

**F. ECONOMIC DEVELOPMENT**

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## **F. ECONOMIC DEVELOPMENT**

### **Introduction**

This section presents the special requirements that apply to Economic Development projects as a part of the Louisiana Community Development Block Grant Program. Economic Development projects can take several forms. First of all, a project may consist of a loan to a business to procure such items as land, commercial-industrial facilities, commercial-industrial equipment, or inventory. Economic Development projects may consist of a loan to a business to finance construction of on-site development. Economic Development projects may also take the form of grants to local governments to purchase land, buildings, et cetera or for public infrastructure improvements to assist a business.

Economic Development projects are subject to the same federal provisions as housing and public facility projects. However, due to different types of activities and participants, certain provisions become more important or apply differently.

This section refers to other sections in the Handbook that apply to most Economic Development projects and lists additional requirements. It also discusses areas that are particular to Economic Development projects.

The text discusses the requirements of each task, references required forms and cites examples of work contained in the supporting materials.

### **Task F-1: Program Administration**

Items previously discussed in the Program Administration Section of the Handbook are also applicable to administering an Economic Development program. Following preliminary approval of a project, some application revisions may be requested such as a new performance schedule or a revised cost summary form. The same documents which must be submitted to this office in order to obtain a release of funds for other CDBG programs, i.e. environmental review record, anti-displacement resolution, community development plan, signature cards, depositary cards, et cetera, must also be submitted for ED programs. In addition, other documents which pertain only to ED programs will be required to obtain a release of funds. These documents and other requirements for the Economic Development program are discussed in this Section.

After the local governing body receives an authorization to incur cost for planning and administration, the State will send the local governing body a contract (State contract) which details the responsibilities of the assisted business (“developer”) and the local governing body. The local governing body will develop a Written Agreement between it and the developer incorporating the provisions of the State contract (24 CFR 570.506 (b)(5) ). The Written Agreement will either be in the form of a Two Party Agreement for infrastructure projects or a Three Party Agreement for

projects that provide direct financial assistance in the form of a loan. **Exhibit F-1** contains a sample written agreement. The shaded portions of the sample written agreement are pertinent to a loan and must be used only for the Three Party Agreement. The local governing body can develop a Two Party Agreement from the sample by removing the shaded portions. This is only a sample since each project is unique and the local governing body has some latitude in negotiating the best possible arrangements with the assisted business. There are basically three requirements for either form of the written agreement. The written agreement must set forth at a minimum the following:

1. All basic activities and responsibilities as established in Contract Exhibits A, B, C, and D of the Grant Agreement (Contract between the State and the Local Governing Body).
2. Specification of all related federal and State provisions and regulations as included in Contract Exhibit F of the Grant Agreement.
3. A statement to the effect that the agreement is contingent upon a release of funds, thereby avoiding any environmental concerns.

In addition to the written agreement, other evidentiary materials must be submitted to this office. Contract Exhibits C and D of the Grant Agreement outlines all required evidentiary materials that must be sent to this office. Local governments are allowed one hundred and eighty (180) days from the date of the Authorization to Incur Cost to submit all evidentiary materials.

Some items of evidentiary materials that are commonly submitted include but are not limited to the following:

1. Written Agreement - This is a legally binding agreement between the developer and the local governing body, (and the State for a Three Party Agreement) which specifies all parties' responsibilities in implementing the ED project. As indicated earlier, this document should contain all provisions outlined in the State Contract. This document should contain provisions which protect the local governing body and the State as well.
2. Mortgage Agreements – (*Loan projects only*) Security is required for all CDBG loans and fully executed mortgage agreements must be submitted to this office. See the LCDBG ED staff for samples of these documents.
3. Evidence of Developer's Private Investment- Fully executed loan agreements with bank, public entities, et cetera, which indicates the dollar amount and terms of the loans, must be submitted. Depending on the source of the Developer's financial commitment, documentation of the evidence will vary. **Exhibit F-2** provides a sample Evidence of Developer's Commitment.
4. A resolution establishing authority of persons to enter into the Written Agreement and other legal documents on behalf of the corporation. See **Exhibit F-3** for a sample resolution.

5. Certification of Legally Binding Agreements - The local governing body's legal counsel certifies the genuineness of the above referenced documents and the authority of all parties to sign the documents. Further, it states that the documents constitute a valid and legally enforceable contract under the laws of the State of Louisiana and is in conformity with the LCDBG Grant Agreement/Contract (**Exhibit F-4**). It is important for your attorney to be actively involved in this process due to potential liability faced by the local governing body.

As indicated earlier, the above represents some of the evidentiary materials required to be submitted to the State prior to release of funds. However, other documents specified in Section A of this Handbook must also be submitted in order to receive a release of funds.

Economic Development projects must comply with all environmental review requirements discussed in Section A (**Task A-2**). One of the common problems noted with Economic Development projects is that a finding of "Categorical Exclusion" (24 CFR Part 58.35) is made in many cases where inappropriate. This is most common where it is argued that the project may be categorically excluded due to only a minimal change in use, size, capacity or location, et cetera and because it is consistent with the allowed use of the site, et cetera. These determinations are difficult to make and require an in depth analysis of the proposed changes. You must closely follow the regulations in making the determination. Please contact your Local Government Representative prior to making a finding of categorical exclusion for an Economic Development project.

The most important fact to consider regarding Economic Development projects and environmental review is that no project activities (other than "Exempt" activities) may be undertaken or EVEN LEGALLY OBLIGATED from the time the application is submitted until all project activities are environmentally cleared. No monies may be reimbursed with LCDBG funds except those costs relating to engineering and planning. See **Exhibit F-5** for a listing of common questions regarding Release of Funds.

Once your project has received the Notice of Approval of Evidentiary Materials and Release of Funds, you may submit a Request for Payment. This process is described in Section A. However, most Economic Development projects have conditions set forth in the State contract that must occur before funds are drawn. Usually the conditions involve expenditures of private sector funds and accumulation and presentation of invoices. Be especially careful in following the provisions of the State contract.

If all conditions of the State contract are met and a draw request is granted, a financial management system must be in place to receive and account for LCDBG funds (**Tasks A-3** and **A-4**). If the Economic Development project involves a loan to a business, a loan closing should be held for presentation of the check to an appropriate company representative, if needed. Prior to the loan closing, security documents such as mortgages, promissory notes, loan agreements and/or security agreements must have been signed. These documents must be prepared by your City/Parish attorney. If examples are needed, they are available from the State. Funds for equipment will be requested by the local government when the equipment is received and invoiced. If you have questions, contact your grant representative.

It is important that all economic development loans be secured as soundly as possible and that the repayment schedule and all requirements set forth in a Three Party Agreement are understood clearly by the payor and payee. Your bank or attorney should be able to produce a payment schedule with principal and interest clearly delineated. The State will prepare a revised payment schedule for recipients if the actual drawdown deviates from the program schedule. Be sure to follow all LCDBG contract requirements and provisions identified in the State contract. One very important requirement is the submittal of quarterly financial reports. These reports are due no later than 30 days after the end of the quarter. For instructions, see Task F-10

Section A also discusses the subject of procurement. Economic Development projects often involve the private sector party procuring services such as engineering. Private sector entities are not subject to the provision of 24 CFR 85.36 even when the activity is financed with federal funds. However, all contract provisions apply to public sector procurements.

In addition, there are citizen participation requirements outlined in **Task A-13** which the grantee must comply with. Finally, Equal Opportunity and Fair Housing requirements are also part of Economic Development program administration (**Tasks A-11** and **A-12**). Grantees must insure that they comply with all the provisions contained in their Statement of Assurances.

### **Task F-2: Public Facilities**

The requirements discussed in Public Facilities, Section B, pertain to construction work financed in whole or in part with LCDBG funds. This section therefore applies to Economic Development projects. The only difference is that 24 CFR 85.36 does not apply if the construction contract is between the private sector party and the contractor. All other provisions regarding applicability of labor and equal opportunity standards do apply. Therefore, the format and contents of the contract must be basically the same as those provided in Public Facilities, Section B. The contract oversight requirements, such as posted construction sites, employee interviews, payroll reviews, et cetera, are the same.

