

FUNDING AGREEMENT INFORMATION AND IDENTIFICATION

Funding Agreement Number: 17N-052

Subrecipient: Louisville/Jefferson County Metro Government

Project Name: Louisville Metro NSP-1 Neighborhood Stabilization Program

Federal Agency: United States Department of Housing and Development

HUD Grantee: Kentucky Department for Local Government

Title: Neighborhood Stabilization Program

Public Law No.: American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Pub. L. 110-289

Award Year: 2017

2501-504-5329-538634

805-506-8500-538200
538211

FUNDING AGREEMENT

This Funding Agreement (hereinafter "the Agreement") is made and entered into this ____ day of _____, 2017, by and between the Louisville/Jefferson County Metro Government, a consolidated local government, pursuant to KRS Chapter 67 C, hereinafter referred to as Subrecipient, and the Commonwealth of Kentucky, Department for Local Government, hereinafter referred to as the Commonwealth. The purpose of this Agreement is to set forth the terms and conditions under which the Commonwealth agrees to dispense the sum of \$63,671.00 (Sixty Three Thousand Six Hundred Seventy-One Dollars) in NSP-1 funding to the Subrecipient. Subrecipient has requested and received funds from the United States Government under Public Law Public Law 111-5 and/or 110-289 (U.S. Department of Housing and Urban Development, Neighborhood Stabilization Program-1) and desires to use the funds for its Neighborhood Stabilization Program-1.

1. GENERAL PROVISIONS

A. Contents of Agreement

This Agreement shall consist of the following documents which are incorporated by reference as if fully set out herein: (1) the Subrecipient Agreement and the exhibit to which this agreement refers; (2) the Subrecipient Proposal and evidentiary material; (3) all State and Federal Law requirements to which the application and this agreement refer or apply; (4) the Commonwealth of Kentucky Substantial Amendment to its Action Plan (which incorporates NSP funding into the State's planning and funds distribution process); (5) the Kentucky NSP Program Guidelines currently in effect, plus any guidance provided by the U.S. Department of Housing and Urban Development specific to the Neighborhood Stabilization Program; (6) any applicable administrative regulations; and (7) any amendments or modifications to any of the above referenced requirements.

B. Scope of Service

The Subrecipient will be responsible for administering and implementing the NSP program in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include activities eligible under the Neighborhood Stabilization Program (including activities funded utilizing NSP program income) including the program delivery, levels of accomplishment, time of performance, budget parameters as set forth in Exhibit A of this Agreement and loan servicing guidelines as set forth in Exhibit B of this Agreement.

C. General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

- (1) "Abandoned": A home or residential property is abandoned if either a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or b) a code enforcement inspection

has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state or local law or otherwise meets a state definition of an abandoned home or residential property.

(2) **“Activity”** refers to an eligible activity category, such as housing rehabilitation or demolition.

(3) **“Activity delivery costs”** are those costs defined in 24 CFR 570.206 that are incurred by Subrecipients, and may be charged to the particular activity performed above and will not count as general administration and planning costs. Project delivery costs can be charged to project funds rather than administrative funds.

(4) **“Administrative Costs”** means costs authorized under 24 CFR 570.206, Program Administrative Costs, which permits NSP funds to be used for "reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part" with NSP funds. Examples of program administrative costs include:

- A. Salaries of executive officers,
- B. Office space for program staff employed in carrying out the NSP program,
- C. Staff time spent developing policies and procedures for managing NSP activities, and
- D. Administrative services performed under third party contracts, such as general legal and audit services.

An amount of up to 5% of NSP funds may be used for general administration and planning activities as defined at 24 CFR 570.205 and 206.

(5) **“Appraisal”** means an appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”), as further defined in 49 CFR 24.103.

(6) **“Area Benefit Activities”** means those activities which benefit all the residents of a primarily residential area in which at least 51% of the residents have incomes at or below 120% of area median income (LMMA).

(7) **“ARRA”** means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, and is inclusive of NSP-3 funding authorized under the Dodd-Frank Wall Street Reform Act. ARRA requirements within this agreement apply to NSP-3 funding.

(8) **“Blighted structure”** means a structure that exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare, as further defined by KRS 99.705.

(9) **“Bona fide tenancy”**: The American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. No. 111-5, imposes requirements on Neighborhood Stabilization Program (NSP) Grantees to ensure that bona fide tenants in foreclosed NSP-affected properties receive proper

treatment. 1 Additional amounts made available for NSP pursuant to Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, are subject to Recovery Act tenant protection requirements. A lease or tenancy shall be considered bona fide only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm's-length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property. A "lease" does not have to be written, but either the lease or tenancy must meet the requirements of the Recovery Act.

Persons affected:

- A. Any bona fide tenant occupying certain residential property under a lease in effect on or before the date of notice of foreclosure, or
- B. Any bona fide tenant occupying certain residential property without a lease or with a lease terminable at will under state law at the time of foreclosure

Implications:

For (A) above, Initial successor in interest (ISII) must allow such tenants to remain to end of the lease term* and provide a minimum 90 days' notice to vacate. These periods may overlap but cannot be less than 90 days.

For (B) above, ISII (see key terms) must provide such tenants a minimum 90 days notice to vacate.

(10) "**CDBG Act**" means the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended.

(11) "**Commonwealth**" when not used to designate the territory of the Commonwealth of Kentucky shall mean the Commissioner of the Department for Local Government or any other person to whom the Commissioner has delegated authority to act with respect to matters covered by this Agreement.

(12) "**Contractor**" means an entity that supplies goods and services at an agreed-upon rate or price. When a Subrecipient hires a contractor, the contractor must be procured pursuant to Part 84.

(13) "**Current market appraised value**" means the value of a property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by the Subrecipient, developer, or individual homebuyer; provided, however, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the Subrecipient, along with DLG approval, determines is qualified to make the valuation.

- (14) **"Date of Notice of Foreclosure"** means: For purposes of the NSP tenant protection provisions described at Section K of FR-5447-N-01, the date of notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed. If none of these events occur in the acquisition of a foreclosed property (e.g. in a short sale), in order to ensure fair and equitable treatment of bona fide tenants and consistency with the NSP definition of foreclosed, the date of notice of foreclosure shall be deemed to be the date on which the property is acquired for the NSP-assisted project. NOTE: This definition does not affect or otherwise alter the definition of "foreclosed" as provided in this Agreement.
- (15) **"Default"** means any default set forth in Section 6-A to this Agreement.
- (16) **"Developer"** means a for-profit or private nonprofit individual or entity that the Commonwealth provides NSP assistance to for the purpose of (1) acquiring homes and residential properties to rehabilitate for use or resale for residential purposes and (2) constructing new housing in connection with the redevelopment of demolished or vacant properties. Developers are program beneficiaries and thus distinct from subrecipients, the Commonwealth's employees, and contractors. Developer-led rehabilitation is undertaken pursuant to 24 CFR 570.202(b)(1). New housing construction is undertaken pursuant to 24 CFR 570.204, or the NSP notice published on October 6, 2008, as amended. To qualify as a developer, the entity must acquire site control of the property to be rehabilitated or redeveloped. The Commonwealth cannot designate an entity as a developer if it is simply providing construction services in connection with a property owned by another entity.
- (17) **"Eligible Costs"** means costs for the activities specified in Exhibit A of this Agreement for which NSP funds are budgeted as specified in Exhibit A of this Agreement, provided that such costs (i) are incurred in connection with any activity which is eligible under the authorizing legislation and Section 105A of Title I of the CDBG Act, and (ii) conform to the requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments or A-122, Cost Principles for Non-Profit Organizations (as applicable); A-102, Grants and Cooperative Agreements with State and Local Governments; and A-133, Audits of States, Local Governments and Nonprofit Organizations, as may be amended from time to time. For purposes of determining the conformity of costs to said A-122 Attachment B, all costs set forth in Section C thereof may be considered eligible without prior approval of the Commonwealth.
- (18) **"Environmental Conditions"** means the condition imposed by law, particularly 24 CFR Part 58, and the provisions of the Agreement which prohibit or limit the commitment and use of NSP funds until certain procedural requirements have been completed.
- (19) **"Environmental Requirements"** means the requirements described in 24 CFR Part 58.
- (20) **"Environmental Studies"** means all eligible activities necessary to produce an "environmental review record", as that term is defined at Section 1508.10 of 40 CFR Part 1508, or to comply with the requirements of 24 CFR Part 58.

- (21) **"Foreclosed" or "foreclosed upon"** means: A home or residential property has been foreclosed upon if any of the following conditions apply: a) the property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or b) the property owner is 90 days or more delinquent on tax payments, or c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, subrecipient, contractor, developer, or end user.
- (22) **"HERA"** means the Neighborhood Stabilization Program 1 (NSP-1) found in Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended.
- (23) **"HUD"** means the United States Department of Housing and Urban Development.
- (24) **"Land bank"** means a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.
- (25) **"LMMI"** is a HUD-defined term incorporating households with eligible incomes (at or below 120% of area median, based on household size and county), including low-, moderate-, and middle-income, in referring to the national objective of the program, as further defined in Section 2(H)1 of this Agreement.
- (26) **"Limited Clientele Activities"** means those activities which serve a limited clientele whose incomes are at or below 120% of area median income (LMMC).
- (27) **"Low-Income Set-Aside"** refers to the NSP requirement that not less than 25 percent (25%) of the funds appropriated or otherwise made available to the Commonwealth shall be used for the purchase and redevelopment of properties that will provide permanent housing to individuals or families whose incomes do not exceed 50 percent of area median income. Set-aside requirement also apply to program income receipts.
- (28) **"NSP Funds"** means those funds to be provided by the Commonwealth to Subrecipient or Developer pursuant to the terms of this Agreement, as specified in Exhibit A of this Agreement. NSP Program Income funds are those funds remitted to DLG and expended, and displaced NSP-1 funds redistributed according to the NSP Substantial Amendment to the Action Plan.
- (29) **"NSP" or "NSP funding"** means a grant or loan guided by HERA and Title I of the Housing and Community Development Act of 1974, Public Law 111-5 and/or 110-

289, inclusive of program income from NSP Funds redistributed by DLG, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by Subrecipient at the time the Subrecipient's Proposal and/or evidentiary material was submitted.

(31) **"Participating Party"** means any person, firm, corporation or funding source identified as such in Exhibit A of this Agreement.

