive blasting or stripping using sand, steel grit, steel shot, aluminum oxide, water or other abrasive media.
- (b) The methods listed in Subdivision (a) above may be used only with adequate engineering controls to the extent feasible to reduce public exposure to lead. Adequate engineering controls include but are not limited to vacuum attachments equipped with high efficiency particulate accumulator (HEPA) filters, partial containment structures, total containment structures under negative pressure or other method approved by the Director or Department of Public Health.

(3) Safety Procedures.

- (a) All windows, doors, HVAC intake vents and other entry ways into the building or structure shall be kept closed, or sealed if necessary, while work is being performed.
- (b) Plastic sheeting shall be used to prevent accumulation of dust and debris on the soil, vegetation or other surfaces adjacent to the work area. At a minimum, plastic sheeting shall be securely attached to the building or structure and extend the length of the work area.
- (c) All visible dust and debris in and around the work area and all waste work materials such as tape, plastic sheeting, mop heads, cleaning cloths, sponges, disposable clothing, filters and other disposable work materials must be cleaned up at the end of each work day during the entire painting or remodeling project. The dust, debris and disposable work materials must be placed in double 4 mil or single 6 mil plastic bags.
- (d) Waste generated during the project shall be disposed of in conformance with all applicable local, state and federal laws and regulations. Waste shall be transported and disposed of in such a manner as to prevent lead from becoming airborne.



(4) Warning Notice.

At least two warning signs shall be conspicuously posted adjacent to the work area. The signs shall be posted at the beginning of the project and remain posted until the project has been completed. The signs shall measure at least eleven (11) inches by eight (8) inches and display the following wording:

**Caution – Paint Removal Work Area  
Danger to Children and Pregnant Women**

(5) Exemption.

Persons are exempt from this ordinance if there is no lead-bearing paint present on the surfaces to be painted or remodeled or if there is no lead-bearing paint disturbed by the painting or remodeling process. Lead-bearing paint means any paint or other surface coating material containing more than 0.06% lead by weight, or showing a lead concentration of more than 0.7 milligrams of lead per square centimeter (0.7 mg/cm<sup>2</sup>) of surface area. This determination must be made prior to removing or disturbing the paint by a laboratory certified to do lead analysis through the Environmental Lead Laboratory Accreditation Program. Paint chip samples must be collected according to instructions provided by the accredited laboratory. Acceptable paint chip samples must include all layers of paint and omit any surface material such as wood, masonry, etc. A Finding of no lead-bearing paint must be supported with written documentation showing who performed the testing specifying the company or lab name and address and technician name, the date of testing, the test method used, the location and type of surface tested and the test result for each sample.

(6) Penalties.

Any person violating any of the provisions of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) and each day or fraction of a day on which any provision of this ordinance is violated shall be deemed a separate offense.

(Sec. 7.49 Cr. by Ord. 10,886, 4-14-94)

**ATTACHMENT 12** (CDBG)

**CERTIFICATE OF EXEMPTION FROM FEDERAL LABOR STANDARDS**

The City hereby finds that the Contractor meets the criteria for exemption from the Federal Fair Labor Standards requirements on one of the following grounds:

- a. The Agreement does not involve payment for construction activities or does not involve construction on eight or more residential units at any one site.
- b. The project does not exceed \$2,000 and hence, does not fall under the provisions of the Davis-Bacon Act.

The Contractor agrees to notify the City within five (5) days if the above circumstances change, such that the Contractor no longer meets one of the qualifying criteria; the Contractor further hereby agrees to comply with the Federal Fair Labor Standards where and when they become applicable.

## **ATTACHMENT 13** (CDBG)

### **STATEMENT OF CONSTITUTIONAL PROHIBITION**

The Contractor hereby agrees to comply with provisions of the regulations at 24 CFR 570.200(j), to wit:

Constitutional prohibition. In accordance with First Amendment Church/State Principles, as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG funds.

1. CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes of which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (2) of this section with respect to rehabilitation and under paragraph (4) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a non-religious use.
2. CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:
  - i. The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);
  - ii. The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;
  - iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;
  - iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;
  - v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;
  - vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;
  - vii. The lessee must remit the amount received from the lessor under paragraph (2)(vi) of this section to the recipient or subrecipient from which the CDBG funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (3) of this section.

3. As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from which the CDBG funds are derived that, in connection with the provision of such services:
  - i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
  - ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
  - iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
4. Where the public services provided under paragraph (3) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

## **ATTACHMENT 14 (CDBG)**

### **DISPLACEMENT, RELOCATION AND ACQUISITION**

The Contractor hereby agrees to comply with the provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and its regulations at 49 CFR Part 24; Department of Housing and Urban Development Regulations 24 CFR 570.606, Sec. 32.185 through 32.29, Wis. Stats., and Ch. COMM 202 of Wisconsin Administrative Codes.

(a) *Minimizing displacement.*

Consistent with the other goals and objectives of this part, the Contractor must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with CDBG funds.

(b) *Relocation assistance for displaced persons.*

(1) *General.*

A displaced person (defined in paragraph (b)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and 49 CFR part 24 and Chapter COMM 202 of the Wisconsin Administrative Codes (whichever is greater).

(2) *Displaced Person.*

(i) For purposes of paragraph (b) of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property or moves his or her personal property from real property, permanently, and involuntarily as a direct result of:

- (1) The acquisition of or written notice of intent to acquire, or initiation of negotiations to acquire, real property for a project assisted with CDBG funds; or
- (2) The rehab or demolition of such real property for a project assisted with CDBG funds; or
- (3) The rehab, demolition or acquisition of all or a part of other real property on which the person conducts a business or farm operation, for a project assisted with CDBG funds.