### **Task F-3: Acquisition**

The Acquisition Section presents the requirements that apply to real property acquisition in connection with LCDBG financed projects. Therefore, this section is important to many Economic Development projects, especially those involving new infrastructure construction or site acquisition.

The most important consideration for Economic Development recipients is whether the Uniform Act (Act) applies to any part of the project.

There are two (2) similar but different instances when your project must follow the Act requirements.

First, the Act will be triggered if the public entity, i.e., a city, parish redevelopment agency or any other entity which has legal power to expropriate land and acquire privately held property under

Louisiana law, is acquiring the property with LCDBG funds, whether the activity is funded wholly or in part with Block Grant funds.

Second, the Uniform Act can in most instances be triggered when a private company, which does not have expropriation power, acquires property with LCDBG funds or private funds, prior to or after the award of a LCDBG Award, knowing that the success of their business depends on the receipt of LCDBG funds.

Prior to any purchase of real property by the local governing body or the developer, contact the Office of Community Development. This will avoid costly time delays and/or disallowed costs associated with the economic development program.

When you contact OCD about acquisition, we will advise you of your responsibilities regarding the Uniform Act and instruct you on how to proceed. You will also be given a copy of the HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition as a guide for you to initiate the proper steps in the Uniform Act process.

The above applies for easements or servitudes (excluding construction easements) that you may need to acquire in conjunction with your program.

#### **Task F-4: Relocation**

Relocation refers to the physical movement of people, families, businesses, whether commercial or industrial, and farm operations as a direct result of activities in connection with any LCDBG project. The requirements for Relocation are discussed in the Relocation Section of the Handbook. Regardless of who or what is being relocated within your project, you should meet with the state staff as early as possible in the application development to deal with this complicated process. Again, the State will provide you with HUD's Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition for your benefit in accomplishing this task.

#### **Task F-5: Davis-Bacon and Related Acts**

Public Facilities, Section B, provides information regarding labor provisions applicable to LCDBG projects. It is important that the City/Parish staff read section B if their project involves construction. Generally, the question of Davis-Bacon applicability to public facility projects is quite clear, and public funds are budgeted for the extra costs that may pertain to covered projects.

The question of applicability takes on greater significance when dealing with economic development projects since the private sector portion of the project can be affected financially by labor provision applicability to the entire project. 42 USC 5310 states that Davis-Bacon wage rates must be paid to laborers or mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with LCDBG assistance. If construction is not involved, Davis Bacon requirements will not apply.

Equipment - HUD has provided the framework to determine whether Davis-Bacon and related labor provisions apply to the installation of equipment, and if its application to equipment will trigger Davis-Bacon to other parts of the project. The policy is provided in **Exhibit F-6**. For your guidance, the following opinions have been written by HUD in response to LCDBG inquiries:

1. LCDBG funds to be used to purchase furniture, fixtures, maintenance equipment, televisions, telephone equipment and registration equipment will not necessitate the application of Davis-Bacon wage rates. This applies if the equipment analysis provided by the developer does not show any installation costs.
2. Department of Labor considers Davis-Bacon coverage of equipment to depend to a great extent on whether the installation of the equipment in question involves more than an incidental amount of construction work.
  - a. As an example, installation costs of \$68,338.80 were found to be more than incidental for \$402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates were applicable to laborers and mechanics involved in installation of the equipment.
  - b. Installation costs of \$29,388.80 were found to be incidental for \$402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates were not applicable to laborers and mechanics in that project who were involved in installation of the equipment or in the construction of the physical plant in which it would be located.
3. Where LCDBG was used to finance equipment, the following items were believed to trigger Davis-Bacon: time clock with card racks, overhead crane system/hoist, air lines and fire extinguisher. The reason for this was the attachment to the building.
4. According to the U. S. Attorney General, Section 110 (Davis-Bacon Act) does not require the payment of prevailing wages with respect to installation where federal funds are provided exclusively for the purchase of equipment and not for its installation.

Every effort must be made to address the equipment issue during the application process. If LCDBG funds are to be used to purchase equipment, an equipment analysis form must be submitted to this office. **Exhibit F-7** is a copy of this form. All LCDBG financed items of equipment must be listed. A determination will be made based on the particular listing. Should the items of equipment change or the amount of installation required increase, the determination may not be valid. Therefore, changes in the items will generally not be permitted. Should a change become necessary and be considered appropriate, the project will require a formal Program Amendment and a re-evaluation of the equipment analysis forms.

Site Preparation - LCDBG financed work on-site will trigger Davis-Bacon. This matter is constantly undergoing scrutiny by HUD and the Department of Labor. The State will try to keep LCDBG recipients as informed and protected as possible.

## **Task F-6: Closeout**

Closeout is addressed in Section H of this handbook. Many Economic Development projects can move to closeout fairly quickly due to the fact that many involve a one-time draw. ED projects may not be conditionally closed out until all funds (private, public and local) have been expended, all jobs created, low-mod employees verified and the projects monitored by the State. In addition, all monitoring and audit findings must be resolved and if the project involves a loan, payments must be up-to-date. See Section H for closeout forms and instructions.

Please pay particular attention to the following items in the Program Completion Report (PCR):

1. The amount of total private and public investment in a project must be listed in the PCR and documented in project files. Before grant award is made, the total financial package is judged and the need for LCDBG assistance determined. Therefore, it is very important that a recipient be able to document that all financial injections in the project have been accomplished. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, audits, canceled checks, etc. A project cannot be closed until all other funds in a project are expended. If all investment has not been made, the project must remain open with periodic reporting. Under the circumstances where the private investment is very large, an amendment to the Grant Agreement may be approved to lower the amount of other funds required.
2. In economic development projects, a recipient must report the number of jobs created/retained as direct beneficiaries. **Task F-8** discusses documenting jobs. A grant may not be closed until all jobs are created/retained and the National Objective met.
3. The PCR must include a report of any repayment. This is addressed in **Task F-7**.
4. The PCR must include reporting of family income level, beneficiaries by race, sex, ethnicity, household size, sex and handicapped persons (24 CFR 570.506 (g) ). Your reporting arrangement with the respective participating company should make this clear early in your negotiations.
5. In the PCR Section, the housing opportunities form which specifies action taken to further fair housing and increase housing opportunities for lower income households must be completed by the Economic Development recipient. It applies to the community rather than the project.

It is very important that projects be closed in an expedient manner to avoid threshold problems. Final closeout of a contract is issued only when all activities are completed. This means the results of the project are achieved, including compliance with a national objective (all low and moderate income job creation/retention), an audit covering all LCDBG expenditures, PCR, and Certificate of Completion are approved. In addition, when a project involves a loan, all loan payments must be up-to-date.

### **Task F-7: Program Income/Revolving Loan Funds**

Program income (repayment) is money earned by a City/Parish that is generated by the use of LCDBG funds distributed by the State. Examples of program income are: (1) payments of principal and interest on loans made using LCDBG funds; (2) proceeds from the lease or disposition of real property acquired with LCDBG funds; (3) interest earned on LCDBG funds held in a Revolving Loan Fund (RLF) account; and (4) interest earned on any program income pending its disposition.

Program income earned by a City/Parish while it is participating in a Community Development program is subject to the requirements of the Housing and Community Development Act of 1974, as amended, and Subpart I of Part 570. (Requirements of the Act include among other things, addressing a national objective and compliance with procurement, equal opportunity, environmental, labor standards regulations and the Uniform Act.) In the case of loan repayments, these shall be continually remitted to the State until the loan has been retired. In the case of lease payments being received from a building purchased, constructed, or renovated, in whole or in part with LCDBG funds, the pro-rata percentage payment will be payable to the State based on a fair market valuation of the leasehold. This "fair market value" shall be considered at least to be the value of the LCDBG contribution amortized over 20 years at no interest. These lease payments will continue to be due to the State until the grant is repaid. Lease payments will not be due; however, when the building is vacant.

Any other program income earned as a result of the LCDBG Program will either be retained by the local governing body or submitted to the State. The Office of Community Development must be contacted for instructions regarding income as soon as the local governing body becomes aware of the income or of the possibility that program income will be received.