(32) **"Program Income"** means the NSP portion of: (i) any income earned by Subrecipient or Developer, or an agent or agency of Subrecipient, from the disposition of real or personal property acquired in whole or in part with NSP funds; (ii) the repayment proceeds (including principal and interest) of any loan made in whole or part with NSP funds; (iii) any other revenues defined as program income in 24 CFR Part 570, Subpart J; and (iv) any interim development financing funds provided to Subrecipients or Developers that is not converted to permanent financing, or used for developer fee or development subsidy or other expenses approved by the Commonwealth. The "NSP portion" means an amount computed by applying the percentage of participation of NSP funds (i) in the acquisition cost of the property to the total income from the disposition of such property, (ii) in the amount of the loan to the total repayment proceeds of such loan, or, (iii) in the cost of an activity to the total income from such activity.

(33) **"Project"** refers to work undertaken for a specific purpose and for NSP refers to an individual property being built or rehabilitated or a similarly specific effort.

(34) **"Project-related soft costs"** refers to those eligible expenses which may be charged by a Developer as project-related expenses, rather than costs to be paid from developer fee. The Commonwealth defines these utilizing correlating HUD guidance contained within HUD CPD Notice 96-9. Costs related to the development or financing of NSP-assisted housing must be reasonable and necessary costs. Staff salary and fringe costs that are directly related to a specific NSP-assisted unit can be charged to either developer fee or project-related soft costs. Eligible project-related soft costs include architectural, engineering or related professional services required to prepare plans, drawings, or specifications of a project; costs to process and settle the financing for a project, such as private lender origination fees, credit reports; fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees; costs of a project audit that DLG may require with respect to the development of the project; an initial operating deficit reserve which is a reserve to meet any shortfall in project income during the period of rent-up (of a new construction or rehabilitation project) and which may only be used to pay operating expenses, scheduled payments to replacement reserves, and debt service for a maximum of 18 months or until the project reaches 100% occupancy, whichever period is lesser; impact fees that are charged for all projects within a jurisdiction; appraisals required by NSP program regulations; preparation of work write-ups, work specifications, and cost estimates or review of these items if an owner has had them independently prepared; construction inspections and oversight; costs associated with a project-specific environmental review.

(35) **"Proposal"** means the Neighborhood Stabilization Program 1 Proposal or Neighborhood Stabilization Program 1-Program Income Proposal, and such other submittals, as are specified in Exhibit A of this Agreement.

(36) **"Purchase Discount"** means the minimum discount percentage from the current market-appraised value under which a property may be purchased. Under HUD Notice FR-5255-N-02, the purchase discount for foreclosed-upon properties is "at least 1 percent from the current market-appraised value of the home or property." The Kentucky NSP program applies the 1% discount to all property types, including properties that are abandoned and/or vacant.

(37) **"Subrecipient"** means a nonprofit or public agency that assists the Commonwealth or another subrecipient to administer all or a portion of the NSP program. As provided in the NSP Bridge Notice, published on June 19, 2009, "Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization (including a unit of general local government) awarded funds by a state. The term also includes any land bank receiving NSP funds from a grantee or another subrecipient." Section 570.500(c) reads as follows: "Subrecipient means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of this part."

(38) **"Subrecipient Activities"** means those activities of the Project to be carried out by the Subrecipient, its agent or agency, which activities are described in Exhibit A of this Agreement and further defined in the Proposal.

(39) **"Vacant properties"** includes both vacant land and properties with vacant structures on the land.

(40) **"Vicinity"** means each neighborhood identified by DLG in its March 1, 2011 NSP3 Substantial Amendment to its Action Plan as being an area of greatest need.

2. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

(1) **Accounting Standards**: Subrecipients agree to comply with 24 CFR Part 84 or Part 85, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

(2) **Cost Principles**: The Subrecipient shall administer its program in conformance with the regulations, policies, guidelines and requirements of OMB Circular's Number A-87, A-122, and A-133 (as applicable) and the 24 CFR Part 84 or 85 (as applicable) as it relates to the Proposal, acceptance, and use of Federal funds under this document. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

- (3) Client Data: Subrecipients shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request. The Commonwealth has adopted the "Part 5," or "Section 8" method of calculating income and assets pursuant to the Home Investment Partnerships Program Technical Guide for Calculating Income and Assets. This method must be used to determine client eligibility in all projects not qualifying under limited clientele or area benefit criteria. The referenced Guide includes requirements for calculating adjusted tenant income for the purpose of determining the tenant rent portion for NSP-funded rental projects.
- (4) Disclosure: Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
- (5) Close-outs: Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG NSP funds, including program income.
- (6) Reporting and Payment Procedures / Indirect Costs: If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.
- (7) Reports: The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Subrecipient shall promptly furnish to the Commonwealth all reports required to be filed in accordance with any directives of the Commonwealth or any statute, rule or regulation of HUD.

B. Eligible Costs

- (1) **"Total Development Cost"** means those expenses which are integral and allocable to the design, construction, and occupancy of a real estate project, including hard and soft costs. Soft costs may include activity delivery costs undertaken by Subrecipient staff and may include the direct cost of staff time, as well as associated fringe, provided each is properly documented and attributable to the production of a specific NSP-assisted unit. Overhead costs for Subrecipients are taken from administrative fees and are not included in Total Development Cost; overhead costs for Developers are to be paid from the Developer Fee. Total development costs may include:

Predevelopment: Costs for land acquisition (appraisal, Realtor, legal, title and recording), demolition, environmental (inspection, engineering, remediation, abatement).

Development: Installation of infrastructure with prior written approval from the Commonwealth (DLG); site development, interest and fees on construction loans, real estate taxes, insurance and property maintenance during development, legal fees, recording fees, surveys, platting cost, testing, engineering, and architectural, construction materials, contractors and subcontractors, construction staff directly allocable to the project, permits, licenses and insurance for construction; construction insurance and bonding allocable to the project; transportation cost, phones used on construction sites, construction supplies and tools, dumpster, site security, other construction and site costs; construction supervisor, construction staff (including salary, taxes, benefits, insurance and related expenses) directly allocable to the construction of the NSP-funded unit(s).

Post-development: marketing; legal, recording, title, documentation and other fees association with the sale; post-completion appraisal(s); mortgage origination fees not attributable to NSP mortgage financing; servicing set-up fees; and homeownership counseling if provided by a HUD-approved housing counseling agency or counselor.

Allowable costs for Subrecipients are outlined in Exhibit B.

(2) **Developer's Fees:** Entities may charge developer's fees only when (i) activities are carried out pursuant to 24 CFR 570.202(b)(1). Developer Fee is an activity, or project cost, and compensates the Developer for related overhead expenses and provides a return on the developer's investment.

Developer Fee Basis: NSP-paid developer fee shall be calculated as follows:

Rehabilitation, including reconstruction: $\text{NSP Total Development Cost} * .08 = \text{developer fee allowed}$

New Construction: $\text{NSP Total Development Cost} * .10 = \text{developer fee allowed}$

The Commonwealth may retain 10% of the NSP-funded project (unit) cost until all project completion documents are received, including remittance of program income receipts to the Commonwealth.

(3) **Appliances:** The CDBG regulations at 24 CFR 570.207 (b)(1)(iii) generally prohibit the purchase of equipment that is not an "integral structural fixture". This has limited use to stoves, refrigerators, and central air conditioning, where appropriate. However, the language in the CDBG regulations on Rehabilitation, at 24 CFR 570.202(b)(4) and (5), does provide for "improvements to increase the efficient use of energy...and water". Clothes washers, dryers and dishwashers are permitted in NSP-1 and NSP-3 when all of the following conditions are met:

A. NSP funds have rehabilitated or constructed the homes;

- B. Installation of such appliances is comparable to unassisted homes in the local housing market (see HOME Program standards);
- C. Deed restrictions or covenants ensure that appliances remain in the home, if appropriate; and
- D. Qualifying appliances meet or exceed Energy Star standards.

The Commonwealth strongly recommends the use of high-efficiency appliances. High-efficiency models (above Energy Star) provide the following benefits:

- Washers save 7,000 gallons of Water per year and use 50% less energy and detergent;
- Dryers use 58 percent less energy; both produce longer clothes life;
- Home installation reduces the costs of Laundromats on LMMI occupants.

C. Procurement Compliance

(1) Subrecipients shall comply 24 CFR Parts 84 or 85, as applicable, as they relate to the procurement of goods, services, materials or equipment acquired with NSP funds. Subrecipient shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the DLG upon termination of this Agreement. If the Subrecipient's agency policy (city, county or nonprofit) is more restrictive than the requirements cited above, the agency policy must be followed. Developers must document cost reasonableness, and must adhere to their agency's standard procurement policies.

D. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- (1) The Subrecipient shall transfer to the Grantee any NSP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- (2) Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as DLG deems appropriate]. If real property acquired in whole or in part with NSP funds fails to meet a national objective within the time period specified in Exhibit A, Subrecipient must repay One Hundred Percent (100%) of the NSP investment in the property. If Subrecipient later fails to maintain the property in a manner that meets a national objective throughout the period of affordability, the Subrecipient shall pay DLG an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-NSP funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to DLG.

(3) In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the NSP program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-NSP funds used to acquire the equipment].

3. ASSISTANCE PROVIDED AND PROGRAM DELIVERY

A. Assistance Provided

In consideration of the various obligations undertaken by the Subrecipient pursuant to this Agreement, as represented by the Subrecipient in the Proposal, the Commonwealth agrees, subject to the terms and conditions set forth herein, to provide the Subrecipient with NSP funds in the amount specified in Exhibit A of this Agreement.

Subrecipient may incur eligible costs such as the cost of an appraisal or title search but then decide that acquisition is not feasible; NSP funds may be used to pay the eligible expenses of a failed acquisition.

Subrecipient may incur counseling costs specific to prospective purchasers of NSP-assisted housing or tenants of NSP-assisted rental housing. For homeownership counseling, Subrecipient may request payment for counseling for households who complete the required eight hours of housing counseling but do not buy a home; Subrecipient must charge these counseling costs as a public service activity under Eligible Use E. Counseling costs for prospective homebuyers who receive counseling and purchase an NSP-assisted home should be charged under the Eligible Use under which the NSP-assisted unit is produced, as a project delivery cost. Developers may not use NSP funding for any type of housing counseling.

B. Appraisals

Appraisals are required on all NSP-assisted acquisitions of property, provided, however, if independent documentation is provided by a qualified source (i.e., broker opinion, property valuation administrator assessed value, etc.) and the value of the proposed acquisition is \$25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the Subrecipient, subject to approval by DLG, determines is qualified to make the valuation.

