

CDBG SUBRECIPIENT AGREEMENT

THIS CONTRACT, made and entered into this _____ day of _____, 20__ by and between _____, IOWA, (hereinafter called the "Local Government"); and, _____, (hereinafter called "the Subrecipient") WITNESSETH THAT:

WHEREAS, the Local Government, at the request of the Subrecipient, has applied to the Iowa Economic Development Authority for a grant of federal funds from the U.S. Department of Housing and Urban Development pursuant to Title I of the Housing and Community Development Act of 1974 and Chapter 23 of the Iowa Administrative Code in order to: _____; and,

WHEREAS, the Local Government has been awarded a grant of funds as aforesaid in the amount of \$_____ subject to the condition that the Local Government provide a local matching contribution in the amount of \$_____; and,

WHEREAS, the parties hereto desire to make a written agreement with respect to said funds and the implementation of the project to which they pertain;

NOW, THEREFORE, the parties hereto have agreed to the terms and conditions as hereafter stated:

Section 1. **Matching Funds.** The Subrecipient shall expend the sum of \$_____ of its own funds constituting _____% of the local matching contribution _____.

Section 2. **Contracts and Services.** As applicable, _____ and _____ shall, for the purpose of completing the aforesaid proposed project, proceed forthwith to engage the services of an architect/engineer or other professional, adopt plans and specifications as required, and award construction or other contracts in accordance with the laws and regulations of the State of Iowa and of the United States.

Section 3. **Administration.** The administration of the CDBG Contract #_____ and all transactions involving the expenditure of any of the grant funds within the scope of said contract shall be the sole prerogative of the Local Government carried out in such manner as it deems appropriate and consistent with Title I of the Housing and Community Development Act of 1974, 261--Chapter 23 of the Iowa Administrative Code and the contract between IEDA and the Local Government.

Section 4. **Property Ownership.** Any and all improvements or property, real or personal, constructed, installed, or acquired pursuant to this contract shall be and remain the property of the Subrecipient, under the following conditions (if any) _____. If, from the date funds are first spent for the property until five years after closeout of the Local Government's grant the use or planned use of the property is proposed to be changed, then the Subrecipient shall notify the Local Government of the proposed change. The Local Government shall contact the Iowa Economic Development Authority for instructions on how to proceed. If the Subrecipient proceeds with a use determined by the IEDA to be inconsistent with the use of the CDBG funds, the Subrecipient shall reimburse the Local Government and the Local Government shall reimburse the IEDA in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds.

Section 5. **Proposed Project.** The Subrecipient shall grant access to the premises and Subrecipients' program records for the Local Government and its contractors to perform such required functions consistent with the CDBG contract as the Local Government shall deem appropriate.

Section 6. **Excess Costs.** It is agreed that if the construction of said project results in contractual liability of the Local Government in an amount greater than said funds as stated in Section 1, the Subrecipient shall be responsible for covering 100% of excess costs and hold the Local Government free of any contractual liability.

Section 7. **Indemnification.** The Subrecipient shall hold the Local Government and its officers and employees harmless from any and all claims, losses, damages or liability whatsoever resulting from or arising out of this contract or the project to which is pertains.

Section 8. **Unallowable Costs.** If the Local Government determines at any time, whether through monitoring, audit, closeout procedures or by other means or process that the Subrecipient has expended funds which are unallowable, the Subrecipient will be notified of the questioned costs and given an opportunity to justify questioned costs prior to Local Government's final determination of the disallowance of costs. If it is Local Government's final determination that costs previously paid by the Local Government are unallowable under the terms of the Agreement, the expenditures will be disallowed and the Subrecipient shall repay to Local Government any and all disallowed costs.

Section 9. **Events of Default.** The following shall constitute Events of Default under this Agreement:

- a. **Material Misrepresentation.** If at any time any representation, warranty or statement made or furnished to the Local Government by, or on behalf of the Subrecipient in connection with this Agreement or to induce the Local Government to make a grant to the Subrecipient shall be determined by the Local Government to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to the Local Government's satisfaction within thirty (30) days after written notice by the Local Government is given to the Subrecipient.
- b. **Noncompliance.** If there is a failure by the Subrecipient to comply with any of the covenants, terms or conditions contained in this Agreement.
- c. **Agreement Expiration Date.** If the Project, in the sole judgment of the Local Government, is not completed on or before the Agreement Expiration Date.
- d. **Misspending.** If the Subrecipient expends Grant proceeds for purposes not described in the CDBG application, this Agreement, or as authorized by the Local Government.
- e. **Insurance.** The following provision shall apply to Activity Number(s) _____. If loss, theft, damage or destruction of any substantial portion of the property of the Subrecipient occurs for which there is either no insurance coverage or for which, in the opinion of the Local Government, there is insufficient insurance coverage.

Section 10. **Notice of Default.** Local Government shall issue a written notice of default providing therein a fifteen (15) day period in which the Subrecipient shall have an opportunity to cure, provided that cure is possible and feasible.