### **Task F-8: Program Benefit/Tracking Job Requirements**

To be eligible for LCDBG assistance, an activity must address the objective of benefiting low and moderate-income persons. In the case of Economic Development projects, persons benefiting will be those hired or retained by the company assisted by LCDBG funds. Since these persons must complete an application for employment, they will be direct beneficiaries.

For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs are held by, or were made available to low and moderate-income persons. (24 CFR 570.483.(b)(4))

Obtaining this information is crucial to documenting project eligibility. The income information provided will determine if the Low-Moderate-Income (LMI) Benefit claimed in your application has been met. Even if all jobs cannot ultimately be filled, the LMI requirements stated in the LCDBG Contract must be met. It is important that the company, to avoid possible eligibility problems, clearly understands and agrees to these requirements as early in the application process as possible. These requirements should be included in the written agreement (24 CFR 570.506(b)(5)).

**Exhibit F-1**, Attachment B is a sample Survey Form for used in collecting information on persons hired or considered for employment. Survey forms must be kept on file by the company and made available to the State or the City/Parish if requested. **Exhibit F-1**, Attachment C, is an Employee Characteristics Record, where the individual information is compiled showing required employee characteristics such as job title and household income. Please note that employees can be denoted by code if you prefer, to protect their privacy. The employee forms and the Employee Characteristics Record must be kept in the LCDBG files.

Just as for Housing and Public Facilities projects, it is your responsibility to determine specific statistical information on those persons benefiting from the project. According to 24 CFR 570.506(g)(2) beneficiaries must be documented as to race, national origin, age, sex, head of household, and handicapped status. Some of this information cannot be obtained prior to or as a condition of employment. Therefore, once hired, all employees must be surveyed.

### **Task F-9: Financial Reporting Requirements**

Both the State contract and the written agreement between the local governing body and the Developer contain periodic financial reporting requirements. It is crucial to the monitoring process of any LCDBG Economic Development Grant that the State receive financial reports within the required timeframe from the Developer in order to assist the local governing body in performing its monitoring function. Quarterly reporting will be submitted on the Sources and Uses Report. See Task F-10. It is equally important that the local governing body ensure that the Developer employs a Certified Public Accountant that can meet the reporting requirements.

For the year-end financial statement the State requires from the developer either a complete unqualified opinion or a reviewed statement with a detailed profit and loss statement, balance sheet, statement of changes in financial position, and all required footnotes. Compiled financial information will not be acceptable for the required annual financial report. Your State contract and the written agreement will specify whether an audited year-end financial statement or a reviewed statement is required. Recipients should be aware of statements in the accountant's letter to management such as:

"A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly do not express an opinion or other form of assurance on them. Management has elected to omit substantially all of the disclosures and the statement of changes in financial position required by generally accepted accounting principals."

Statements such as the above can be indicators of less reliable, missing, and possibly distorted information.

Preferably the accountant's letter to the management for the annual financial report should contain language similar to the following:

"We have examined the balance sheet of XXX Corp as of July 31, 2004, and the related statements of income, retained earnings, and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. In our opinion, the financial statements referred to above present fairly the financial position of XXX Corp as of July 31, 2004, in conformity with generally accepted accounting principals applied on a basis consistent with that of the preceding year."

Not all businesses can afford the expense of an audit. In those cases where a business cannot afford an audited annual financial report and your State contract and the written agreement allows for a review statement, a reviewed statement may be acceptable. In this case the accountant's letter to management would contain language similar to the following:

"We have reviewed the accompanying balance sheet of XXX Corp as of July 31, 2004, and the related statements of income, retained earnings and changes in financial position for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion.

Accordingly, we do not express such an opinion. Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principals."

A reviewed statement must include all the required footnote disclosures. The footnotes disclose such critical information as: the basis for the inventory valuation, depreciation methods, maturity and debt structure, and related party transactions (loans to and from stockholders, etc.)

It is incumbent upon the local government to know what kind of audit report is acceptable and take the necessary steps to ensure that the specific kind of audit report required is produced by the business and is provided to you on an annual basis.

The local government should ensure that the terms of engagement between the developer and his accountant require more than just a compilation for the annual report.

### **Task F-10: Sources and Uses Report**

Due to the impossibility of frequent monitoring visits by the State LCDBG-ED staff, it is necessary that the local government which has received these LCDBG-ED funds report regularly on the developer's progress. The LCDBG State contract and written agreement established the periods when the reports are due. This requirement is closely monitored. Failure to submit this report in a timely manner can result in negative consequences to the local government/business.

The sources and uses reports must be filed jointly with the quarterly financial report that is required of the developer. The use of this report will assist the local governing body in carrying out its contractual responsibilities. It will allow the State to keep up to date on the developer's progress, to ensure that the money is being spent as scheduled, and that the jobs needed and promised are being created as quickly as possible.

The reports will be required every quarter. The first quarter begins with the date of the first draw from the State. The first reporting period will coincide with the next federal and State quarterly reporting period of 3-31, 6-30, 9-30, or 12-31. The report will be due 1 month after the end of the first reporting period and every 3 months thereafter. (For example, if the first payment request is paid on August 10<sup>th</sup> then the first report is due before the end of October.)

Timely submission of those reports will assist local and State governments to ensure that the program funds are being effectively and efficiently used. It is the best way for both levels of government to stay abreast of the developer's progress. This process will create an early warning system that will allow both levels of government to assist the developer if unexpected problems arise, which could alter his/her schedule of events as approved in the application and in the contract between the local government and developer. Without this reporting system a particular project could get so far behind that contractual conditions could not be met by the developer or the local government. To avoid any potential liability all communities providing assistance to for-profit entities must ensure that this contractual obligation is strictly observed. A copy of this report is shown in **Exhibit F-8**.

### **Task F-11: Record Keeping**

Refer to **Task A-16** in this handbook. For further questions related to the record keeping in this area, please call your Local Government Representative at the Division of Administration at (225) 342-7412 and reference 24 CFR Section 570.506.

### **Task F-12: Loan Default Policy**

Representatives of many local governments have asked about their monetary liability in case of a loan default by a developer who was assisted with LCDBG funds through their local governments. This is a very appropriate concern of local officials, since the Department of Housing and Urban

Development (HUD) does monitor the State's use of LCDBG funds and can require that funds not appropriately spent be repaid by the recipient.

In order for the local government to fulfill its responsibility, and not face potential monetary liability, it must make a "good faith effort" to ensure that the project is successfully developed as outlined in the application package/contract. Briefly summarized, the local government's responsibilities are:

1. to maintain records of total and low-to-moderate income employment;
2. to monitor the financial condition of the business;
3. to inform the State in a timely manner of any difficulties with the project;
4. to take the proper legal remedies to recover the LCDBG investment, if the business becomes insolvent or fails to comply with contract requirements; and,
5. to pursue the appropriate legal action in the event of fraud or other illegal activities.

It is HUD's position that the local government should act as a responsible creditor, both in servicing loans and instituting the proper legal proceedings in the event of default.

In case of a default, a committee consisting of the Program Director, Local Government Representative, Economic Development Staff, the Division of Administration's (DOA) attorney, and Commissioner will review the local government's grant performance as it pertains to the above mentioned criteria.

Each member of the committee will report to the Commissioner on the local government's performance. The committee will then meet to discuss the findings and make a recommendation concerning the disposition of the case.

Before the State relieves a local government of any potential monetary liability, the local government will have to demonstrate substantial progress in recovering the LCDBG funds from the project.



Change of Ownership - DEVELOPER must obtain, in writing, prior authorization from the STATE and CONTRACTOR for any change of ownership interest of DEVELOPER.

3. DEVELOPER further agrees to make available to the CONTRACTOR the following financial information:
  - a. Financial/Employment Record - The DEVELOPER will upon request by the CONTRACTOR, the Legislative Auditor for the State of Louisiana, the Division, and/or HUD, make available its records with respect to invoices, materials, payrolls, records of personnel, and conditions of employment relating to matters covered by this Contract.