While URA regulations do not specifically require appraisals in connection with voluntary acquisitions under 49 CFR 24.101(b), the NSP requires appraisals to be performed with respect to the NSP-funded acquisition of foreclosed upon homes and residential properties, even though they may be considered voluntary under the URA. The Commonwealth further requires an appraisal for all NSP-assisted acquisitions of property to ensure cost reasonableness. The URA appraisal requirements of 49 CFR 24.103 must be met. For acquisitions which meet

the applicable voluntary acquisition requirements of 49 CFR 24.101(b), Subrecipient must meet the following requirements:

(1) The Subrecipient must ensure that the owner is informed in writing of what it believes to be the market value of the property; and that the NSP Subrecipient will not acquire the property if negotiations fail to result in an amicable agreement (see 49 CFR 24.101(b)(1) & (b)(2)).

(2) If NSP funds are to be used to acquire a property (other than through donation), the Subrecipient must ensure that the purchase price includes no less than a one percent (1%) discount from the value established by an appraisal that meets the following requirements:

- A. The appraisal must have been completed within 60 days of the offer made for the property (an initial offer can be made, subject to the completion of the appraisal within 60 days of a final offer).
- B. The appraisal must meet the URA definition of an appraisal (see 49 CFR 24.2(a)(3)) and the five following requirements (see 49 CFR 24.103(a)(2)):
 - i. An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.
 - ii. All relevant and reliable approaches to value. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.
 - iii. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
 - iv. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.
 - v. The effective date of valuation, date of appraisal, signature, and certification of the appraiser.
- C. The appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.
- D. If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be

just compensation for the owner's entire interest in the real property and the salvage value (defined at §24.2(a)(24)) of the retained improvement.

(3) The Subrecipient has a legitimate role in contributing to the appraisal process, especially in developing the scope of work and defining the appraisal problem. The scope of work and development of an appraisal under these requirements depends on the complexity of the appraisal problem. HUD's guide to preparing an appraisal scope of work under the URA is available in HUD Handbook 1378- Appendix 19 or through the following link:

<http://www.hud.gov/offices/adm/hudclips/handbooks/cpdh/1378.0/1378x19CPDH.pdf>

(4) The Subrecipient shall establish criteria for determining the minimum qualifications and competency of appraisers. Qualifications shall be consistent with the scope of work for the assignment. The Subrecipient shall review the experience, education, training, certification/licensing, designation(s) and other qualifications of appraisers, and use only those determined by the Subrecipient to be qualified.

(5) If the Subrecipient uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 et seq.).

C. Purchase Discounts

The Commonwealth requires all NSP-assisted acquisitions of property to be at a discount from the current market appraised value of the property, taking into account its current condition, and such discount shall ensure that Subrecipient is paying below-market value for the home or property. The Commonwealth is requiring a minimum discount of 1 percent less than current market appraised value for each property purchased with NSP funds. Subrecipients are strongly encouraged to negotiate with lenders to obtain price reductions commensurate with the avoided costs of holding, marketing and selling the homes and to obtain a minimum 1% discount from current market appraised value. The address, appraised value, purchase offer amount, and discount amount of each property purchase must be documented in the Subrecipient's program records.

D. Applicability of the Uniform Relocation Act

The URA voluntary acquisition requirements (49 CFR 24.101(b)(1)-(5)) apply to anyone who uses NSP funds (or any federal financial assistance) to acquire property including any agency, non-profit, or individual homebuyers who use federally-funded down payment or other financial assistance. To meet these requirements, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, that the acquisition will not take place. There are specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it (see 49 CFR 24.101(b)(1)(i)-(iv)) or if the buyer does not have the power of eminent domain (see 49 CFR 24.101(b)(2)). Any acquisition under possible threat of eminent domain, cannot be considered a "voluntary acquisition" (even if the seller is willing to negotiate).

The relocation provisions of the Uniform Relocation Act apply to NSP funds. An unlawful occupant (see 49 CFR 24.2(a)(29)) who is displaced for an NSP-funded acquisition will not be entitled to relocation assistance and payments. However, a lawful occupant displaced for an NSP-funded acquisition will generally be eligible for relocation assistance and payments under URA.

(1) Bona Fide Tenants: The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a bona fide tenant at the time of foreclosure. Prior to investing NSP funds for acquisition, Subrecipient must make a determination whether the initial successor in interest complied with these requirements.

- A. The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any bona fide tenant, as of the date of such notice of foreclosure: (i) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.
- B. In the case of any qualified foreclosed housing in which a recipient of assistance under Section 8 of the United States Housing Act of 1937 (42 U.S.C 1437f) (the Section 8 Program) resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit.
 - i. Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.
 - ii. If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered

uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family's reasonable moving costs, including security deposit costs.

- C. For purposes of this section, a lease or tenancy shall be considered bona fide only if: (i) the mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arm's length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.
- D. The recipient shall maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements of HERA as amended by ARRA. If the recipient determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified. If a recipient elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

Subrecipient may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant. This section shall not preempt any Federal, State or local law that provides more protections for tenants.

(2) Lease-purchase activity – additional requirements: For lease-purchase activity, the Subrecipient will generally not be required to relocate a tenant if he/she does not qualify to purchase the property at the end of the lease term if:

- A. This is a new tenant who was not in the property at time of Initiation of Negotiations for acquisition, demolition, rehabilitation or conversion of a lower income unit for an NSP-funded project (i.e., a "subsequent tenant" under URA); and
- B. Before agreeing to occupy the unit, the tenant was provided with a move-in notice (see 24 CFR 570.606(b)(2)(ii)(B)) that advised them they were occupying an NSP-funded project for a lease-purchase activity and that if they were unable to meet the eligibility requirements to become an owner within the program's time limits that they would not be eligible for relocation assistance under either the URA or Section 104(d).

For lease-purchase activity, the eviction for cause standards in the URA 49 CFR 24.206 would also apply.

Monthly lease-purchase costs during client tenancy must be at or below the applicable fair market rent set by HUD, as adjusted for unit size and geographic location. Note: Fair market rents include tenant-paid utilities.

Lease-purchase units must convert to homeownership within the time period specified in Exhibit A, calculated from the date of the initial lease agreement.

E. Section 3 Requirements

Should Subrecipient's combined NSP expenditures for housing construction, rehabilitation, demolition, etc., exceed \$200,000, Section 3 requirements will apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered contractors. These responsibilities include:

- 1) Making efforts to meet the minimum numerical goals found at 24 CFR Part 135.30;
- 2) Complying with the specific responsibilities at 24 CFR Part 135.32; and
- 3) Submitting Annual Summary reports in accordance with 24 CFR Part 135.90.

If covered contractors receive awards that exceed \$100,000 for the construction and rehabilitation activities listed above, responsibility for Section 3 compliance is shared between the Subrecipient and that firm (with the exception of the submission of the Section 3 Annual report (Form HUD 60002), which must be submitted by the Subrecipient to DLG).

If no contractor receives an award exceeding \$100,000, responsibility for complying with the requirements of Section 3 stays with the Subrecipient. Specifically, the Subrecipient shall be responsible for awarding 10 percent of the total dollar amount of all covered contracts to Section 3 business concerns.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent

feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the NSP-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the NSP-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

Notifications: The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

Subcontracts: The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

F. Code and Accessibility Requirements

(1) **Federal and State Accessibility Requirements:**

A. New Construction-Housing Facilities: If a development has five or more rental units under one contract/deed, then five percent (5%) of the total units or more must be accessible to persons with mobility impairments AND two percent (2%) of the units or one unit must be accessible to persons with visual or hearing impairments. NOTE: These accessible units must comply with UFAS (Uniform Federal Accessibility Standards). See

8.22,24 CFR Chapter 8. Units which are newly-constructed under any Eligible Use, including reconstruction under Eligible Use B, must meet these requirements.

B. Alterations of Existing Housing Facilities: If a development to a project contains 15 or more rental units and the cost of the alterations is 75% or more of the replacement cost of the completed facility, then five percent (5%) of the total units must be accessible to persons with mobility impairments AND two percent (2%) of the units must be accessible to persons with visual or hearing impairments. Reconstruction under Eligible Use B must also meet these requirements.

(2) Fair Housing Design Requirements: New construction and all rehabilitation of units constructed after 1991: Developments shall comply with all requirements of the Fair Housing Accessibility Requirements of the Fair Housing Act. For more information about Fair Housing Accessibility visit the Fair Housing First website at www.fairhousingfirst.org

(3) Building Code Requirements: NSP-assisted units must meet all local housing codes and occupancy standards for new or reconstructed units. At a minimum, for rehabilitated units the Subrecipient must adopt the 2006 International Code Council (ICC) Property Maintenance Code. All newly-constructed units (including reconstruction) must meet 2007 Kentucky Residential Code.

(4) Lead Safe Housing: The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all NSP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

(5) Energy Efficiency/Green Building: Subrecipients shall, at a minimum, adhere to the universal design, green building, energy-efficiency improvement, and handicapped accessibility features specified in the Subrecipient's Proposal, and as required in Exhibit A to this Agreement.

4. ELIGIBLE USES OF FUNDS AND RELATED REQUIREMENTS

A. Authorized Uses of NSP Funds

(1) Low-Income Set-Aside: Pursuant to Exhibit A of the funding agreement all available NSP shall be used for the purchase and redevelopment of properties that will provide permanent housing to households whose incomes do not exceed 50 percent of area median income. "Homes

and residential properties” includes permanent housing only, and does not include homeless shelters.

Subrecipient must expend at least the amount of set-aside funding identified in Exhibit A of this Agreement to create permanent housing for households with incomes at or below 50% of area median.

(2) Requirements for Homeownership Activities: Regardless of the Eligible Use under which a property is assisted, for NSP-assisted housing that is being sold to homebuyers (excludes NSP-assisted housing for which the Subrecipient will retain ownership and rent housing to tenants), the following shall apply:

- A) If an abandoned or foreclosed upon home or residential property is to be sold to an individual as a primary residence, no profit (excluding developer fee) may be earned on such sale.
- B) HERA Section 2301(d)(2) directs that the sale of such property shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. Further, the sale price must be the lesser of the post-development fair market value or the acquisition/redevelopment cost.
- C) The maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally include, among other things, costs related to the sale of property). Cost should equal the total development cost; it may not include holding costs (post-construction utilities, property taxes, insurance, maintenance, etc.).
- D) In determining the sales price, the Commonwealth will NOT consider the costs of boarding up, lawn mowing, maintaining the property in a static condition, or, in the absence of NSP-assisted rehabilitation or redevelopment, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs.
- E) Each NSP-assisted homebuyer is required to complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency or a counselor approved by Kentucky Housing Corporation (a HUD-approved housing counseling agency) before obtaining a mortgage loan.

