

CDBG-DR 5-4c
LEGALLY BINDING AGREEMENT
EXHIBIT I
STANDARD PROVISIONS

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

1. **Unexpended Grant Funds:** The Non-Profit (and/or) Participating Party agrees that it will return to the Recipient any unexpended grant funds provided by the Recipient under this Agreement.
2. **Program Income:**
3. **Limitation of Liability:** The Non-Profit (and/or) Participating Party will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that s/he is an agent or employee of the Recipient.
4. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG-DR funds for use on this project, shall be vested in the Subrecipient. When the Subrecipient determines that the property is no longer required for the purposes of this project, the Subrecipient must notify the Department of Local Government (DLG) and obtain approval for disposition of the property in accordance with applicable guidelines.
5. **Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.
The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.
Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Non-Profit (and/or) Participating Party shall be notified in writing of any such changes when they occur and they shall be incorporated in writing into this contract/agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the Non-Profit (and/or) Participating Party.
6. **Terms and Conditions:** The Subrecipient reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the Community Development Block Grant - Disaster Recovery Program.

7. **Reporting Requirements:** The Non-Profit (and/or) Participating Party agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the Subrecipient.
8. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five (5) years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five (5) year period, then records must be retained for five (5) years after the litigation, claim or audit is resolved.
9. **Access to Records:** Records with respect to all matters covered by this agreement shall be made available for audit and inspection by the Subrecipient, DLG, HUD or their representatives.
10. **Sanctions:** If the Non-Profit (and/or) Participating Party fails or refuses to comply with the provisions set forth herein, then DLG or the Recipient may take any or all of the following sanctions: cancel, terminate or suspend in whole or in part this agreement, or refrain from extending any further funds to the Non-Profit (and/or) Participating Party until such time as the Non-Profit (and/or) Participating Party is in full compliance.
11. **Applicable Law:** In addition to the applicable Federal Laws and Regulations, this agreement is also made under and shall be construed in accordance with the laws of the Commonwealth of Kentucky. By execution of this agreement, the Non-Profit (and/or) Participating Party agrees to submit to the jurisdiction of the Commonwealth of Kentucky for all matters arising or to arise hereunder, including but not limited to performance of said agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
12. **Uniform Administrative requirements:** The Non-Profit (and/or) Participating Party shall adhere to the following administrative requirements:
 - Financial:** Guidelines for financial and compliance audits of Federally assisted programs which are OMB Circular A-133, and OMB Super Circular.
 - Procurement:** The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG-DR funds by the Recipient and the Non-Profit (and/or) Participating Party.

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

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

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

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

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

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

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

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

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

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

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

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

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

14. **Compliance with Air and Water Acts:** Applicable to construction contracts and related subcontracts exceeding \$100,000: This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time.
- A. A stipulation by the Contractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
 - B. Agreement by the Contractor to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857c-8-0 and section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said section 114 and 308, and all regulations and guidelines issued thereunder.
 - C. A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
 - D. Agreement by the Non-Profit (and/or) Participating Party that he will include or cause to be included the criteria and requirements in paragraph (A) through (D) of this agreement, in every nonexempt subcontract and requiring that the Contractor will take such action as the State may direct as a means of enforcing such provisions.

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

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

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

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

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

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

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

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

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

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

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

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

The Non-Profit (and/or) Participating Party will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the Non-Profit (and/or) Participating Party's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

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

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