The DEVELOPER shall provide on a quarterly basis a report showing the amount of funds invested by the DEVELOPER in this project and showing jobs created, including low-moderate income jobs, as a result of this project. The reports are due no later than 30 days after the end of each quarter. The first quarter begins the date of the first draw of monies from the State. The first reporting period will be adjusted to coincide with the next federal and State quarterly reporting period of 3-31, 6-30, 9-30, or 12-31. The report will be due 1 month after the end of the first reporting period and every 3 months thereafter. In order to document the information included in these reports, DEVELOPER shall attach to them paid invoices showing work completed and materials purchased for the project by the DEVELOPER. Current payrolls of the plant operating in \_\_\_\_\_, Louisiana shall also be attached. DEVELOPER shall also provide an annual report including this same information as well as information described in Exhibits C and D of Attachment A of this contract. These quarterly and annual reports shall be provided to the CONTRACTOR and to the Division by the DEVELOPER no later than thirty (30) days after the end of the time period covered by the report.

The above Expenditure/Employment records, either on a quarterly and/or yearly basis, are to be reviewed by the CONTRACTOR and the Division for administrative purposes only.

4. DEVELOPER further represents that it has applied for and will benefit from the Loan and /or Infrastructure Improvements described in Exhibit A of the Grant Agreement, based upon its representation to the STATE that:
  - a. DEVELOPER acknowledges its representation in the application for the grant under the Grant Agreement pertaining to the number and types of jobs indicated in the Application, Low-to-Moderate Income Benefit, attached as Exhibit D 1 b) of Attachment A, which shall result in the creation of a total of ( ) full-time jobs of which \_\_\_\_\_ ( ) shall be held by low to moderate income persons.

DEVELOPER agrees to keep employment records as to the status of race, ethnicity, gender and handicap status and shall report this information as required by the STATE. At least fifty-one percent (51%) of all jobs created by the DEVELOPER must be held by low and moderate income persons.

- b. DEVELOPER shall include on all applications for employment the household income and number of persons in the household, at the date of hiring of all employees. CONTRACTOR will provide income certification forms to DEVELOPER.
  - c. DEVELOPER acknowledges its representation in the Application, and hereby obligates itself to invest \$ \_\_\_\_\_ in private funds in consideration of receipt of the LCDBG Loan and /or Infrastructure Improvements from CONTRACTOR. DEVELOPER further acknowledges its duty to invest private funds, over and above the funds generated through operations, in a ratio of \$ \_\_\_\_\_ of private funds to \$1.00 of LCDBG funds.
  - d. DEVELOPER acknowledges its duty in fulfilling its Contractual duty to CONTRACTOR, and in turn CONTRACTOR'S obligation to meet the National Objective requirements of the program in a timely manner; and obligates itself to create or cause to be created the number of jobs within the quarterly time frames set forth in Exhibit B of the Grant Agreement and that the CONTRACTOR expects these jobs to be created at the specified time intervals, in satisfactory performance of the Grant Agreement.
  - e. DEVELOPER acknowledges that the STATE and CONTRACTOR in making these Loan and /or Infrastructure Improvements, relied upon representations of the DEVELOPER regarding potential sales, financial performance, employment, market, financial resources and conditions, economic assumptions, technical and managerial expertise, and total projected investment. DEVELOPER further acknowledges that the STATE and CONTRACTOR have relied upon these representations as being realistic, accurate, knowledgeable, and having been made in good faith. The STATE shall consider these factors to the extent that it may grant relief from Contract conditions within overall accomplishments of the National Objective.
5. CONTRACTOR agrees to carry out all activities set forth in Attachment A, Exhibit A, B, and D of the Grant Agreement, at a maximum total cost \$ \_\_\_\_\_ and agrees to adhere to the time performance schedule as submitted in the application or as subsequently amended.
  6. CONTRACTOR further represents that it has applied for and is receiving the funds under the Grant Agreement, based upon its representation to the STATE that:
    - a. The Grant is anticipated to create a specific number of permanent new job opportunities within the quarterly time frames set forth in the Grant Application for persons who, at the time of their employment, will be persons of

low-to-moderate income households. Low to moderate income households are determined by annualizing the household income from three months immediately prior to the date of hiring. Low to moderate income persons are defined as persons whose annual income is less than the following amounts, listed by household size, for the Parish of \_\_\_\_\_

Household Size by Number of Persons

<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>	<u>Seven</u>	<u>Eight</u>
\$xx,000	xx,000	xx,000	xx,000	xx,000	xx,000	xx,000	xx,000

- b. The Grant anticipates private funds in the amount of \$ \_\_\_\_\_ will be invested, over and above the funds generated through operations; or a minimum of \$ \_\_\_\_\_ of private funds to \$1.00 of LCDBG funds.
  - c. CONTRACTOR obligates itself to use all powers available to enforce the undertaking or assurance of the participating parties, namely DEVELOPER, respecting the creation of jobs which are specified in Exhibit D of the Grant Agreement.
7. CONTRACTOR and DEVELOPER acknowledge that nothing contained in this contract, or by any third person shall be considered to create any relationships of third party beneficiary, principal and agent, limited or general partnership, joint venture of any association or relationship involving CONTRACTOR or DEVELOPER.
8. The CONTRACTOR and DEVELOPER shall comply with all applicable federal, state and local laws, e.g., Equal Opportunity, contracted in Exhibit F of the Grant Agreement or as otherwise required.
9. REMEDIES UPON DEFAULT. Upon the occurrence, or the discovery of the STATE or CONTRACTOR of the occurrence, of any of the foregoing events, circumstances, or conditions of default, the STATE shall have, in addition to its option to halt the infrastructure improvements and loan provisions, all of the rights and remedies of a secured party under the applicable laws of the State of Louisiana. Without in any way limiting the generality of the foregoing, the STATE shall have the following specific rights and remedies:
- a. In the event the DEVELOPER is unable to provide the employment opportunities for low and moderate income persons as set forth in Exhibit D, the STATE or CONTRACTOR shall have the right to exercise any and all of the specific steps described in its Corrective and Remedial Actions Policy which was published as a Rule in the August 20, 1987 issue of the Louisiana Register.
  - b. In addition, if the DEVELOPER fails to create the total of \_\_\_\_\_ ( ) full-time jobs and jobs held by low to moderate income persons, the Division may, in its discretion, require the DEVELOPER to pay to the Division \_\_\_\_\_ ( ) for each job less than the number of jobs which had been agreed to by the

DEVELOPER. If at least fifty-one percent (51%) of all jobs created by the DEVELOPER are not held by low to moderate income persons, the Division may require all Grant funds expended to be repaid by the DEVELOPER to the Division.

10. TERMINATION OR SUSPENSION:

- a. The CONTRACTOR or STATE may, after giving reasonable written notice specifying the effective date, terminate this Contract in whole or part for cause, which shall include but not be limited to:
  - (1) failure, for any reason, of the DEVELOPER to fulfill in a timely and proper manner the obligations under this Contract, and such statutes, Executive Orders, and federal directives as may become generally applicable at any time.
  - (2) submission by the DEVELOPER to the CONTRACTOR or its Auditors, of reports that are incorrect or incomplete in any material respect;
  - (3) ineffective or improper use of funds provided under this Contract;
  - (4) suspension or termination of the grant by the STATE under which this contract is made, or the portion thereof delegated by this Contract.
- b. If the DEVELOPER is unable or unwilling to comply with such additional conditions as may be lawfully applied to the Grant by the STATE, the CONTRACTOR shall terminate the Contract by giving reasonable written notice to the STATE, signifying the effective date thereof. The CONTRACTOR, if first authorized by the STATE, may at its sole option continue with its own funds on the project until a question is resolved with the understanding that a satisfactory resolution may allow the STATE to reimburse funds at its sole option and discretion.
- c. If through any cause, the DEVELOPER shall fail to fulfill in a timely and proper manner, their obligations under this contract, or if the DEVELOPER shall violate any of the covenants, agreements, or stipulations of this contract, the CONTRACTOR or STATE shall thereupon have the right to terminate this contract by giving written notice to the DEVELOPER of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of said termination.
- d. Notwithstanding the above, the DEVELOPER shall not be relieved of any liability to the CONTRACTOR or STATE including liability for damages sustained by the CONTRACTOR or STATE by virtue of any breach of the DEVELOPER.