(3) Eligible uses:

- (A) Eligible Use A: Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers. HERA [§2301(c)(3)(A)] allows financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such

mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers;

(B) Eligible Use B: Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties. HERA [§2301(c)(3)(B)] allows the purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.

a. Acquisition:

- i. Section 2301(d)(1) of HERA requires any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property. Such discount shall ensure that purchasers are paying below-market value for the home or property.
- ii. For mortgagee foreclosed properties, Subrecipients must seek to obtain the "maximum reasonable discount" from the mortgagee, taking into consideration likely "carrying costs" of the mortgagee if it were to not sell the property to the Subrecipient.
- iii. Section 301 of the URA, regarding just compensation, does not apply to voluntary acquisitions.
- iv. All acquisitions of property under NSP require an appraisal for purposes of determining the statutory purchase discount. Appraisals shall be conducted under procedures set forth in Section 2(B) of this Agreement.
- iv. For individual purchase transactions, the purchase discount is to be at least 1% from the current market appraised value of the home or property. Subrecipients shall follow the purchase discount procedures outlined in HUD's NSP Notice FR-5255-N-02. Subrecipients are strongly encouraged to obtain a minimum 5% discount as originally proposed in their Proposal.
- vi. An NSP Subrecipient may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay the necessary and reasonable costs related to the appraisal and transfer of title.
- vii. Subrecipients may not exercise the power of eminent domain to acquire NSP-assisted property.
- viii. HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d).
- ix. Subrecipients are encouraged to acquire and redevelop FHA foreclosed properties. HUD provides information on such properties at <http://www.hud.gov/offices/hsg/sfh/reo/reohome.cfm>. Subrecipients may also contact their local HUD FHA office for further information.

b. Rehabilitation

- i. Any rehabilitation of a foreclosed upon home or residential property shall be to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties.
- ii. Funds may be used for preservation, improving energy efficiency or conservation, or providing renewable energy source(s).
- iii. The Commonwealth encourages Subrecipients to strategically incorporate modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods. Subrecipients must provide, at a minimum, the elements proposed in their Proposal for NSP funding.
- iv. Subrecipient may fund costs such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities, subject to the parameters contained within Exhibit A.
- v. Subrecipient may rehabilitate property to be operated as rental housing if permissible as set forth in Exhibit A. The costs of purchase, rehabilitation, conversion and sale of such properties are eligible NSP activities, but the expenses of actually operating the rental housing (such as maintenance, insurance, deficits in monthly operating income) and tenant-based rental subsidies are not eligible NSP activities.

c. Sale

- i. Subrecipient must ensure that homebuyers obtain a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages.
- vii. Subrecipients are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate. The Commonwealth further requires that all non-NSP mortgage financing be in the form of a fixed-rate, fixed-term loan. Balloon loans, adjustable rate loans and similar products are not allowed.

(C) Eligible Use C: Establish and operate land banks for homes and residential properties that have been foreclosed upon.

a. Land Bank Uses

- i. A land bank may not hold a property for more than ten years from the date of project closeout without obligating the property for a specific, eligible redevelopment in accordance with NSP requirements.
- ii. The Subrecipient must adhere to the actual service area benefitting from a land bank's activities as proposed in its Proposal.
- iii. Subrecipients may pursue other Land Bank activities; however, NSP funds may only be used for acquisition.

- iv. Abandoned homes and residential properties are not eligible under this activity.

(D) Eligible Use D: Demolish blighted structures.

Structures must be documented to meet the definition of blighted under KRS 99.705. The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) are not applicable to NSP-assisted activities.

NSP Subrecipients are not required to meet the requirements of 42 U.S.C. 5304(d) as implemented at 24 CFR 42.375, which mandates one-for-one replacement of low- and moderate-income dwellings units that are demolished or converted for activities assisted with NSP funds.

(E) Eligible Use E: Redevelop demolished or vacant properties.

- a. Subrecipients may acquire demolished or vacant properties for redevelopment for purposes other than housing, provided, however, that such redevelopment must be in a targeted area of greatest need and support activities in the area that are acquiring, repairing, and selling foreclosed and/or abandoned homes. Redevelopment of previously undeveloped property is not an NSP-eligible activity.
- b. Subrecipients may fund costs, such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities.
- c. New construction of housing and building infrastructure for housing is an eligible use.
- d. Subrecipients may redevelop property to be used as rental housing.

(F) Administrative Costs (Housing and Economic Recovery Act §2301(c)(3))

- a. An amount of up to 5% of NSP Project funds may be used for general administration and planning activities as defined at 24 CFR 570.205 and 206. Administrative costs are associated with the planning and implementation of project activities, such as general management, oversight and coordination; public information; fair housing activities; and indirect costs (with an approved cost allocation plan). With HUD concurrence, the Commonwealth has provided developers with modest administrative funds so that they may enter into third-party administrative contracts with qualified CDBG administrators. The Commonwealth's intent is to enable developers to meet all aspects of the CDBG regulations which underpin the NSP program, as well as NSP-specific requirements. Developers may not retain any portion of the administrative funds

for the agency's use, nor may any Developer costs be reimbursed with administrative funds, other than the third-party contract itself.

- b. Activity delivery costs, as defined in 24 CFR 570.206, may be charged only by Subrecipients to the particular activity performed above and will not count as general administration and planning costs. Project delivery costs can be charged to project funds rather than administrative funds (for example, staff and overhead costs directly related to carrying out activities eligible under § 570.201 through § 570.204). Generally, an administrative cost is not directly related to unit production. Project delivery costs, in contrast, are attributable to a specific unit and must be documented as such. These may include staff cost for the preparation of work specifications and bid documents, property inspections, etc., or external costs such as those related to the sale of the property. Eligible activity delivery costs may also include costs related to the sale of the property such as staff time spent counseling the purchasing household, obtaining appraisals, and engineering and design costs related to a specific activity. For direct costs, staff job descriptions should include the duty (i.e., inspection of NSP-assisted units) and time sheets should document time expended on specific activities for specific NSP units. At the Subrecipient's discretion, it may charge such project delivery costs to individual units produced, or may fund all such costs from its administrative funds.
- c. Developers may not retain administrative funds for agency expenses, nor may they charge activity delivery costs. Developer fee is intended to cover Developer profit and overhead. Developers may also charge reasonable actual soft costs as part of total development costs. The Commonwealth, with HUD concurrence, utilizes HUD CPD Notice 96-09 to determine project-related soft costs which must be "reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME [NSP] funds." These include but are not limited to staff and overhead costs that are directly related to a project and/or to the provision of relocation services; environmental costs; architectural, engineering or related professional services required to prepare plans, drawings or specifications of a project; costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees; costs of a project audit that DLG may require with respect to the development of the project; an initial operating deficit reserve; and impact fees that are charged for all projects within a jurisdiction.
- d. For Subrecipients only, housing counseling for prospective purchasers of NSP-assisted units is an eligible activity delivery cost. If a prospective homebuyer completes housing counseling but does not purchase an NSP-assisted home, the costs associated with the counseling are classified as a public service. Other types of housing counseling, such as counseling for prospective tenants, must be

classified as a public service. DLG maintains a separate budget line item for Eligible Use E/Public Services for counseling expenses for non-purchasing households; subrecipients may request reimbursement for such expenses separately from their direct allocation of NSP funds.

- e. Pre-award Costs: A Subrecipient may incur pre-award costs necessary to develop the NSP Proposal and undertake other administrative and planning actions necessary to receive the NSP funding, in compliance with 24 CFR 570.200(h). States may allow Subrecipients to incur pre-award costs pursuant to 24 CFR 570.489(h).

B. Ineligible Uses of NSP Funds

The following types of activities may not be funded with NSP funds:

- i. Acquisition, construction, or reconstruction of buildings for the general conduct of government;
- ii. Refinancing of existing mortgages;
- iii. Foreclosure prevention activities;
- iv. NSP assistance under Eligible Uses A-D if the properties were acquired by the Subrecipient or Participating Party prior to Dec. 2, 2008;
- v. Provision of NSP funds for more than 50% of the required down payment assistance;
- vi. Acquisition of property via a short sale;
- vii. Political activities;
- viii. Certain income payments;
- ix. Construction of new housing by units of general local government, except as permitted under Eligible Use E; and
- x. The expenses of actually operating the rental housing (such as maintenance, insurance, deficits in monthly operating income) and tenant-based rental subsidies.

C. Meeting the National Objective

(I) All of the funds made available under this Agreement shall be used with respect to individuals and families whose incomes do not exceed 120% of area median income. NSP redefines and supersedes the definition of "low- and moderate-income" of the CDBG program by allowing households whose incomes exceed 80% but are no greater than 120% of area median income to qualify for NSP funds. HUD will refer to this new income group as "middle income," but continue to use the CDBG definitions of "low-income" and "moderate-income." HUD will use the term "low-, moderate- and middle-income" (LMMI) to refer to the national objective of the program. NSP allows for the use of only the LMMI national objective.

- (2) Activities may not qualify under NSP using the “prevent or eliminate slums or blight” or “address urgent community development needs” objectives as allowed in the overall benefit provisions of the HCD Act and the CDBG regulations.
- (3) Activities may not meet the HERA low- and moderate-income national objective if the assisted activity only creates or retains jobs for persons whose household incomes are at or below 120 percent of median income (LMMI). Project activities must meet the NSP income eligibility requirements.
- (4) Although NSP changes the low and moderate income requirement level of the CDBG program, the remaining requirements of 24 CFR 570.208(a) and 570.483(b) regarding area benefit, housing, and limited clientele benefit remain unchanged.
- (5) Area Benefit Activities: Benefiting all the residents of a primarily residential area in which at least 51% of the residents have incomes at or below 120% of area median income (LMMI). Area benefit activities include land banking activity (Eligible Use C) and limited clientele activities under Eligible Use E. No use of the “upper quartile” provision is allowed for exception criteria communities. Subrecipients must identify the service area of each NSP-funded activity. HUD has provided data on the percentage of low-, moderate- and middle income persons, by census tracts and block groups. See <http://www.huduser.org/publications/commdev/NSP.html>.
- (6) Limited Clientele Activities: Serving a limited clientele whose incomes are at or below 120% of area median income (LMMC). Limited clientele activities include only housing counseling for prospective purchasers/tenants, and public facilities as approved by the Commonwealth.

D. Adjustments to Funds

The amount of funds which the Commonwealth has agreed to provide to the Subrecipient under this Agreement has been determined by the Commonwealth in reliance upon the cost estimates of the Subrecipient with respect to the activities set forth in the Proposal. The Commonwealth reserves the right to reduce the amount (i) to conform to any revision to which the Subrecipient and the Commonwealth may agree with respect to Exhibit A of this Agreement, or (ii) if the actual costs for activities are lower than those set forth in Exhibit A of this Agreement.

