

**2021**  
**Economic Development Grantee Handbook**

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**June 2021**

***Section 1:***  
***Administrative Requirements for Economic  
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## **Administrative Requirements Economic Development Category**

### **I. PURPOSE**

The purpose of the following administrative requirements is to provide local governments with standards for administering the Community Development Block Grant (CDBG) program in a consistent manner. These requirements are in addition to those prescribed through the Housing and Community Development Act. Generally, the federal requirements for the program are prescribed through the Code of Federal Regulations, 24 CFR 570; 2 CFR Part 200; and the CDBG program manuals.

### **II. ELIGIBILITY AND APPLICATION REQUIREMENTS**

The eligibility and application requirements are specified in the Application Guidelines. Application Guidelines are published annually and are consistent with the Consolidated Plan for the CDBG program.

### **III. ADMINISTRATION**

#### **A. Grant Agreement**

The agreement will list all conditions which must be satisfied by the local government grantee to secure a release of funds. The agreement will constitute authority to incur eligible reimbursable costs to satisfy the conditions of the agreement; however, no costs will be reimbursed and no CDBG funds can be obligated or drawn down until all requirements for Release of Funds have been met which must be prior to grant award.

If the conditions are not satisfied within 90 days of the award date, the Kansas Department of Commerce (Commerce) may terminate the grant offer.

The terms and conditions for the CDBG are specified in the grant agreement between the local government and the state. This document describes the special provisions and requirements which govern the use of funds. This document can be amended only by the mutual consent of the state and the local government. This amended agreement shall be reduced to writing, confirmed by the governing body of the grantee, signed by the elected official representing the grantee, and signed by a representative of Commerce.

## B. Approval of Activities in a Grant Application

Commerce will approve only those activities that in its judgment meet the requirements as set forth in Section 104(b)(3) of the Housing and Community Development Act (the Act) of 1974, as amended, and which are eligible for funding under Section 105(a)(17) of the Act, which provides for assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project.

## C. Eligible Costs

Commerce has the responsibility to determine the eligibility of project costs in a local government grantee's CDBG program. The determination of project cost eligibility will be made in accordance with the Act and 2 CFR Part 200.

## D. Administrative Costs

Administrative costs are reasonable costs of overall program management, coordination, monitoring, and evaluation. Project or activity costs are those costs specifically related to the implementation and execution of the activity and can be classified as delivery costs. A grantee may be reimbursed for approved administrative costs provided:

1. The costs are reasonable for the services provided, are in accordance with 2 CFR Part 200, and do not exceed the amount authorized in the grantee's CDBG contract.
2. The amount of compensation charged to the program is based on payrolls documented and provided in accordance with generally accepted practices of state and local governments.
3. If applicable, the grantee has followed procurement procedures when contracting with consultants. Grantees may contract with a regional council of which it is a member without following procurement procedures if the regional council provides the services on its own.

If a grantee withdraws from the program at any time, Commerce reserves the right to determine the amount of funds to reimburse or recapture from the grantee for incurred eligible administrative costs. Further, Commerce reserves the right to reduce the amount of administrative funds requested, if deemed excessive.

Local government grantees should make certain that costs directly associated with implementing a project are charged as project costs even though they may be administrative in nature. An example would include legal procedures for acquiring property.

#### E. Environmental Review

Procedures contained in 24 CFR Part 58, "Environmental Review Procedures for Title I, Community Development Block Grant Programs," will apply to all local government grantees. The environmental review of economic development projects covers the entire project, including the private money portion.

#### F. Release of Funds

Upon satisfaction of all Environmental Review conditions, local government grantees will submit a "Request for Release of Funds." Following satisfaction of other conditions which may occur, approval of "Request for Release of Funds" will constitute authority to obligate and to begin drawdown of funds.

#### G. Request for Grant Funds

1. The grantee shall be entitled to receive requisitioned funds from Commerce only in accordance with its actual and immediate cash requirements.
2. A Request for Funds submitted by a grantee shall include as part of the request a summary listing of invoice numbers and dates, payroll references, check numbers, dates, amounts, and other such information to substantiate use of federal funds and local funds by source.
3. Requisitions for cash advances shall be made on the established forms and shall not ordinarily be made more frequently than twice a month or in amounts less than \$3,000 and in no case more than \$200,000, unless a piece of equipment is more than \$200,000.
4. The grantee shall establish procedures to ensure that any amounts of cash in excess of the limits set forth in number 1 above shall be expended within three days of receipt of the funds in the depository account.
5. Cash advances made by the grantee to subgrantees shall conform to the same standards of timing and amount as apply to the grantee under this agreement.
6. Amounts withheld from contractors to assure satisfactory completion of work shall not be paid until the grantee has received a final payment request from the contractor and has certified the work is complete and satisfactory.