11. The DEVELOPER shall not assign any interest in this Agreement, and shall not transfer

any interest in the same whether by assignment or novation, without the prior written consent of both the CONTRACTOR and STATE.

12. Attachment A, Exhibits A through F, Attachment B, and Attachment C to this Contract are hereby included and made a part of this Contract. DEVELOPER shall ensure that the information required in Attachments B and D are provided to the CONTRACTOR.

13. SPECIAL CONDITIONS

A. In the event DEVELOPER fails to satisfy any special condition of this contract, fails to implement the project described in Attachment A, of this Agreement, or fails to comply with any provision of this Agreement, in addition to the remedies specified elsewhere in this Agreement, DEVELOPER may be liable to the CONTRACTOR for an amount not to exceed the CONTRACTOR'S maximum obligation under this contract.

B. DEVELOPER shall submit to the CONTRACTOR, when requested to do so by CONTRACTOR, a document which must include the following: (1) the types of positions, number and wage scales of all permanent positions to be created/retained as a result of this project, including specifics on those jobs filled/to be filled by low and moderate income persons; (2) a hiring plan that includes methods of identifying and training potential low/moderate income job applicants; (3) any other relevant details or special conditions placed on this contract.

C. DEVELOPER shall ensure that the CONTRACTOR is provided with the documentation required by Exhibit D of Attachment A of this Agreement.

D. DEVELOPER shall ensure that the CONTRACTOR is provided with a copy of the hazard insurance policy covering all items held as collateral for the Loan funds provided.

E. The DEVELOPER shall within thirty days after the end of each three-month period during the term of this contract, document and furnish to the CONTRACTOR low/moderate income verification forms marked "Attachments B and C and other documentation necessary for CONTRACTOR to satisfy the requirements of Attachment A, with respect to permanent jobs created and that the low and moderate income of DEVELOPER'S employees meet the requirements.

F. The CONTRACTOR shall have access to the DEVELOPER'S Employment Records in order to verify Employment data such as low/moderate income status, ethnicity, et cetera.

G. The DEVELOPER may not sell or lease machinery and/or equipment purchased with Loan Funds without the written permission of the CONTRACTOR and STATE during the term of this contract. During the term of this contract,

CONTRACTOR shall have the right to recover some or all of the \$ \_\_\_\_\_ paid to DEVELOPER under this contract, based on the sale or lease of such machinery and/or equipment. This paragraph shall apply to all lease agreements or sales of such items except that the CONTRACTOR and STATE shall have the right to approve any such leases or sales, if it deems them favorable.

- H. Successors: This contract shall inure to the benefit of and bind the heirs, personal representatives, successors, and assigns of the parties.
- I. If Unenforceable: If any provision of this contract is determined to be unlawful or unenforceable by a court having jurisdiction over the parties, such provision shall be severable from the other provisions of this Agreement, and all remaining provisions shall be fully enforceable.
- J. Governing Law and Venue: This contract shall be governed by the laws of Louisiana, which State shall also be deemed the place where this agreement was entered into and the place of performance and transaction of business of the parties.
- K. Authority to Make and Use Copies: DEVELOPER authorizes CONTRACTOR to make copies, photocopies, reproductions and other facsimiles (copies) of this original Agreement for the purpose of filing and for any other purposes permitted as if such copies were the original.
- L. Notwithstanding any other provisions of this contract to the contrary, the schedules concerning the times of the creation of jobs set forth in Exhibit B of Attachment A are extended as guidelines and it shall not be a default under this contract if DEVELOPER fails to create the number of jobs in any particular period as set forth in the LCDBG Program Time Schedule submitted in the grant application or as subsequently amended by all parties' agreement. It being expressly understood and agreed, however, that it shall be considered a default under this contract if DEVELOPER has failed to create \_\_\_\_\_ ( ) permanent jobs of which \_\_\_\_\_ ( ) are low/moderate income on or before the termination of this contract. If additional jobs are created beyond the number cited above, fifty-one percent (51%) must be filled by low to moderate income persons.
- M. In the event the CONTRACTOR becomes obligated to pay any sum of money to the Louisiana Division of Administration under the Division of Administration Agreement with respect to, because of or arising out of any of the following, to-wit: (1) the failure of DEVELOPER to comply with any of its obligations under this Agreement, (2) the failure of the CONTRACTOR to comply with any of its obligations under the Division of Administration Agreement which failure results from or arises out of DEVELOPER failing to comply with its obligations under this Agreement or (3) the failure of the CONTRACTOR to comply with any of its obligations under the Division of Administration Agreement, including without limitation, the requirements of Exhibits A through F (to the Division of

Administration Agreement), which relate to the creation of jobs or to the income requirements with respect to the persons whose jobs are referred to in such Exhibits A through F thereto, then DEVELOPER shall be obligated to pay such amounts to CONTRACTOR at the office of the Mayor of \_\_\_\_\_ in the City of \_\_\_\_\_ in \_\_\_\_\_ Parish, Louisiana, within fifteen (15) days after the Louisiana Division of Administration makes any written demand on CONTRACTOR for any such amount (there may be different demands for different amount made from time to time). Any written request from the Louisiana Division of Administration for the payment by CONTRACTOR of any amount of money by reason of or based on any of the matters set forth above shall be deemed to be owing by the CONTRACTOR to the Louisiana Division of Administration for the purposes of the foregoing obligation of the DEVELOPER to make payment(s) to CONTRACTOR, subject to DEVELOPER'S right to recover such funds from the CONTRACTOR as hereinafter provided as a result of a final judgment against the Louisiana Division of Administration as provided for below. The failure of DEVELOPER to make any such payment which is required by written notice from the Louisiana Division of Administration as above provided within the time above provided shall give the CONTRACTOR the right at its election to terminate this agreement without any further obligation to DEVELOPER but such termination shall not relieve DEVELOPER of its obligations under this agreement. Provided however, DEVELOPER shall have the right to make any payment requested by CONTRACTOR under the provisions of this paragraph under protest and if it is determined by final judgment, no longer subject to appeal, of a court of competent jurisdiction in a case in which the Louisiana Division of Administration is a party along with CONTRACTOR and DEVELOPER that such amount was not owed by CONTRACTOR to the Louisiana Division of Administration then CONTRACTOR will repay such amount without interest (except for any interest which the CONTRACTOR might be entitled to recover from the Louisiana Division of Administration.) CONTRACTOR and DEVELOPER hereby agree that any such litigation with the Louisiana Division of Administration shall be in a court of competent jurisdiction in East Baton Rouge Parish, Louisiana. The total aggregate liability to the DEVELOPER shall be \$ \_\_\_\_\_. The obligations of DEVELOPER under this Section shall remain in effect after termination of this contract.

- N. Notwithstanding any other provision of this contract to the contrary, no employee or duly authorized agent of CONTRACTOR may enter upon the premises without the prior consent of an officer of DEVELOPER, which consent shall not be unreasonably delayed or withheld and which consent shall be given with respect to the matters referred to in this Agreement.
  