Section 11. **Remedies upon Default.** If, after opportunity to cure, the default remains, Local Government shall have the right, in addition to any rights and remedies available to it to do one or both of the following:

- a. exercise any remedy provided by law;
- b. require immediate repayment of up to the full amount of funds disbursed to the Subrecipient under this Agreement plus interest.

Section 12. **Miscellaneous.** Neither party to this contract shall assign its rights and obligations hereunder without the prior written authorization of the other party. This contract shall be governed by the laws of the State of Iowa. In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The terms and conditions of this contract may be amended only by written instrument

executed by both parties and, when necessary, with the concurrence of the State of Iowa, Iowa Economic Development Authority. Such amendments include any deviation from the recipient program schedule, or other terms and conditions provided for by the Iowa Economic Development Authority contract number which is by this reference incorporated herein and made a part hereof of this Subrecipient agreement.

Section 13. Federal Laws. By virtue of the federal funding provided for under this agreement, the parties hereto shall be bound by and adhere to all applicable federal laws, rules, policies, orders, and directions, including by way of specification but not limited to the following:

- a. The requirements of Executive Order 11246, as amended by Presidential Executive Order 11375 and the regulations issued under the Order at 41 CFR Chapter 60.
- b. The requirements of Executive Orders 11625, 12432, and 12138. Consistent with responsibilities under these Orders, the provider must make efforts to encourage the use of minority- and women-owned business enterprises in connection with activities funded under this part.
- c. The maintenance of books, records, documents and other such evidence pertaining to all costs and expenses incurred and revenues received under this contract/subagreement to the extent and in such detail as will properly reflect all costs, direct and indirect, of labor, materials, and equipment, supplies, services, and other costs and expenses of whatever nature, for which payment is claimed under their contract/subagreement as specified in 261- Chapter 23, Iowa Administrative Code and 2 CRF 200
- d. At any time during normal business hours and as frequently as deemed necessary, the parties heretofore shall make available to the Iowa Economic Development Authority, the State Auditor, the General Accounting Office, and the Department of Housing and Urban Development, for their examination, all of its records pertaining to all matters covered by this contract/subagreement and permit these agencies to audit, examine, make excerpts or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this contract/subagreement.
- e. Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5), where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); the Copeland Anti-Kickback Act (18 U.S.C. 874); and regulations which implement these laws.
- f. Contracts in excess of \$100,000 shall require compliance with the following laws and regulations: Section 306 of the Clean Air Acts (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; EPA Regulations - 40 CFR, Part 15; as applicable.
- g. Procurement. For purposes of this agreement Cities and Counties are required to adopt the federal procurement policies and procedures that align with Federal provisions of 2 CFR 200.318-200.326. The Procurement Policy is found in "Iowa Community Development Block Grant Management Guide", as found on the Authority's website at www.iowaeconomicdevelopment.com/Community/CDBG.
- h. BABA requirements. The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.
- i. CIVIL RIGHTS

(a) DISCRIMINATION IN EMPLOYMENT. The Recipient shall not discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, national origin, age, sexual orientation, gender identity, familial status, physical or mental disability. The Recipient may take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, color, religion, sex, national origin, age, sexual orientation, familial status, gender identity, or physical or mental disability. Such action shall include, but may not be limited to, the following: employment, upgrading, promotion, demotion or transfers; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including an apprenticeship. The Recipient agrees to post notices setting forth the provisions of the nondiscrimination clause in conspicuous places so as to be available to employees. Upon the State's written request, the Recipient shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

(b) CONSIDERATION FOR EMPLOYMENT. The Recipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, sexual orientation, gender identity, physical or mental disability, or familial status.

(c) SOLICITATION AND ADVERTISEMENT. The Recipient shall list all suitable employment openings in the State Employment Service local offices.

(d) CIVIL RIGHTS COMPLIANCE IN EMPLOYMENT. The Recipient shall comply with all relevant provisions of the Iowa Civil Rights Act of 1965 as amended; Chapter 19B.7 and Chapter 216, Code of Iowa; Federal Executive Order 11246, as amended; Title VI of the U.S. Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d et seq.); the Fair Labor Standards Act (29 U.S.C. Section 201 et seq.); The Americans with Disabilities Act, as applicable, (P.L. 101 336, 42 U.S.C. 12101-12213); Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. Section 794); and the Age Discrimination Act of 1975 as amended (42 U.S.C. Section 6101 et seq.). The Recipient will furnish all information and reports requested by the State of Iowa or required by or pursuant to the rules and regulations thereof and will permit access to payroll and employment records by the State of Iowa to investigate compliance with these rules and regulations.

(e) CERTIFICATION REGARDING GOVERNMENT-WIDE RESTRICTION ON LOBBYING. The Recipient certifies, to the best of his or her knowledge and belief, that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, 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 awarding any Federal contract, making any Federal grant, making any Federal loan, entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(ii) 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, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.