7. Commerce may terminate advance financing and require the grantee to finance its operations with its own working capital should it be determined that the grantee is unwilling or unable to establish procedures to minimize the time lapsing between cash advances and disbursement. Payments to the grantee should be made only as reimbursement for actual cash disbursements.

#### H. Program Amendments and Extensions

Prior written approval from Commerce is required for any program amendment and for any program extension, except as provided in number 1 below. Policies relating to program amendments and extensions under the CDBG program are:

1. Program Amendments - Local governments may reallocate up to ten percent of the total grant amount received or \$10,000, whichever is less, among approved activities (except professional services) without prior approval of Commerce. However, Commerce shall be notified in writing of such changes.

Amendments will be submitted for:

- a. Any change of ten percent or more of the total grant or more than \$10,000, whichever is less.
  - b. Any inclusion of a new activity or deletion of an approved activity.
  - c. Any increase in the amount budgeted for any professional services.
  - d. Any time extension of the grant period when special circumstances necessitate such an action.
2. Submission of Program Amendments - For any program amendment request, local government grantee shall submit in writing to Commerce:
    - a. Identification of and reasons for the proposed program amendments.
    - b. Copies of a revised implementation schedule, if applicable. An approved revised schedule is required for all time extensions.
    - c. Amendment form (included in Financial Section of Grantee manual), in duplicate, both originally signed by the chief elected official of the grantee and approved by the governing body prior to submittal.

For program amendments which include any new activity, the local government grantee will also submit in writing:

- d. Certification that the new activities meet the national objective to benefit low- and moderate-income (LMI) persons for funding and comply with the Applicable Laws and Regulations for Title I;
- e. Certification that sufficient funds are available to complete the new activities within the program period;
- f. Re-evaluation of environmental assessment, if applicable.

## I. General Administration

1. Match Requirement and Other Funding Sources - The following requirements shall apply to the identification and expenditure of matching and other leveraged funds by the business assisted through the CDBG grant to the local government.
  - a. For activities requiring matching funds or for activities in which the business leverages additional funds, the business must insure that such funds are available for expenditure during the project period. The assured availability of these matching and leveraged funds is part of the loan agreement and, therefore, is required.
  - b. Matching and leveraged funds must be expended as identified in the application. Copies of invoices and checks must be on file with the grantee for all expenditures.
  - c. Grantees generally will be required to apply local matching and leveraged funds proportionately to CDBG funds, as shown in the approved application and executed agreement, for all activities. Documentation and verification of matching leveraged funds by the business will be required at the time of agreement execution. The local government will be required to certify on each Request for CDBG Funds form the amount of local and matching funds applied to the project.
2. Financial Management Standards
  - a. Management System - All local government grantees will maintain a financial management system.
  - b. Procurement Standards - The requirements of the CDBG program shall apply to the procurement of supplies, equipment, construction, and services funded in whole or in part with block grant funds by grant recipients or subrecipients. For-profit businesses are expected to follow "good business" practices in procuring goods and services.
  - c. Property Management - All local government grantees will comply with the requirements of the CDBG program.

- (1) Local governments must receive written approval from Commerce prior to the purchase of any real or personal property over \$300 for which there is not a separate budget line item.
  - (2) Disposition of any real property acquired with CDBG funds must first have the approval in writing from Commerce.
- d. Bonding and Insurance - All local government grantees will comply with the requirements of the CDBG program. State law in many instances is more restrictive than the above requirements.
- e. Program Income - As defined in the Consolidated Plan, program income is gross income earned by the grantee from activities supported by grants made by Commerce under the provisions of the Federal Act, or as otherwise defined by Commerce.
- (1) Program income includes, but is not limited to:
    - (a) Proceeds from the disposition by sale or long-term lease of real property purchased with CDBG funds.
    - (b) Income from the temporary use of leasing of properties acquired with CDBG funds pending the disposition of such income.
    - (c) Recapture of principal and interest from loans made with grant or revolving loan fund proceeds.
  - (2) Program income:
    - (a) Shall be used prior to drawdown of additional grant funds.
    - (b) From closed grants, shall be treated as program income of an active grant and shall be used prior to drawdown of additional grant funds.
    - (c) Shall be subject to the requirements of a local reuse plan submitted by the local government and approved in writing by Commerce.
    - (d) Shall be used in accordance with requirements of Title I of the Housing and Community Development Act.
    - (e) Shall not be used to increase the amount approved as necessary or appropriate for assistance to a for-profit entity.