- O. The DEVELOPER agrees to indemnify, defend and hold harmless CONTRACTOR and the members of the City Council of \_\_\_\_\_, including the Mayor (all of the foregoing are hereinafter, separate and collectively, referred to in the singular as "Indemnatee"), from and against all

claims, causes of action, damages, suits and liability, of every kind, including all expenses of litigation, court costs and attorney's fees, (a) for damage to any property or for injuries, sickness or death of any person caused by, arising out of or related, directly or indirectly, to the premises or DEVELOPER'S occupation of or use of the premises or any Waste on or under the premises or any operations or activities of DEVELOPER or on behalf of DEVELOPER or under its authority or with the express or implied consent of DEVELOPER, which operations, occupation or uses or activities are with respect to or are directly or indirectly related to (1) the purchase or operation of machinery and equipment. The above indemnity shall apply even though any damage to property or any injury, sickness or death referred to therein is caused in whole or in part by any defect in or condition of machinery and/or equipment, whether or not such defect or condition was known by Indemnatee. Under the provisions of this indemnity, the DEVELOPER is agreeing to indemnify Indemnatee from DEVELOPER'S own negligence or fault. However, notwithstanding any other provision of this Special condition to the contrary, this indemnity shall not be applicable to any damage, injury or death caused by the sole negligence of any employee or duly authorized agent of CONTRACTOR which occurred by an action or omission of such CONTRACTOR employee or duly authorized agent, which act or omission occurs on the premises while said CONTRACTOR employee is actually on the premises. Notwithstanding any provision of this Special Condition to the contrary, this indemnity shall not be applicable to any claim arising prior to the date of this Agreement. The CONTRACTOR shall give prompt and timely written notice to DEVELOPER of any claim made or suit or action commenced which in any way would result in indemnification under this paragraph. The obligations of DEVELOPER under this Special Condition shall remain in effect after termination of this Agreement as to any liability which arose during this Agreement. So long as either (1) DEVELOPER is entitled to possession of the machinery and/or equipment of this Agreement or (2) DEVELOPER owns any part of the machinery and/or equipment, it is hereby agreed that DEVELOPER shall carry and maintain, and have in full force and effect comprehensive general public liability insurance, endorsed to include broad form contractual liability insurance coverage and with a cross liability endorsement and such insurance shall name CONTRACTOR as an additional insured thereunder (together with a cross liability endorsement relating thereto), but the CONTRACTOR as an additional insured shall only be such with respect to liability arising out of the machinery and/or equipment purchased by Loan Funds or duties with respect thereto or with respect to or which occurs on the premises and such liability insurance shall provide the first tier, or primary coverage, with respect to any other insurance coverage provided to or for CONTRACTOR or otherwise afforded to CONTRACTOR, which other insurance afforded CONTRACTOR shall be excess. Such insurance shall be with insurance companies authorized to transact business in the State of Louisiana. Such public liability insurance shall have a combined single limit of not less than \$1,000,000.00 per occurrence for bodily injury and property damage. In no event shall the procurement and maintenance of the insurance coverage provided for herein modify, reduce, limit or otherwise restrict DEVELOPER'S indemnification obligations provided for

above. DEVELOPER shall furnish to CONTRACTOR a certificate or certificates signed by a duly authorized agent of the company issuing such insurance coverage, detailing the coverage, limits and expiration thereof, and specifying that the same shall not be canceled or materially changed until after ten (10) days notice in writing has been given to CONTRACTOR by such insurance company. The provisions of the above insurance agreement are solely for the benefit of DEVELOPER and CONTRACTOR. Accordingly, third parties shall have no rights under or by reason of the provisions of this paragraph with respect to DEVELOPER providing insurance.

**THUS DONE AND SIGNED** in the presence of the undersigned Notary Public and competent witnesses at \_\_\_\_\_, Louisiana, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

WITNESSES:

**DIVISION OF ADMINISTRATION**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ **JERRY LUKE LEBLANC**  
\_\_\_\_\_ **COMMISSIONER**

WITNESSES:

MANUFACTURING, INC.

\_\_\_\_\_  
\_\_\_\_\_ **PRESIDENT**

\_\_\_\_\_  
\_\_\_\_\_ **NOTARY PUBLIC**

My Commission expires: \_\_\_\_\_

WITNESSES:

CITY OF \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ **MAYOR**

\_\_\_\_\_  
\_\_\_\_\_ **NOTARY PUBLIC**

My Commission expires: \_\_\_\_\_

Please note: Attachment A is the contract between the State and the local governing bodies with Exhibits, A-F.

Attachment B is the Employee Survey Form

Attachment C is the Employee Characteristics Record

**LCDBG ECONOMIC DEVELOPMENT PROGRAM**

COMMUNITY: \_\_\_\_\_ COMPANY: \_\_\_\_\_

PROGRAM YEAR: \_\_\_\_\_ CURRENT DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

Employee: LAST NAME \_\_\_\_\_

FIRST NAME \_\_\_\_\_

Employee: SSN \_\_\_\_\_

DATE HIRED \_\_\_\_/\_\_\_\_/\_\_\_\_

Employee: JOB TITLE OR POSITION \_\_\_\_\_

HUD Income Limits for FY \_\_\_\_\_

PARISH \_\_\_\_\_

Employee: FAMILY INCOME \_\_\_\_\_

	<u>1 Person</u>	<u>2 Persons</u>	<u>3 Persons</u>	<u>4 Persons</u>	<u>5 Persons</u>	<u>6 Persons</u>	<u>7 Persons</u>	<u>8 Persons</u>
<b>Above</b>								
<b>Moderate</b>								
<b>Low</b>								
<b>Extremely Low</b>								

Please circle the number that corresponds to income category and number of persons in your family. The income number is determined by computing the total income of all family members for the last three months and then multiplying that number by four.

Employee: Racial and Ethnicity Category

- Alaskan Native or American Indian     Native Hawaiian or Other Pacific Islander
- White     Asian     Asian and White     African American or Black
- Alaskan Native or American Indian and White     Alaskan Native or American Indian and Black
- African American or Black and White     Other Multi Racial

Please mark the following box if the employee is of the following ethnicity:  Hispanic or Latino

Employee: Check one of applicable

- Female Head of Household                       Handicapped Person                       Elderly

Note: 18 U.S.C. Sec 1001 provides that "whoever knowingly and willfully makes any materially false, fictitious, or fraudulent statement or representation;...shall be fined under this title or imprisoned not more than five years or both.

Signature \_\_\_\_\_



SAMPLE EVIDENCE OF DEVELOPER'S COMMITMENT  
(On letterhead)

We, \_\_\_\_\_ (Lending Institution) \_\_\_\_\_, have agreed to provide  
\_\_\_\_\_ Name of Developer \_\_\_\_\_ funds in the principal amount of  
\$ \_\_\_\_\_ for the following terms \_\_\_\_\_,  
part of the Louisiana Development Block Grant (LCDBG) Economic Development Application  
for the Community of \_\_\_\_\_ Town/City \_\_\_\_\_, \_\_\_\_\_ Parish \_\_\_\_\_.  
Upon approval of the LCDBG application, the above stated amount will be available starting  
\_\_\_\_\_ (Date) \_\_\_\_\_, with the commitment lasting until \_\_\_\_\_ (Date) \_\_\_\_\_.

Signed: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Street or P.O. Box)

\_\_\_\_\_  
Town State Zip Code

\*Any special conditions, provisions, or loan agreements must be attached.

SAMPLE

UNANIMOUS CONSENT OF THE DIRECTORS  
OF INTERNATIONAL MFG., LTD.

The undersigned, being all the directors of International Mfg., Ltd., a Delaware Corporation (the "Corporation"), hereby adopt the following resolutions:

RESOLVED, that the appropriate officers of the Corporation be, and each and any of them hereby authorized and empowered to take all action on behalf of the corporation that they may deem necessary or appropriate to obtain a loan from the City of \_\_\_\_\_, Louisiana, in the amount of \$500,000 which has been provided to the City through an LCDBG Economic Development Grant, to be used for capital equipment financing; that the loan shall be due and payable ten years from the date funds are disbursed to the Corporation; that the loan will bear interest at the rate of ten percent per annum; that the loan will be secured by a UCC-1 on capital equipment; that the obtaining of such loan shall be effected on such other terms and conditions as the officers of the Corporation acting in the premises may approve, the consummation of such loan to be conclusive evidence of such approval, and it is

FURTHER RESOLVED, that, (name), (title), of the said Corporation be authorized and empowered to perform such acts and to execute such documents and agreements as may be necessary or appropriate to effectuate the intent of the foregoing resolutions and the transactions contemplated thereby; and it is

FURTHER RESOLVED, that the execution, delivery and performance by the Corporation does not and will not result in any breach of or constitute a default under any indenture or loan or credit agreement on any other agreement, lease, or instrument to which such Corporation is a party or by which it or properties may be bound or affected and cause such Corporation to be in default under any such law, role, regulation, order, writ, judgment, injunction, decree, determination, or award on any such indenture, agreement, lease, or instrument, and it is