(iii) The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(iv) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(f) PROGRAM NONDISCRIMINATION. The Recipient shall conform with requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and HUD regulations issued pursuant thereto contained in 24 CFR Part 1. No person in the United States shall, on the basis of race, color, national origin, sex or religion or religious affiliation, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available through this Contract. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et. seq.) or with respect to an otherwise qualified individual with a disability as provided in the Americans with Disabilities Act, as applicable, (P.L. 101 336, 42 U.S.C. 12101 12213) or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) shall also apply to any such program or Project.

(g) FAIR HOUSING. The Recipient shall comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), generally known as the Fair Housing Act, and with HUD regulations found at 24 CFR Part 107, issued in compliance with Federal Executive Order 11063, as amended by Federal Executive Order 12259. The recipient shall also comply with Section 109, Title I of the Housing and Community Development Act of 1974, as amended.

(h) SECTION 3 COMPLIANCE. The Recipient shall comply with provisions for training, employment, and contracting in accordance with 24 CFR part 75, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). 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.

(ii) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

(iii) The contractor agrees to post copies of a notice advising workers of the Contractor's commitments under Section 3 in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to provide written notice of employment and contracting opportunities to all known Section 3 Workers and Section 3 Businesses.

(v) The contractor agrees to hire, to the greatest extent feasible, Section 3 workers as new hires, or provide written justification to the recipient that is consistent with 24 CFR Part 75, describing why it was unable to meet minimum numerical hiring goals, despite its efforts to comply with the provisions of this clause.

(vi) The contractor agrees to maintain records documenting Section 3 residents that were hired to work on previous Section 3 covered projects or activities that were retained by the contractor for subsequent Section 3 covered projects or activities.

(vii) The contractor agrees to post contract and job opportunities to the Opportunity Portal, and will check the Business Registry for businesses located in the project area.

(viii) The contractor agrees to include compliance with Section 3 requirements in every subcontract for Section 3 projects as defined in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

(ix) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

(x) The contractor will certify that they have followed prioritization of effort in 24 CFR part 75.19 for all employment and training opportunities. The contractor will further certify that it meets or exceeds the applicable Section 3 benchmarks, defined in 24 CFR Part 75.23, and if not, shall describe in detail the qualitative efforts it has taken to pursue low- and very low-income persons for economic opportunities.

(xi) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(i) **NONCOMPLIANCE WITH THE CIVIL RIGHTS LAWS.** In the event of the Recipient's noncompliance with the nondiscrimination clauses of this Contract or with any of the aforesaid rules, regulations, or requests, this Contract may be canceled, terminated, or suspended either wholly or in part. In addition, the State of Iowa may take further action, imposing other sanctions and invoking additional remedies as provided by the Iowa Civil Rights Act of 1965 (Chapter 216, Code of Iowa) or as otherwise provided by law.

(j). Others as applicable

Section 14. **Termination.** The following shall constitute Events of Default under this Agreement:

- a. FOR CAUSE. The Local Government may terminate the Contract in whole, or in part, whenever the Local Government determines that the Subrecipient has failed to comply with the terms and conditions of the Contract.
- b. FOR CONVENIENCE. The Parties may terminate the Contract in whole, or in part, when all parties agree that the continuation of the Project would not produce beneficial results commensurate with the future disbursement of funds.
- c. DUE TO REDUCTION OR TERMINATION OF CDBG FUNDING. At the discretion of the Local Government, the Contract may be terminated in whole, or in part, if there is a reduction or termination of the CDBG Federal block grant funds to the State.

Section 15. **Procedures Upon Termination.** This contract may be terminated by discretion of the Local Government by providing written notice to be conveyed via certified mail 30 days in advance. Project costs incurred to be paid through the effective termination date.

Section 16. **Duplication of Benefits.**

- a. The parties acknowledge that activities identified in this agreement are funded through the state of Iowa's CDBG-CV funds, allocated through the CARES Act.
- b. The parties acknowledge that prevention of Duplication of Benefits is a requirement per the CARES Act and corresponding HUD Federal Register Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs. (FR-6218-N-01).
- c. For CDBG activities identified in this agreement, the parties agree to prevent Duplication of Benefits as required by Section 312 of the Stafford Act, as amended by Section 1210 of the Disaster Recovery Act of 2018.
- d. The Subrecipient agrees to follow the Duplication of Benefits policies and procedures as provided by the Local Government.
- e. The Subrecipient agrees to repay CDBG-CV funds received from the Local Government, if the Local Government determines a Duplication of Benefits has occurred.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives.

LOCAL GOVERNMENT: _____

By: _____ Date: ____ / ____ / ____

Attested By: _____ Date: ____ / ____ / ____

SUBRECIPIENT: _____

By: _____ Date: ____ / ____ / ____

Attested by: _____ Date: ____ / ____ / ____