- (3) All program income from a project funded by this agreement and received prior to the program's closeout being accepted by Commerce and not used to reduce the grant drawdowns shall be returned to Commerce.
- (4) Program income does not include interest earned on cash advances from Commerce. Such interest shall be remitted to the U.S. Treasury.
- (5) It is understood that this agreement does not provide the grantee the right to keep program income for the purpose of a Local Revolving Loan Fund.
- (6) To be considered for a Local Revolving Loan Fund, the grantee shall submit and have approved by Commerce a Program Reuse Plan and a Local Revolving Loan Fund Capacity Agreement. Commerce reserves the right to refuse local reuse.
- (7) A Local Revolving Loan Fund Capacity Agreement shall be entered into prior to the formal closeout of the grant.
- (8) Local governments shall report the receipt and expenditure of program income to Commerce for the six-month period ending June 30 and December 31 of each year. Reports are due within 30 days following the end of the reporting period.
- (9) A Local Revolving Loan Fund (RLF) is a fund specially created to handle program income and to re-loan the funds to other projects that meet all the federal and state CDBG requirements. In order for the state to approve the establishment of an RLF, the project must attain the national objective, meet its job creation/job retention targets, and be current on the CDBG loan. All program income generated from projects awarded by the state after January 1, 1989 must meet the "same activity" and "reasonable time" provisions. "Same activity" is defined as another loan to the same business from which the program income was generated. "Reasonable time" is defined as another loan made within three months of the time when principal payments began on the original loan. Program income on projects prior to this date must meet all federal requirements and follow guidelines consistent with respective program year.
- (10) Local RLF's must submit semi-annual reports to Commerce. All funds retain their identity as CDBG program income in perpetuity, regardless of the number of times they are loaned and repaid. All CDBG requirements remain in effect.

- J. Record Keeping Requirements - The following policies are related to record keeping requirements under the CDBG program. (Appropriate forms for record keeping are contained in the CDBG Grantee Handbook.)
1. Financial Management - Recipients are to maintain records which identify adequately the source and application of funds for grant supported activities. These records will contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities outlays, and income.
  2. Relocation - Each local government grantee will maintain a management control mechanism that indicates the overall status of the relocation organization, and farm operation displaced. Each separate record shall include:
    - a. Name, address, and relocation needs of person(s) to be displaced; a description of the services and assistance provided; a statement of the type and amount of relocation payments made; and the location and a description of the replacement dwelling or nonresidential accommodation to which the person(s) relocated.
    - b. The pertinent claim form(s) and supporting documentation submitted by the displaced person and a copy of the worksheet or other document used by the recipient to determine eligibility for and the amount of the payment(s) made.
    - c. A copy of any grievance filed by the displaced person, a description of the actions taken to resolve it, and a copy of all pertinent determinations.
  3. Equal Opportunity - Each local government grantee will maintain data which records its affirmative action in equal opportunity employment and its good faith efforts to identify, train, and/or hire lower-income residents of the project area and to use business concerns which are located in or owned in substantial part by low- and moderate-income persons or which employ low- and moderate-income persons residing in the area of the project.
  4. Affirmative Action - Businesses assisted through the CDBG program shall comply with Title VI of the Civil Rights Act of 1964 and the Fair Housing Amendments Act of 1988 which prohibit discrimination on the basis of race, color, sex, religion, national origin, or familial status. No person shall be denied employment on the basis of a disability.
  5. Labor Standards - Each local government grantee will maintain records regarding compliance of all contractors performing construction work with grant funds, with the obligations imposed upon them by the Davis-Bacon Act, as amended (40 U.S.C. 276a-276-5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), and the regulations issued pursuant to these Acts and with other applicable federal laws and regulations pertaining to labor standards.

Assisted businesses and industries who use CDBG funds for construction shall comply with the requirements of the Davis-Bacon Act which provides for standard wages for construction activities.