FURTHER RESOLVED, the financial statements as of (date), copies of which are contained in the LCDBG application are complete and correct and fairly present, according to GAAP, the financial condition of the Corporation and since (date) there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Corporation, and there are no liabilities of the Corporation fixed or contingent, which are material, but are not reflected in the financial statements including those to come out of the projected future course of operations, and it is

FURTHER RESOLVED, that the Corporation is not in Default in

any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party, there is no pending or threatened action or proceeding against or effecting the Corporation before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operation, properties, or business of the Corporation, and it is

FURTHER RESOLVED, that the Corporation has satisfied all judgments, and the Corporation is not in default with respect to any judgment, writ, injunction, decree, rule, or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign and it is

FURTHER RESOLVED, the Corporation possesses all licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct their respective business substantially as now conducted and the Corporation is not in violation of any valid rights of others with respect to any of the foregoing, and it is

FURTHER RESOLVED, that the LCDBG application and required evidentiary materials contain a complete and correct disclosure of all credit agreements, indentures, purchase agreements, quantities, capital leases, and other investments, agreements, and arrangements presently in effect providing for or relating to extensions of credit in respect of which the corporation is in any manner directly or contingently obligated, and it is

FURTHER RESOLVED, that this Board of Directors hereby approves and ratifies all of the actions here-to-fore taken and all of the documents, agreements and other instruments heretofore executed and delivered by the officers of the Corporation on behalf of the Corporation in connection with the loan contemplated in the preceding resolutions.

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SAMPLE

RESOLUTION OF AUTHORITY

CERTIFIED RESOLUTION OF BOARD OF DIRECTORS  
OF  
VENTURES, INC.

I, Elsie Govang, do hereby certify that I am the duly elected and qualified Secretary of Ventures, Inc., a corporation authorized under the laws of Louisiana and that the following is a true and correct copy of the Resolution duly adopted by the Board of Directors in accordance with law and the by-laws of said corporation on January 2, 2003, and that such resolution is now in full force and effect.

It is resolved that:

Ventures, Inc. (Corporation) be and is hereby authorized to enter into a participating agreement, a copy of which is attached hereto, with Elwyn Parish for the purpose of entering into a grant agreement with the State of Louisiana.

Scott Ward, President of Ventures, Inc., is hereby appointed to enter into said Agreement and to execute all documents necessary to effectuate the closing of the Agreement.

In Witness hereof, I hereunto affix my signature on this 2nd day of January, 20\_\_.

---

Elsie Govang  
Secretary

(TO BE ON ATTORNEY'S LETTERHEAD)

August 3, 20\_\_

Dear Mayor \_\_\_\_\_:

As the City Attorney for the City of \_\_\_\_\_, it is my opinion that the copy of the note annexed hereto evidencing legal financial commitment in the amount of \$1,000,000, between XYZ Partnership and International Mfg., Ltd. is in compliance with Paragraph \_\_\_ of Exhibit \_\_\_\_\_ of the contract between the City of \_\_\_\_\_ and the Louisiana Division of Administration or its Successor to obtain a loan in the amount of \$500,000.

It is further my opinion that the agreement between XYZ Partnership and International Mfg., Ltd., is a binding and legally enforceable agreement and obligated XYZ Partnership to make a long-term permanent financial loan in the principal amount of \$1,000,000 to International Mfg.

It is further my opinion that Mr. X is authorized to commit the partnership to make this loan and officially represent the partnership in all matters pertaining to this loan.

Very truly yours,

City Attorney

CERTIFICATION OF LEGALLY BINDING AGREEMENTS

Pursuant to Article \_\_\_\_\_ of the LCDBG Contract, I hereby submit the following legal opinion in regard to the evidentiary materials required to be furnished by \_\_\_\_\_ (name of company or individual) \_\_\_\_\_.

1. I am the attorney for the City/Parish of \_\_\_\_\_, recipient of the LCDBG Contract referred to above.
2. I am basing the foregoing legal opinion on the written Affidavit of (name, title, and function) \_\_\_\_\_, copies of the enclosed documents, and upon my information and belief. I do not have personal knowledge of any of the facts alleged herein.
3. Evidence of Contracts. Enclosed is a copy of the Agreement entered into by \_\_\_\_\_ (name and title of City/Parish official) \_\_\_\_\_, the City of \_\_\_\_\_, as attested to by (list all persons attesting to contract and titles -- both City officials and representatives of private parties) \_\_\_\_\_  
\_\_\_\_\_.

Also enclosed is a copy of the Ordinance authorizing the \_\_\_\_\_ (title of City/Parish official) \_\_\_\_\_ to enter into a Contract with \_\_\_\_\_ (name of company or individual) \_\_\_\_\_.

It is my opinion that \_\_\_\_\_ (name of City/Parish official) was authorized to enter into the Contract with \_\_\_\_\_ (name of company or individual) \_\_\_\_\_. My opinion is based on resolution number \_\_\_\_\_ which was duly passed by the legislative body of the City/Parish of \_\_\_\_\_ authorizing the \_\_\_\_\_ (title of City/Parish official) \_\_\_\_\_ to enter into the Contract.

It is my opinion that \_\_\_\_\_ (name) \_\_\_\_\_ is the \_\_\_\_\_ (title) \_\_\_\_\_ of \_\_\_\_\_ (name of company) \_\_\_\_\_ and that he was authorized to enter into the LCDBG Agreement with the City/Parish of \_\_\_\_\_. My opinion is based upon the attached Affidavit(s) of \_\_\_\_\_ (name(s) and title(s) or person(s) submitting Affidavit(s) \_\_\_\_\_

It is my opinion that the above mentioned contracts are legally enforceable under the laws of this State and conform to the provisions of the Grant Agreement unless otherwise specified herein.

4. Evidence of Loans. Enclosed is a copy of \_\_\_\_\_ (amount of money in words and figures) note with a Deed of Trust or other security securing said note, a \_\_\_\_\_ (amount of money in words and figures) \_\_\_\_\_ installment note and two (2) financing statements perfecting the lender's(s') lien on the security pledged collateral for said note. Also enclosed is a letter from \_\_\_\_\_ (name) \_\_\_\_\_ on the (name and location of bank) \_\_\_\_\_ letterhead.

It is my opinion that the above two (2) loans have been funded and that \_\_\_\_\_ (name) \_\_\_\_\_

was authorized to execute the documents on behalf of the lender(s) and that the documents comply with Section \_\_\_\_\_, LCDBG Contract. My opinion is based upon copies of loan documents provided me by \_\_\_\_\_ (name) \_\_\_\_\_ and included herein. "It is further my opinion that the note, mortgage, security agreement, and other loan documents are valid and enforceable according to their terms."

5. Evidence of Investor's Equity. Pursuant to the Contract entered into by and between the City of \_\_\_\_\_ and \_\_\_\_\_ (name of company) \_\_\_\_\_, agreed to expend \_\_\_\_\_ (sum of money) \_\_\_\_\_ on \_\_\_\_\_ (enumerate investments or improvements) \_\_\_\_\_. It is my opinion that \_\_\_\_\_ (name of company) \_\_\_\_\_ has expended \_\_\_\_\_ (sum of money) \_\_\_\_\_ as of \_\_\_\_\_ (date) \_\_\_\_\_ for the purpose of \_\_\_\_\_ (enumerate investments or improvements) \_\_\_\_\_. My opinion is based upon the Affidavit of \_\_\_\_\_ (name and title) \_\_\_\_\_ and the attached list of assets and values spent by \_\_\_\_\_ (name of company) \_\_\_\_\_.
6. Evidence of Title to Real Property. Enclosed is a copy of the Deed to the land where \_\_\_\_\_ (name of company) \_\_\_\_\_ is presently located. The Title policy has been examined or documentation has been submitted which contains sufficient evidence including evidence of recordation which satisfies the State that the recipient or participating party has title as required. It is my opinion that \_\_\_\_\_ (name of company) \_\_\_\_\_ owns the land in fee simple referred to in the Deed. My opinion is based on the attached Deed and Affidavit of \_\_\_\_\_ (name) \_\_\_\_\_. The land cost approximately \_\_\_\_\_ (sum of money in words and figures) \_\_\_\_\_ according to the Affidavit of \_\_\_\_\_ (name) \_\_\_\_\_.
7. Borrower's Representations. Enclosed is the developer's resolution entitled "Unanimous Consent of the Board of Director's of International Manufacturing, GmBH" and dated \_\_\_\_\_ (date) \_\_\_\_\_, authorizing the officers to take the necessary action to obtain an LCDBG loan on behalf of the developer. In the aforementioned resolution the developer makes certain representations concerning legality of the LCDBG loan in regards to other company obligations, current financial situation, pending litigation, and rights to do business.