E. Subrecipient's Treatment of Program Income

- (1) All Program Income which is received by the Subrecipient must be returned to the Commonwealth (via the Department for Local Government) unless otherwise specified in Exhibit A. For all Subrecipient activities, including land-banked property or sale of homeownership property, program income must be remitted to DLG within five business days of

the closing date of the property's sale. For Subrecipient rental housing (including lease-purchase activity), program income must be remitted within five business days of the end of each calendar quarter. For Developer homebuyer activities, program income must be remitted to DLG within five business days of the closing date of the property's sale. For Developer lease-purchase or rental activities, program income must be remitted annually following completion of the financial audit of the housing development. All program income must be remitted in accordance with the Commonwealth's Substantial Amendment to its Action Plan (the \$25,000 benchmark used in the CDBG program is not applicable).

- (2) Unless otherwise specifically stated in Exhibit A of this Agreement, all Program Income received by the Subrecipient after completion of all activities and through the end of the Affordability Period specified in subsection K below shall be returned to the Commonwealth.

5. AFFORDABILITY

All NSP-assisted units must adhere to the affordability provisions of 24 CFR 92.252 (for rental units) and 24 CFR 92.254 (for homeowner units) for an Affordability period, which is based upon the total amount of NSP funds provided per unit. Affordability periods must be enforced utilizing a mortgage, promissory note and, where applicable, deed restriction. Subrecipient must enter into a loan servicing agreement with DLG or DLG's designee. The Affordability Period is a minimum standard, and Subrecipients may operate under longer affordability periods as set forth in Exhibit A.

The minimum Affordability Period is as follows:

< \$15,000 per unit	5 years
> \$15,000 < \$40,000 per unit	10 years
> \$40,000 per unit	15 years
New construction or acquisition of newly-constructed units, including reconstruction under Eligible Use B	20 years

A. Continued Affordability - Homeownership

The HOME regulations cited in the NSP Notice provide options for continued affordability; Subrecipients must use the recapture option, which is applicable throughout the affordability period. Under the recapture option, the NSP subsidy must be returned to the Commonwealth with certain exceptions. This option allows the seller to sell the unit to any willing buyer at any price. Once the NSP funds are repaid, the property is no longer subject to NSP restrictions. Recaptured funds will be calculated as follows:

- (1) For forgivable, incrementally deferred loans, repayment of any unforgiven amount. This will be calculated against full-year occupancy, i.e., the date of forgiveness as identified in the mortgage and/or promissory note.
- (2) For amortizing loans, repayment of the unpaid principal balance.

Where sale proceeds are insufficient to repay either amount above, proceeds will be distributed as follows:

- Sale price – senior mortgage amounts = sale proceeds
- Sale proceeds minus homebuyer investment (down payment only; does not include NSP funds for closing costs) minus documentable homebuyer expenses for improvements.
- If there are funds remaining, proportional allocation based on homebuyer investment & NSP investment. For owner-occupied, there will be no recapture of any appreciation. The revenues owed would be limited to the NSP investment, minus any forgiveness, etc.

B. Continued Affordability – Rental

NSP requires that NSP-assisted housing have “continued affordability” for a period of years (the continued affordability period), and permits Subrecipients to adopt the HOME standard for affordability, except that housing may be occupied by households with incomes up to 120% of AMI. The Commonwealth, as Grantee, has adopted the HOME standards in its NSP Action Plan; Subrecipient may implement a longer period as noted in Exhibit A.

The Commonwealth’s minimum affordability periods for NSP-assisted rental properties are:

< \$15,000 per unit	5 years
> \$15,000 < \$40,000 per unit	10 years
> \$40,000 per unit	15 years
New construction or acquisition of newly-constructed units, including reconstruction under Eligible Use B	20 years

The per unit investment of NSP funds is dependent on the amount of NSP funds invested in the project relative to other funding sources, and the number of units that are reserved for occupancy by NSP income-eligible tenants paying NSP-qualified rents. The Commonwealth will enter into a mortgage and promissory note and will require a deed restriction for all rental units to ensure continued affordability.

Rents must be affordable and meet the definition thereof in the Commonwealth’s Substantial Amendment to its Action Plan.

6. DISBURSEMENT OF NSP FUNDS

A. Authorization

(1) Promptly after the Commonwealth has received from the Subrecipient two (2) fully executed copies of this Agreement and has approved evidentiary materials required by Exhibit A of this Agreement that would allow a draw of NSP funds pursuant to the terms of Exhibit A of this Agreement, the Commonwealth shall authorize the amount of NSP funds specified in Exhibit A of this Agreement.

(2) The Subrecipient is authorized to draw NSP funds only in accordance with the provisions of this Agreement and the procedures established by the Commonwealth. No payment by the Commonwealth of an improper or unauthorized draw to the Subrecipient shall constitute a waiver of the right of the Commonwealth to challenge the validity of said draw, to enforce all rights and remedies set forth in the Agreement, or to take corrective or remedial administrative action, which action may include suspension or termination of this Agreement.

(3) The disposition of any funds that remain available following completion of the Project, termination of this Agreement by the Commonwealth or Subrecipient, or termination of the Project for any cause, shall be in accordance with closeout procedures then in effect or established by the Commonwealth including, but not limited to, provisions of the applicable OMG circulars for local governments and/or nonprofit agencies.

B. Incurring Costs for Project Activities

(1) The use of funds is conditioned upon the Subrecipient incurring costs to be paid in accordance with this Agreement or as otherwise approved by the Commonwealth in writing. Except as permitted by 24 CFR Part 58, no costs to be paid out of project funds may be incurred by the Subrecipient until all Environmental Conditions of 24 CFR Part 58 have been fully satisfied and the Commonwealth has issued the environmental clearance required by 24 CFR Part 58.

(2) The authorization to incur costs in subsection (1) above is not an authorization to reimburse those costs and does not mean or imply that such costs will be reimbursed out of NSP funds. The Subrecipient may voluntarily, at its own risk, and upon its own credit and expense, incur costs as authorized in subsection (1) above, but its authority to reimburse or to be reimbursed out of NSP funds shall be governed by the provisions of this Agreement applicable to the payment of costs and the release of funds by the Commonwealth.

(3) Prior to the Commonwealth issuing the environmental clearance required by 24 CFR Part 58 and as mentioned above, the Subrecipient may not use any funds, including state, federal, local or private funds, to take any action with respect to the Project where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such a fashion that the validity of the conclusions to be reached would be affected.

C. Authorization by the Commonwealth for the
Subrecipient to Draw NSP Funds

Subrecipient's draw of NSP funds can occur only after the following has occurred:

- (1) The Commonwealth has issued the environmental clearance required by 24 CFR Part 58;
- (2) The Commonwealth has approved the required evidentiary materials specified in Exhibit A of the Agreement,
- (3) The Commonwealth has authorized the Subrecipient's ability to draw funds;
- (4) Subrecipient shall have submitted all certifications and materials required as conditions precedent to Subrecipient's authority to pay costs out of NSP funds;
- (5) If authorized by Exhibit A herein and if the Commonwealth finds Subrecipient has timely and acceptably submitted the evidentiary materials in Exhibit A herein, approved same, and if no default has occurred, as defined in Section 6-A herein, and
- (6) The Commonwealth has not served Subrecipient with notice of Subrecipient's suspension of authority to draw the NSP funds, nor is the Subrecipient in breach of the Subrecipient's obligation to report default.

7. REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS

A. Subrecipient's Representations and Warranties

The Subrecipient has, by and through consultations among all appropriate members of the Subrecipient's governing body and its officers, examined each of the following and by its execution of this Agreement the Subrecipient does, upon information and belief, represent and warrant to the Commonwealth that:

- (1) The Subrecipient is duly organized and validly existing under the laws of the Commonwealth, and has the requisite power and authority to enter into this Agreement and to assume the responsibilities for compliance with all Federal and State laws and regulations; and
- (2) A resolution, order or ordinance has been duly adopted, passed or enacted as an official act of the Subrecipient's governing body, authorizing the execution and delivery of this Agreement by the Subrecipient and authorizing and directing the person executing this Agreement to do so for and on behalf of the Subrecipient, said acts being done in such manner and form as to comply with all applicable laws to make this Agreement the valid and legally binding act and agreement of the Subrecipient; and
- (3) There is no action, proceeding, or investigation now pending, nor any basis therefore, known or believed by the Subrecipient to exist, which (i) questions the validity of this Agreement, or any action taken or to be taken under it, or (ii) is likely to result in any material

adverse changes in the authorities, properties, assets, liabilities, or conditions (financial or otherwise) of the Subrecipient, which would materially and substantially impair the Subrecipient's ability to perform any of the obligations imposed upon the Subrecipient by this Agreement; and

(4) The representations, statements, and other matters contained in the Proposal were true and complete in all material respects as of the date of filing. The Subrecipient is aware of no event that would require an amendment to the Proposal, other than any amendment that has been filed with and approved by the Commonwealth, since the date the Proposal was filed. The Subrecipient is aware of no event or other fact that should have been, and has not been, reported in the Proposal as material information; and

(5) The Subrecipient has obtained or has reasonable assurances that it will obtain all Federal, State and local government approvals and reviews required by law to be obtained by the Subrecipient for the Project; and

(6) Insofar as the capacity of the Subrecipient to carry out any obligation under this Agreement is concerned, (i) the Subrecipient is not in material violation of its Charter, or any mortgage, indenture, agreement, instrument, judgment, decree, order, statute, rule or regulation and (ii) the execution and performance of this Agreement will not result in any such violation; and

(7) Except for approved eligible administrative and personnel costs, none of the Subrecipient's designees, agents, members, officers, employees, consultants or members of its governing body in which the program is situated, and no other public official of the Subrecipients of such locality or localities who exercises or who has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the project or in any activity, or benefit there from, which is part of this project at anytime during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the Commonwealth and the Commonwealth has approved such exception.

(8) Anti-Lobbying – The Subrecipient certifies that: No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(9) Conflicts of Interest - The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4); KRS 99.350(8); KRS 61.252(1); KRS 65.003; and the local community ethics code. This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 84, 24 CFR Part 85, 24 CFR 570.611, 24 CFR 570.489(h), A-110, KRS 45A.340, KRS 61.210, KRS 61.220 and KRS 61.250 et. seq.