The term displaced person includes, but may not be limited to:

- (A) A person who moves permanently from the property after the property owner (or person in control of the site) issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after:

- (i) The date the applicant submits the request for assistance for a project if the applicant has site control; or
  - (ii) The date the applicant obtains site control, if that occurs after the request for assistance; or
- (B) A person who moves before the date described in paragraph (b)(2)(i)(A) of this section, if HUD or the City determines that the displacement was a direct result of rehabilitation, acquisition or demolition of the project.
- (C) A person who moves permanently from the property after the "initiation of negotiations" if the person has not been issued a Notice of Nondisplacement which offers either:
- (i) The right to remain in the property in accordance with reasonable terms and conditions; or
  - (ii) The opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project.
- (D) A tenant-occupant of a dwelling who received a Notice of Nondisplacement but is required to relocate temporarily for the project, if the tenant does not return to the property and either:
- (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
  - (ii) Other conditions of the temporary relocation are not reasonable.
- (E) A tenant-occupant of a dwelling who received a Notice of Nondisplacement but is required to move to another unit in the building/complex, if the tenant moves from the building/complex permanently and either:
- (i) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;
  - (ii) Other conditions of the move are not reasonable.
- (F) A nonresidential tenant who received a Notice of Nondisplacement, but moves permanently from the building, if the terms and conditions under which the tenant may remain are not reasonable;
- (G) A tenant of a dwelling who moves from a residential structure, permanently, as a direct result of the leasing of other units in the structure that changes the residential character/use of the structure to a public character/use.
- (ii) Notwithstanding paragraph (b)(2)(i) of this section, the term "displaced person" does not include:
- (A) A person who is evicted for cause based upon serious or repeated violation of material terms of the lease or occupancy agreement. To

exclude a person on this basis, the City must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

- (B) A person who has no legal right to occupy the property under State or local law;
  - (C) A person who the Contractor determines occupied the property for the purpose of obtaining relocation assistance and the City and HUD concur with that determination;
  - (D) A tenant/occupant who at the time they moved into the property was provided written notice of the application for assistance for the project, the project's possible impact on the persons and the fact that he or she would not qualify as a "displaced person" as a result of the project.
  - (E) A tenant/occupant of a substandard dwelling that is acquired and/or emergency repairs to the dwelling are undertaken, and the City and HUD determine that:
    - (i) Such repairs and/or acquisition will benefit the tenant; or
    - (ii) It is not feasible to bring the unit up to decent, safe, and sanitary condition; or
    - (iii) The tenant's new rent and average estimated monthly utility costs will not exceed the greater of:
      - (1) the old rent/utility costs, or
      - (2) 30% of the gross household income; and
    - (iv) The project will not impose any unreasonable change in the character or use of the property; and the tenant will not be required to move, unless it is for a short period necessitated by the project and the tenant is reimbursed for all reasonable out-of-pocket costs associated with the temporary relocation.
  - (F) The person is an owner-occupant of the property who moves as a result of an arm's length acquisition or as a result of the voluntary rehabilitation or demolition of the property.
  - (G) The person, after receiving a notice of eligibility for relocation assistance, is notified in writing that he or she will not be displaced for the project.
  - (H) The person retains the right of use and occupancy of the real property for life following its acquisition by the Contractor.
  - (I) The City and HUD determine that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition of the project.
- (iii) The City may, at any time, ask HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.*

For purposes of determining the type of replacement housing assistance to be provided under URA levels, if the displacement is the direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the grant or loan agreement between the City and the person owning or controlling the property.

(c) *Residential antidisplacement and relocation assistance plan.*

The City shall comply with the requirements of 24 CFR Part 42, subpart C.

(d) *Real property acquisition requirements.*

The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) One for one replacement of lower-income dwelling units.

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income permanent dwelling units in connection with an activity assisted under this part, must be replaced with lower-income dwelling units.

Before obligating or expending any CDBG funds provided for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the Contractor must submit the following information in writing to the CDBG Office for submittal to HUD:

1. A description of the proposed assisted activity;
2. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;
3. A time schedule for the commencement and completion of the demolition or conversion;

In addition, the Contractor will cooperate with the CDBG Office in developing the following information for submittal to HUD;

1. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
2. The source of funding and a time schedule for the provision of replacement dwelling units;
3. The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy.



(f) *Relocation assistance under Section 104(d).*

Under 42 USC 5304(d), each "displaced person" is entitled to choose to receive either assistance at URA levels (see paragraph (b) of this section) or the 104(d) levels described in section 570.606(c).

(g) *Appeals.*

If a person disagrees with the City's determination concerning the person's eligibility for, or the amount of relocation assistance for which the person may be eligible, the person may file a written appeal of that determination with the City. The appeal procedures are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the City's decision to the HUD Field Office.

Additional Requirements

The Contractor must submit a completed relocation plan to the State of Wisconsin for approval, along with a copy to the CDBG Office. Any offer to purchase a property must be contingent upon State approval of such a plan.

The Contractor further agrees to:

1. Notify the CDBG Office of the identification of a potential site prior to the initiation of negotiations resulting in the acquisition and/or rehabilitation of a property; and
2. Inform in writing each owner at the time of the initiation of negotiation of such a property of their rights and responsibilities under the Relocation Act.
3. Inform in writing each tenant at the time of the initiation of negotiation of such a property, or at the time rehabilitation is considered in the case of an agency who already owns the property, of the potential for displacement of non-displacement, conditions of continued occupancy, or potential eligibility for relocation assistance and cautioning the tenant not to move in order to avoid jeopardizing potential relocation benefits if the project does proceed and individuals are displaced.
4. Maintain all records as required under the Relocation Act.

Note: For a more comprehensive review of all of the requirements, contact the CDBG Office.