It is my opinion that these statements are true and accurate. My opinion is based upon the attached Affidavit from developer's counsel.

If you have any questions in regard to my opinion, please do not hesitate to contact me.

Very truly yours,

Name of City/Parish Attorney

## RELEASE OF FUNDS QUESTIONS AND ANSWERS

1. Is it true that no project acquisition or construction activities may begin before the City/Parish receives a formal Release of Funds from the State?

Yes, this is true. The only related activities that can be undertaken BEFORE this formal Release of Funds are administration, planning and engineering/design. These may be undertaken because they have been determined to be exempt from environmental review requirements.

It is very important to remember that you cannot use LCDBG funds to reimburse the private sector for activities that they CONTRACTED for prior to the Release of Funds. No private funds that are OBLIGATED or EXPENDED prior to the Release of Funds can be reimbursed with LCDBG funds. You must make the private participant understand this also.

2. Can project activities funded by PRIVATE funds be undertaken prior to the Release of Funds? FOR EXAMPLE, If we are going to pay for servitudes with local money, can we start the acquisition process before the Release of Funds? If we started getting the servitudes before the application was approved, is it OK to continue getting the servitudes before the Release of Funds?

NO activity that requires environmental review should be undertaken if LCDBG funds will help pay for the project of which the activity is a part. In the example, acquisition should NOT begin prior to the Release of Funds. If it was started before the application was submitted, it should stop as soon as the application is submitted to the state. Any private contracts for work signed prior to the LCDBG application can continue. No further contracts should be executed until the Release of Funds is received.

3. Can I order equipment before the Release of Funds if LCDBG is financing the equipment? If the equipment is financed by company funds? If the order was placed prior to application approval?

An order for equipment may not be placed before the Release of Funds regardless of which participant is paying for the equipment. An order placed prior to the release of funds CANNOT be paid for with LCDBG funds.

4. My project involves LCDBG funds for renovation and private funds for building equipment and inventory. How can I as a city person keep track of when the company begins ordering inventory? The company started working people on the renovation before we had a Release of Funds and before they spent any LCDBG money. Are we in violation of the contract?

It is VERY important that SOMEONE familiar with the LCDBG regulations is communicating with the private company. If activities such as renovation begin before Release of Funds, the money cannot be reimbursed. Such activities should be stopped, and

resumed after the Release of Funds is received. The cost of renovations made AFTER the Release of Funds would be reimbursable with LCDBG monies.

5. Our project was going to use LCDBG funds to pay for acquisition of a small parcel adjacent to the existing plant. The private sector money was going to be used for construction and acquisition of a much larger parcel for parking facilities. The company went out and bought the little parcel and the parking lot parcel before the Release of Funds. Does this mean we can't reimburse them for the cost?

Funds cannot be obligated or expended prior to the Release of Funds. The funds spent for acquisition CANNOT be reimbursed. LCDBG funds CANNOT be used to reimburse or pay for any activity if the OBLIGATION of funds occurred before the Release of Funds.

6. With respect to the Release of Funds, should I only be concerned about activities that disturb the site, such as moving dirt or construction. If I have State Historic Preservation Officer (SHPO) approval, is that enough? Do I still have to wait for the comment period to lapse?

SHPO approval is only one of many necessary approvals prior to the Release of Funds unless they are for exempt activities (planning, administration and engineering/design). NEVER allow ANY construction prior to the Release of Funds. You have to wait not only for the completion of the comment period, but until the CITY/PARISH receives the formal notice of Release of Funds.

DAVIS-BACON EQUIPMENT POLICY

Davis-Bacon applies to the installation of equipment if the following occurs:

1. Federal funds are used for the installation.
2. The acquisition of the equipment requires upgrading of the building.
3. The installation of equipment requires improvement of utilities.

If Davis-Bacon applies to the installation of equipment, it may apply to the project as a whole. To determine this you must look at factors for separability:

1. Ownership (common)
2. Use and operation (common management company)
3. Construction process (common):
  - a. Architects (same or different)
  - b. Construction companies (same or different)
  - c. Construction contracts (one or several)
  - d. Work force (same or different)
  - e. Relationship of public/private funding
4. Independence or interrelation
5. Grant documents
6. Vertical vs. horizontal (whether or not the company is doing the entire project)

Activities which traditionally trigger Davis-Bacon:

1. Built-in shelving, display cases or bookcases
2. Walk-in refrigerators
3. Interconnected heating/cooling system
4. Escalators/elevators
5. Hardwired security systems
6. Sinks, bathtubs and toilets
7. Boilers/generators
8. Items requiring outside excavation for laying wire or pipe
9. Gas or electric equipment which requires upgraded services

## EQUIPMENT ANALYSIS

1. Equipment Name: \_\_\_\_\_
2. Description of Use: \_\_\_\_\_
3. Estimate cost: \_\_\_\_\_
4. Estimated Cost of Installation: \_\_\_\_\_
5. Who will Install:     Vendor \_\_\_\_\_             Contractor \_\_\_\_\_  
                                  Employees \_\_\_\_\_             Other \_\_\_\_\_
6. Method of installation including a thorough description of any attachment to building:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Any structure modifications: Yes \_\_\_\_\_             No \_\_\_\_\_ If yes, explain:  
\_\_\_\_\_  
\_\_\_\_\_
8. Any improvements to infrastructure (water, sewer, gas, electric) to accommodate:  
Yes \_\_\_\_\_             No \_\_\_\_\_ If yes, explain:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## QUARTERLY STATUS OF SOURCES AND USES LCDBG ECONOMIC DEVELOPMENT FUND

DATE OF REPORT: \_\_\_\_\_

COMMUNITY: \_\_\_\_\_

DEVELOPER: \_\_\_\_\_

TYPE OF GRANT: \_\_\_\_\_

REPORT # \_\_\_\_\_ PERIOD COVERING From: \_\_\_\_\_ To: \_\_\_\_\_

	EXPENDITURES:	
	<u>PRIVATE:</u>	<u>LCDBG:</u>
Current Period Only	_____	_____
Total Previous Periods	_____	_____
<b>TOTAL CURRENT</b>	_____	_____

	JOBS:	
	<u>TOTAL:</u>	<u>LOW/MOD:</u>
Total Employment Previous Periods	_____	_____
New Hires This Period	_____	_____
Discharged Employees	_____	_____
<b>NET TOTAL EMPLOYMENT THIS PERIOD</b>	_____	_____

PERSON PREPARING REPORT: \_\_\_\_\_

\_\_\_\_\_  
Signature of Local Government Official

\_\_\_\_\_  
Signature of Developer

CURRENT EMPLOYMENT LISTING  
as of (date) \_\_\_\_\_.

NAME	JOB CATEGORY	ORIGINAL DATE OF HIRE	SOCIAL SECURITY #
Grant, Ulysses	Welder	5/21/04	415-00-0000
Lee, Robert	Fabricator	6/03/04	416-00-0000
Meade, George	Accountant	7/15/04	415-00-0000
Jackson, Thomas	Foreman	7/16/03	414-00-0000
Sherman, William	Fabricator	1/06/04	312-00-0000
Polk, Leonidas	Machine Operator	2/15/04	414-00-0000
Sheridan, Phillip	Fabricator	2/15/04	386-00-0000
Hill, A. P.	Assembler	6/14/05	415-00-0000
Farragut, David	Assembler	2/01/04	212-00-0000
Bragg, Braxton	Sales Manager	11/15/04	213-00-0000
Davis, Jefferson	President	3/21/05	416-00-0000

Signed: \_\_\_\_\_  
(Jefferson Davis, President XXX Corp., Inc.)

Date: \_\_\_\_\_