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- A. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- B. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- C. No covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

C. Certifications

By signing this Agreement, Subrecipient certifies that:

1. It possesses legal authority to apply for the funding, and to execute the proposed program, shall abide by all federal and state laws, executive orders, and regulations.
2. Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the acceptance of NSP funds, including all understandings and assurances contained therein, and directing and authorizing the applicant's chief executive officer to act in connection with the Proposal and to provide such additional information as may be required.
3. It has complied with all the requirements of Executive Order 12372, and that either:

- A. Any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the Proposal; or
 - B. The required procedures have been followed and no comments or recommendations have been received prior to submission of the Proposal.
4. It has facilitated or will facilitate citizen participation by:
- A. Publishing a statement of proposed activities so that affected citizens have an opportunity to submit comments on the proposed activities and the community development performance of the applicant;
 - B. Providing adequate notices for two or more public hearings, specifically to persons of low and moderate income;
 - C. Holding two or more hearings on the proposed Proposal at times and locations convenient to potential beneficiaries, convenient to the handicapped, and meeting needs of non-English speaking residents, if appropriate, to obtain citizens' views before adoption of a resolution or similar action by the local governing body authorizing the filing of the Proposal;
 - D. Providing citizens information concerning the amount of funds available for proposed community development activities and the range of those activities;
 - E. Providing citizens with information concerning the estimated amount of funds that will benefit persons of low and moderate income;
 - F. Furnishing citizens with the plans made to minimize the displacement of persons and to assist persons actually displaced as a result of funded activities;
 - G. Providing technical assistance to groups representing persons of low and moderate income requesting such assistance in developing proposals;
 - H. Providing citizens with reasonable notice of substantial changes proposed in the use of NSP funds and providing opportunity for public comment;
 - I. Providing citizens with reasonable access to records regarding the past use of CDBG funds received; and
 - J. Any modifications or amendments of the program that are made from time to time will be made in accordance with the same procedures required in (d) for the preparation and submission of a statement of proposed activities.
5. It has identified housing and community development needs, including those of low and moderate income persons and the activities to be undertaken to meet such needs.

6. The NSP program has been developed so as to give maximum feasible priority to activities which will benefit low and moderate income families.
7. It will minimize displacement of persons as a result of activities assisted by NSP funds.
8. It will not attempt to recover any capital costs of public improvements assisted in whole or in part with NSP funds by assessing any amount against properties owned and occupied by persons of low and moderate income.
9. It will comply with the regulations, policies, guidelines and requirements of OMB Circular's Number A-87, A-122, A-128, A-133 and the "Common Rule," 24 CFR, Part 84 or Part 85 as they relate to the Proposal, acceptance, and use of Federal funds under this document.
10. It will comply with:
 - A. Section 110 of the Housing and Community Development Act of 1974, as amended, 24 CFR 570.603, and State regulations regarding the administration and enforcement of labor standards;
 - B. The provisions of the Davis-Bacon Act (40 U.S.C. S 276a-5) with respect to prevailing wage rates;
 - C. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et. seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
 - D. Federal Fair Labor Standards Act, 29 U.S.C.S 102/et. seq., requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
 - E. Anti-Kickback (Copeland) Act of 1934, 18 U.S.C.S 874 and 40 U.S.C.S 276c, which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities; and
 - F. KRS 337, with respect to Kentucky Prevailing Wage Rates and labor standards.
11. It will comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administrative requirements.
12. It will comply with:
 - A. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States

shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- B. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services;
- C. Section 109 of the Housing and Community Development Act of 1974 (ACT), as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that 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 with funds provided under the Act. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program activity;
- D. Executive Order 11063, as amended by Executive Order 12259 on equal opportunity in housing and non-discrimination in the sale or rental of housing built with Federal assistance, and requiring that programs and activities relating to housing and urban development be administered in a manner affirmatively to further the goals of Title VIII of the Civil Rights Act of 1968; and
- E. Executive Order 11246 as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Contractors and subcontractors on Federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.
- F. The Equal Employment Opportunity Act of 1972
Section 504 of the Rehabilitation Act of 1973
The Vietnam Era Veterans Readjustment Act of 1974

The Age Discrimination Act of 1975
The Immigration Reform and Control Act (IRCA) of 1986
The Civil Rights Restoration Act of 1987
The Fair Housing Amendment Act of 1988
The American with Disabilities Act of 1990
Housing for Older Persons Act of 1995
Title I Section 106(d)(5)(B) of the Housing and Community Development Act of 1974
The Kentucky Civil Rights Act
KRS Chapter 344.015(2) and 45 KAR 1:080 Section 1(7) and Section 2.

13. It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income persons residing within the unit of local government in which the project is located; and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing within the unit of local government.

14. It will to the greatest extent practicable under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended with the final rule published February 3, 2005, and will comply with Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42.

15. It will:

A. Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and HUD implementing regulations at 24 CFR Part 42 and 24 CFR 570.606, subject to superseding language within HERA;

B. Provide relocation payments and offer relocation assistance as described in the Uniform Relocation Assistance Act of 1970, as amended, to all persons displaced as a result of acquisition of real property for an activity assisted under the Neighborhood Stabilization Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treatment of such persons on account of race, color, religion, national origin, sex, or source of income; and

C. Provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of NSP funds to acquire or substantially rehabilitate property.

16. It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

17. It will comply with the provisions of the Hatch Act that limits the political activity of employees.
18. It will give the State, HUD and the Comptroller General, through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the NSP funds.
19. If the Subrecipient is a unit of local government, its chief executive officer or other officer of applicant approved by the State:
 - A. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. S 4321 et. seq.) and other provisions of Federal law, as specified in 24 CFR Part 58, which furthers the purposes of NEPA, insofar as the provisions of such Federal law apply to the Kentucky Neighborhood Stabilization Program; and
 - B. Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.
20. It will comply with the National Environmental Policy Act of 1969 (42 U.S.C. S 4321 et. seq.) and 24 CFR Part 58, and in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 468), Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1974 (16 U.S.C. 469a-1, et. seq.) by:
 - A) Consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the proposed activity; and
 - B) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties;
 - C) Executive Order 11988, Floodplain Management;
 - D) Executive Order 11990, Protection of Wetlands;
 - E) Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) as it relates to the mandatory purchase of flood insurance for identified special flood hazard areas;
 - F) The Endangered Species Act of 1973, as amended;
 - G) The Fish and Wildlife Coordination Act of 1958, as amended;
 - H) The Wild and Scenic Rivers Act of 1968, as amended;

- I) The Safe Drinking Water Act of 1974, as amended;
 - J) The Clean Air Act of 1970, as amended;
 - K) The Federal Water Pollution Control Act of 1972, as amended;
 - L) The Clean Water Act of 1977; and
 - M) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976.
21. It will comply with Section 401(b) of the Lead-Based Paint Poisoning Act, as amended (42 U.S.C. s 4831(b)). It will also comply with the Lead Safety Housing Regulation covering prohibited methods of paint removal (24 CFR Part 35.140) and occupant protection (24 CFR Part 35.1345).
22. It will adopt and enforce a policy of prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations and will enforce applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.
23. It will provide a drug-free workplace and provide a "Place of Performance" form in accordance with the Drug-Free Workplace Act.
24. It will comply with 24 CFR Part 570.489(j) concerning the change of use of real property purchased or improved in whole or in part with CDBG funds.
25. It will comply with all provisions of Title I of the Housing and Community Development Act of 1974, as amended, which have not been cited previously as well as with other applicable laws.
26. It will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

27. It will not use funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

28. It will comply with FR 5359-F-02 regarding Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.

D. General Obligations

(1) Obligation to Complete Activities on Time

A. The Subrecipient shall use its best efforts to assure the completion of the Subrecipient Activities described in Exhibit A of the Agreement and further defined in the Proposal, including benchmark and deadline dates for the commitment and expenditure of funds, and the sale, lease-purchase or rental of units as set forth in Exhibit A of the Agreement.

B. The Subrecipient agrees that the foregoing undertaking and assurance means that Subrecipient shall, to the maximum extent permitted by law, use and apply all of its governmental (if applicable) and proprietary powers for such completion, including but not limited to those powers governing taxes, other revenues, credit, eminent domain and appropriations, if necessary, for the purpose of providing for any shortfall between funds available under the NSP and funds necessary to complete all of the Subrecipient Activities described in Exhibit A of this Agreement.

(2) Insurance Coverage

A. Workers' Compensation: The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement, and will require all contractors and subcontractors to provide Worker's Compensation Insurance coverage for all of their employees involved in the performance of this Agreement, as a condition of any contract or subcontract.

B. Insurance and Bonding: The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall require all contractors and subcontractors to carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance and will require the same of its contractors and subcontractors.

(3) Signage: Subrecipient agrees to provide, and to require its contractors and/or subcontractors to post, signage at the project site(s) recognizing the Commonwealth of Kentucky, the U.S. Department of Housing and Urban Development, and the Subrecipient. A model sign is available for download from DLG's website at the following link: <http://www.dlg.ky.gov/downloads>. For single-site rental projects, a single 4'x8' (or larger) sign shall suffice. For scattered site rental projects and/or scattered site homeownership projects, Subrecipient must post either a 4'x4' sign or 4'x8' sign on at least 35% of its total project locations. Signage should be maintained until all development activity is complete, and on homeownership units, may remain until the unit is sold.

E. Commonwealth Approval of Amendments

The Commonwealth will consider program amendments initiated by either party. The Commonwealth defines a program amendment as a request for change in an approved program which (i) is a new activity in the program, (ii) significantly alters the scope, location, or objective of the approved activities or beneficiaries, and/or (iii) results in a change or cumulative changes of the approved budget as described in Exhibit A. Any amendments shall be made in writing and shall be made in accordance with the procedures set forth in the Kentucky NSP Implementation Manual established by the Commonwealth.

F. Notification and Action Upon Default

(1) The Subrecipient shall promptly give notice to the Commonwealth upon the discovery by the Subrecipient of any default, as defined in Section 6-A of this Agreement, involving itself or any Participating Party.

(2) Promptly, upon the discovery of any default involving any itself or any Participating Party, the Subrecipient shall vigorously pursue, to the fullest extent possible, all remedies available to Subrecipient to remove or cure such default, or to seek redress or relief from its effects, including reimbursement for any NSP funds expended on the Project, and to prevent or mitigate any adverse effects on the Project. Subrecipient shall keep the Commonwealth fully informed as to the status of such actions.

8. INSPECTION AND REVIEW

A. Duty to Maintain and Rights to Inspect and Copy, Books, Records and Documents

(1) Documentation and Record Keeping

A. Records to be Maintained: The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- Records providing a full description of each activity undertaken;
 - Records demonstrating that each activity undertaken meets the national objectives and income requirements of the NSP program;
 - Records required to determine the eligibility of activities;
 - Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with NSP assistance;
 - Records documenting compliance with the fair housing and equal opportunity components of the NSP program;
 - Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
 - Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- (2) Retention: The Subrecipient shall retain all project-related financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years from project close-out, except as noted below:
- A. For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.
 - B. Written agreements must be retained for five years after the agreement terminates.
 - C. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled.
 - D. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

The retention period begins on the date DLG issues its project close-out approval letter. Notwithstanding the above if any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

- (3) Access: The Subrecipient agrees that the Commonwealth, the Finance and Administration Cabinet, The Auditor of Public Accounts, the Legislative Research Commission, HUD, the General Accounting Office, and the Inspector General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or

program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Commonwealth, the Finance and Administration Cabinet, The Auditor of Public Accounts, the Legislative Research Commission, HUD, the General Accounting Office, and the Inspector General of the United States which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1) (c) prior to the execution of the contract. This exemption provision does not apply to HUD, the General Accounting Office, and the Inspector General of the United States. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a state government agency were providing the services.

(4) Audits, Inspections and Site Visits: All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

Any duly authorized representative of the Commonwealth or HUD shall, at all reasonable times, have access to all portions of the Project, including all files and records as specified in Section 5 above, until completion of all closeout procedures and final settlement and conclusion of all issues arising from this NSP funding.

9. DEFAULTS AND REMEDIES

A. Defaults

A default shall consist of any use of NSP funds for any purpose other than as authorized in this Agreement; or any breach of any covenant, agreement, provision, or warranty (i) the Subrecipient made in the Agreement; (ii) the Subrecipient made in any agreement entered into between the Subrecipient and any Participating Party; (iii) any Participating Party made in any agreement specified in Exhibit A of this Agreement; or (iv) of the time frame specified in the Agreement.

B. Remedies Upon Default

(1) Upon occurrence of any default as described in Section 6-A, the Commonwealth may suspend the Subrecipient's authority to draw NSP funds at any time by notice to the Subrecipient. If a default is not cured within thirty (30) consecutive days from notice of such default by the

Commonwealth to the Subrecipient, the Commonwealth may continue such suspension or by delivery of notice terminate this Agreement. In the event of a termination, the Subrecipient's authority to draw funds shall have terminated at the date of the notice of termination and the Subrecipient shall have no right, title or interest in or to any NSP funds remaining.

(2) In addition to any other rights or remedies, if a default consists of the Subrecipient's failure to submit the evidentiary materials described in Exhibit A of this Agreement or in other official written notification, the Commonwealth shall have the right to terminate this Agreement and the award of NSP funds to which this Agreement relates by delivery of written notice to the Subrecipient. Upon such termination, all obligations of the Commonwealth pursuant to this Agreement and such award shall cease and the Subrecipient shall neither have nor retain any rights whatsoever with respect to the NSP funds provided under this Agreement.

(3) The rights and remedies of the Commonwealth shall be deemed to be cumulative and shall be in addition to all those rights afforded the Commonwealth by law or equity. Any election of any right or remedy shall not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy.

(4) The rights and remedies available to the Commonwealth in the event of a suspension or termination of the Agreement shall survive such suspension or termination.

10. EVIDENTIARY MATERIALS

A. Commitments of Participating Parties

(1) In selecting the Subrecipient for the award of NSP funds, the Commonwealth has relied, in material part, upon the representations of the Subrecipient and Participating Parties that the Subrecipient and the Participating Parties (i) will carry out certain activities connected with the Project; (ii) will complete those activities; and (iii) have, or will have, the financial capability to assure the carrying out of the activities to the completion.

(2) Evidentiary materials submitted by the Subrecipient as Exhibit A which have been submitted to and approved by the Commonwealth shall not be amended in any material respect without prior written approval of the Commonwealth.

B. Form of Documentary Evidence

All documentary evidence of commitments submitted to the Commonwealth for approval shall be in the form of either (i) a duplicate original, or (ii) a photographic copy of the fully executed original, of the documents.

11. PSC STANDARD TERMS AND CONDITIONS

A. Effective Date

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

B. Renewals

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

C. LRC Policies

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

D. Choice of Law and Forum

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

E. Cancellation

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

F. Funding Out Provision

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

G. Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

H. Authorized to do Business in Kentucky

The contractor (subrecipient) affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor (subrecipient) shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

I. Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at
<https://secure.kentucky.gov/sos/ftbr/welcome.aspx>.

J. Invoices for Fees

The contractor (subrecipient) shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website:
<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

K. Travel Expenses, if authorized

The contractor (subrecipient) shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

L. Other Expenses, if authorized

The contractor (subrecipient) shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor (subrecipient) shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.
- Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

M. Purchasing and Specifications

The contractor (subrecipient) certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of-interest laws and principles, "he" is construed to mean "they" if more than one person

is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

N. Conflict-of-Interest Laws and Principles

The contractor (subrecipient) certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

O. Campaign Finance

The contractor (subrecipient) certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

P. Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

Q. Protest

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

William M. Landrum III, Secretary
Commonwealth of Kentucky
Finance and Administration Cabinet
Room 383, New Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601
Phone #: (502) 564-4240
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

R. Social Security

(Check One)

_____ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

_____ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

S. Violation of Tax and Employment Laws

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

T. Discrimination

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. 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 compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

- (3) The contractor 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 advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- (7) The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

12. TERMINATION OF AGREEMENT

This Agreement shall terminate upon the completion of all closeout procedures respecting this NSP1 funding including provisions of the Single Audit Act, OMB Circular A-133 and the final settlement and conclusion between Subrecipient and the Commonwealth of all issues arising out of this NSP funding. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice. This notice, if tendered by the Commonwealth, may also include the notice to cure provided for in Section 9 B. (1). Upon termination of the

Agreement pursuant to this provision, the Developer shall have no right to NSP funds remaining to be disbursed. This provision shall in no way impair and shall be in addition to any additional remedies the Commonwealth may have upon a finding of default or other non-compliance according to the terms of this Agreement. Upon termination of this Agreement by either party with or without cause, the Commonwealth may declare this Agreement void from the beginning without further obligation to the recipient. Further, if the Agreement is terminated by the Subrecipient with or without cause or by the Commonwealth with cause, the Commonwealth may recover all funds paid to the recipient hereunder.

12. MISCELLANEOUS

A. Notice

(1) All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing.

(2) Any such communication shall be deemed effective for all purposes as of the date such communication is mailed, postage prepaid, by registered, certified or first class mail, to be delivered only to the office of the addressee, addressed as follows:

A. Communications to the Commonwealth shall be mailed to: Office of Federal Grants, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601.

B. Communications to the Subrecipient shall be addressed to the Subrecipient, at the address set forth in Exhibit A of this Agreement, or such other address or representative as may be furnished by the Subrecipient to the Commonwealth.

B. Assignment

No right, benefit, or advantage inuring to the Subrecipient under this Agreement and no burden imposed on the Subrecipient hereunder, may be assigned without the prior written approval of the Commonwealth. An authorization by the Commonwealth for the transfer of NSP funds by Subrecipient to a Participating Party shall not be deemed an authorization for an assignment, and such Participating Party shall not succeed to any rights, benefits or advantages of the Subrecipient hereunder.

C. Successors Bound

This Agreement shall bind, and the rights, benefits and advantages shall transfer to, the Subrecipient's successors.

D. Remedies Not Impaired

No delay or omission of the Commonwealth in exercising any right or remedy available under this Agreement shall impair any such right or remedy or constitute a waiver of any default, or an acquiescence therein.

E. Cumulative Remedies

All rights and remedies of the Commonwealth under this Agreement shall be cumulative.

F. Severability

If any article, subsection, clause or provision of this Agreement is held by any court to be unenforceable or prohibited by law, the rights and obligations of the parties shall be construed and enforced with that part, term or provision limited so as to make it enforceable to the greatest extent allowed by law, or, if it is unenforceable, this Agreement shall be construed as if that part, term or provision does not exist.

G. Entire Agreement

This Agreement constitutes the entire agreement between the Commonwealth and the Subrecipient and supersedes all prior oral and written agreements between the parties hereto with respect to the subject NSP funding. Notwithstanding the provisions of Section 1-A of this Agreement and anything contained in the Proposal, the provisions of this Agreement shall prevail.

H. Table of Contents; Titles and Headings

Any table of contents and the headings of the sections and subsections set forth herein are not a part of this Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

I. Amendment of this Agreement

This Agreement, or any part hereof, may be amended as previously described in Section 4-D from time to time hereafter only in writing executed by the Commonwealth and the Recipient.

J. Governing Law

This Agreement as it may affect the rights, remedies, duties, and obligations of the Commonwealth shall be governed by and construed in accordance with Federal and State law. Insofar as Federal law does not apply, the provisions of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

K. Waiver by the Commonwealth

The Commonwealth reserves and shall have the exclusive right to waive, at the sole discretion of the Commonwealth, and to the extent permitted by law, any requirement or provision under this Agreement. No act by or on behalf of the Commonwealth shall be, or be deemed or construed to be, any waiver of any such requirement or provision, unless the same be in writing, signed by the Commonwealth, and expressly stated to constitute such waiver.

L. Effective Date

The Agreement shall continue in effect for twelve (12) months from the date of this agreement unless terminated at an earlier date in accordance with the terms set forth herein. The terms of this Agreement may not be renewed or extended upon mutual written agreement duly executed by the parties.

M. Termination of Agreement

This Agreement shall terminate upon the completion of all closeout procedures respecting this NSP funding including provisions of the Single Audit Act, OMB Circular A-133 and the final settlement and conclusion between Subrecipient and the Commonwealth of all issues arising out of this NSP funding. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice. This notice, if tendered by the Commonwealth, may also include the notice to cure provided for in Section 6 B. (1). Upon termination of the Agreement pursuant to this provision, the Subrecipient shall have no right to NSP funds remaining to be disbursed. This provision shall in no way impair and shall be in addition to any additional remedies the Commonwealth may have upon a finding of default or other non-compliance according to the terms of this Agreement. Upon termination of this Agreement by either party with or without cause, the Commonwealth may declare this Agreement void from the beginning without further obligation to the recipient. Further, if the Agreement is terminated by the Subrecipient with or without cause or by the Commonwealth with cause, the Commonwealth may recover all funds paid to the recipient hereunder.

N. Anti-Speculation Provisions-Sale of Real Property

- (1) When, in Exhibit A of this Agreement, a document is required to contain a provision for the prevention or discouragement of speculation in the purchase and sale of property by a beneficiary of NSP funds, then, unless otherwise specified, such provision shall comply with this Section.
- (2) The document shall prohibit the beneficiary of NSP funds from selling or otherwise disposing of the property within a period specified in Exhibit A of this Agreement after the date of the purchase, for an amount in excess of the purchase price paid, plus the actual costs of any improvements to the property by the beneficiary. The prohibition against sale shall have the same force and effect as a lis pendens, and shall specify that in the event of any attempted sale in violation of the provision, the Subrecipient shall be entitled to the ex-parte issuance of an injunction restraining such sale. The document shall be executed and authenticated in such

manner and form as may be required under State law to authorize its recordation at the place of recordation of deeds, as if a lis pendens and the document shall be so recorded.

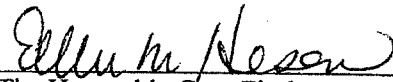
(3) The document may, in conjunction with the foregoing or in lieu thereof, describe a procedure whereunder, in the event of any sale of the property within the period specified in Exhibit A of the Agreement, the amount of NSP funds which benefited the beneficiary shall be repaid by the beneficiary to the Subrecipient. Such procedure may include a pro-rata reduction of the amount to be repaid, based upon the time elapsing between the date of the initial purchase of the property and its disposition by the beneficiary. The document must either specify the amount of the NSP funds which benefited the beneficiary, or set forth a formula or agreed method for determining such amount. The document shall be executed and authenticated in such manner and form as may be required to authorize its recordation, as if a lis pendens and the document shall be so recorded.

EXECUTED BY THE PARTIES THIS ____ DAY OF _____, 2017

DEPARTMENT FOR
LOCAL GOVERNMENT

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

Sandra K. Dunahoo
Commissioner

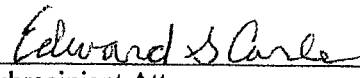


The Honorable Greg Fischer
Mayor, Louisville/Jefferson County Metro
Government

Examined as to form and legality:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Department for Local Government Attorney



Subrecipient Attorney
Edward S. Carle
Assistant Jefferson County Attorney

EXHIBIT A**SUPPLEMENTARY PROVISIONS**

Rider to Section 1-A(2) In addition to Subrecipient's Proposal for Commonwealth Neighborhood Stabilization Program (herein after referred to as "NSP") assistance, "Proposal" shall include the following submittals:

1. Written clarifications requested by/provided to Department of Local Government (DLG) during pre-award review and evidentiary material.
2. Louisville/Jefferson County Metro Government is funded as a Subrecipient.

BUDGET

Total Grant Amount:

Eligible Use	NSP-1	TOTAL
Administrative	\$ 3,032.00	\$ 3,032.00
Eligible Use C	\$20,009.00	\$20,009.00
Eligible Use E	\$40,630.00	\$40,630.00
	\$63,671.00	\$63,671.00

DELIVERY OF NOTIFICATIONS

The address of the parties for the purposes of communications relating to this Agreement shall be:

DEPARTMENT FOR LOCAL GOVERNMENT

Commissioner Sandra K. Dunahoo
1024 Capital Center Drive
Suite 340
Frankfort, KY 40601
(502) 573-2382

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

Deborah Bilitski
Develop Louisville
Louisville/Jefferson County Metro Government
444 South Fifth St., 5th Floor
Louisville, Kentucky 40202

PROGRAM ACTIVITIES/LEVEL OF ACCOMPLISHMENTS

Rider to Section 1-C(14). "Subrecipient Activities" for this Project shall consist of the following:

1. The Subrecipient agrees to perform activities as stated in the NSP proposal and given approval as summarized below:

NSP-1

Eligible Use C: Purchase and rehabilitate approximately twelve (12) foreclosed residential properties in the Shagbark/Shanks neighborhood and other NSP-eligible areas as may be identified in Louisville and land bank until residential redevelopment opportunities are identified, and properties can be redeveloped and occupied by income-eligible households within six months of the date of disposition of property from the land bank. This use permits activity delivery costs including operation and maintenance of the land bank, and maintenance and disposition costs of the land-banked properties. All properties must be disposed of from the land bank and must meet a national objective no later than ten years from the date of acquisition.

Eligible Use E: Acquire and redevelop foreclosed, abandoned and/or demolished/vacant properties with subsequent re-platting of all NSP-acquired properties for creation of approximately thirty-eight (38) lots for single family dwellings; new construction of approximately nine (nine) single family homes for homeownership or rental activity.

2. Subrecipient agrees to meet, at a minimum, the respective affordability periods for each activity. Prior to the obligation of NSP funds for lease/purchase activity, Subrecipient will provide unit-specific information as requested by the Department for Local Government. For homeownership activity, individual unit set-up packages will be submitted to and will require approval by the Department for Local Government prior to Subrecipient obligation of NSP funds.
3. The set-aside requirement has been waived for NSP-1 units.
4. The Subrecipient shall make every effort to acquire and assist properties within a single Census tract, where feasible.
5. The Subrecipient agrees to provide all necessary administration to the project to assure compliance with all applicable state, federal and local statutes, as set forth in this funding agreement. Subrecipient shall expend no more than \$3,031.00 of NSP-1 funds to cover administrative costs of the project.
6. The Subrecipient agrees to implement a minimum of six (6) green building techniques, including at least two (2) water saving measures, in each new home construction or renovation from the list of green construction criteria listed below.

- All adhesives, sealants, and primers used on the interior of all buildings and applied on site will comply with South Coast Air Quality Management District Rule #1168.
- Install compact florescent light bulbs (CFLs) in the homes.
- Install programmable thermostats in the homes.
- The average flow rate for all lavatory faucets will be equal to or less than 2.0 gpm (water saving measure).
- The average flow rate for all showers will be equal to or less than 2.0 gpm (water saving measure).
- The average flow rate for all toilets will be equal to or less than 1.3 gpf (water saving measure), toilets will be dual-flush and meet the requirements of ASME A112.19.14 (water saving measure) or toilets will meet the U.S. EPA WaterSense specification and will be certified and labeled accordingly (water saving measure).
- All domestic hot water piping will have R-4 insulation. Insulation will be properly installed on all piping elbows to adequately insulate the 90-degree bend.
- All windows will be Energy Star rated for Kentucky's climate zone.
- Rehabilitation will incorporate Energy Star Features such as qualified ceiling fans, light fixtures, and ventilation fans.
- Install three (3) of the following Energy Star qualified appliances: washer, dishwasher, refrigerator, range hood, or dehumidifier.
- Energy Star heating and cooling product with adaptive recovery technology to prevent excessive use of electricity for back-up heating.

TIME OF PERFORMANCE

The Subrecipient agrees that adhere to the following deadlines:

The Agreement shall continue in effect from January 1, 2017 until December 31, 2017, unless terminated at an earlier date, in accordance with the terms set forth herein. The terms of this Agreement may not be renewed or extended.

EXHIBIT B – SERVICING AGREEMENT

1. **Purposes of Agreement.** DLG, through its administrative services contract with the Kentucky Housing Corporation ("KHC"), agrees to act as a mortgage loan servicer for any and all current and future Neighborhood Stabilization Program 1 ("NSP 1") loans of Subrecipient. Servicing of such mortgage loans will be in accordance with all the applicable covenants and provisions of the Federal National Mortgage Association Service Guide (hereinafter "Guide").

2. **Duties and Fees.**

A. Loan servicing provided by DLG will include:

- (i) Maintaining loan records;
- (ii) Collecting and recording monthly loan payments;

(ii) Verifying placement of homeowner's insurance and payment of applicable taxes; and

(iii) Monitoring loan activity such as default status, foreclosure, bankruptcy, property sale and/or subordination requests.

(iv) Specific loan duties are as follows:

a. Deferred second Homeownership loans, incrementally forgiven:

- i. DLG, through its agent KHC, will escrow taxes and insurance and report annually to DLG (and DLG to Subrecipient) that said taxes and insurance have been paid;
- ii. DLG, through its agent KHC, will notify Subrecipient if it receives a subordination request, recapture demand, or notice of bankruptcy and/or foreclosure in regard to these loans; and

b. Amortizing first or second-lien Homeownership loans:

- i. DLG, through its agent KHC, will escrow taxes and insurance and report annually to Subrecipient that said taxes and insurance have been paid;
- ii. DLG, through its agent KHC, will collect a \$75 tax service fee at loan closing to set-up the escrow account at KHC;
- iii. DLG, through its agent KHC, will provide to Subrecipient proof of payment of escrows and notify Subrecipient if it receives a subordination request, recapture demand, or notice of bankruptcy and/or foreclosure in regard to these loans;

c. Rental, amortizing first position loan:

- i. DLG, through its agent KHC, will collect principal, interest and escrow taxes and insurance for these loans;
- ii. DLG, through its agent KHC, will provide to Subrecipient proof of payment of escrows and notify Subrecipient if it receives a subordination request, recapture demand, or notice of bankruptcy and/or foreclosure in regard to these loans;

d. Rental, forgivable at maturity loan:

- i. DLG, through its agent KHC, will escrow taxes and insurance and report annually to Subrecipient that said taxes and insurance have been paid;
- ii. DLG, through its agent KHC, will notify Subrecipient if it receives a subordination request, recapture demand, or notice of bankruptcy and/or foreclosure in regard to these loans;

e. Rental, reserve for replacement:

- i. DLG, through its agent KHC, will establish rental, reserve for replacement accounts for each rental project into which Subrecipients will deposit required funds;
- ii. DLG, through its agent KHC, shall notify Subrecipient of requests for reserve for replacement withdrawals, and DLG will approve/disapprove of such request;

- iii. DLG, through its agent KHC, will maintain reserve account and ensure that it is capitalized by Subrecipient in accordance with funding agreement requirements;
- iv. DLG will review and approve or deny requests for reserve for replacement withdrawals.

B. Loan servicing provided by DLG, through its agent KHC, will not include:

- (i) Financial counseling for Subrecipient's clients;
- (ii) Reconciling of delinquencies or other problems associated with the loans to Subrecipient's clients; or
- (iii) Foreclosure and/or bankruptcy proceedings on Subrecipient's behalf.

The duties and obligations of DLG shall be determined solely by the express provisions of this Agreement and DLG shall not be liable for the performance of any duties or obligations which are not specifically set forth in this Agreement.

3. **Service Release.** Subrecipient shall release all servicing rights and all rights to receive servicing fees and other servicing-related income and benefits, with respect to each loan delivered under this Agreement to and for the benefit of DLG. Subrecipient hereby agrees to comply with all applicable federal, state and local laws relating to the sale and/or transfer of loan servicing rights.