6. Environment - Each local government grantee will prepare and maintain environmental review records as specified in 24 CFR Part 58 and as Commerce may otherwise require.
7. Fair Housing - Each local government grantee will maintain records regarding its efforts to affirmatively further fair housing on an annual basis during the life of the grant.
8. Displacement - Each local government grantee will maintain in its records the plans for minimizing displacement of persons as a result of activities assisted with CDBG funds, and the actions taken to assist persons actually displaced as a result of such activities.
9. Job Creation/Retention - Each local government shall obtain information from assisted businesses and industries regarding the job creation and retention of employees. Prior to employment, this information shall contain data on income prior to employment (or retention) and family size. After employment, information shall be obtained on race, sex, ethnic origin, disability, or female head of household. Each grantee is also required to obtain race, sex, ethnic origin, disability, or female head of household information on all applicants for jobs of the businesses and industries assisted by CDBG funding.

This information shall be reported by the local government in the format prescribed by Commerce.

10. Program Income - All grantees shall submit reports in the format and frequency prescribed by Commerce.
11. Retention of Records –
  - a. Grantees are required to retain all records pertinent to the grant program for a minimum of **three years** after HUD closeout of the year or final repayment on an Economic Development grant. The exception to this requirement would be if the grant is in litigation at the end of the applicable period. The starting point for the **three year period** is when all grants awarded for that program year (January 1 to December 31) have been closed by CDBG and the program close-out for the **program year** has been accepted and acknowledged by HUD.
  - b. Such records shall be accessible to authorized representatives of Commerce, the Secretary of HUD, the Inspector General of the United States and the General Accounting Office.
  - c. Any contract or agreement entered into by the Grantee shall contain the provisions of Item B above to assure accessibility by authorized personnel to the pertinent records of any sub-recipient, contractor or subcontractor.
12. Access to Records - Authorized representatives of Commerce, the Secretary of HUD, the Inspector General of the United States, or the U.S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, items, or property belonging to, or in use by, the grantee and/or loan recipient pertaining to the administration of this grant and the receipt of assistance. Any contract or agreement entered into by the grantee shall contain language comparable to the above so as to assure access by authorized parties to the pertinent records of any

subgrantee, contractor, or subcontractor. Failure on the part of a grantee or a loan recipient to allow said access shall be cause for Commerce to initiate suspension procedures.

13. Performance Reports - The local government grantee is required to submit to Commerce quarterly performance reports and a final report in the manner prescribed by Commerce.
14. Monitoring - Commerce will review and monitor local government grantees activities through on-site visits or other means to assist in the implementation of a local CDBG program and assure compliance with all applicable laws, regulations, and requirements.
  - a. Monitoring for economic development projects shall consist of at least two on-site reviews of the local government records and accomplishments and a review of the location of project activities. The assisted business will be contacted to verify employee certification of income and to inspect property which is used as collateral for the project.
  - b. A monitoring report will be submitted to the local government within 30 days following the review.
  - c. Local governments will be required to respond in writing within 30 days to any findings made as a result of noncompliance with program requirements.
15. Audits and Grant Close-outs
  - a. Recipients will initiate grant close-out in accordance with procedures established by Commerce which are outlined in the grant agreement.
  - b. Administrative close-out shall consist of submission and acceptance of the Final Performance and Financial Reports. The Final Performance Report will be submitted when all jobs to be created/retained as described in the approved application have been achieved, all funds expended, and final job verification has been made.
  - c. Close-out shall consist of submission to and approval by Commerce of the following:
    - (1) Final Performance Report
    - (2) Final Financial Report
    - (3) Final Audit of all expenditures, if applicable
    - (4) Job Edit Report

(5) Job Reconciliation Report

- d. Each grant to a local government will be audited under such terms, conditions and procedures as are established by Commerce in accordance with 2 CFR Part 200. Audit costs, which are procured in accordance with 2 CFR Part 200, are an eligible grant expense and such costs shall be budgeted by local government grantees or paid from funds. (See Section 2, Audit Requirements, of regular CDBG Grantee Handbook.)
- e. Grantees will be required to submit the “Audit Information Form” to the Kansas Department of Commerce each fiscal year. This form must be submitted to the Department on or before May 15th of each fiscal year.

16. Review of Recipient Performance

- a. Objective - A review of each recipient's performance may be conducted by Commerce at any time to determine whether:
  - (1) The recipient is carrying or has carried out a program substantially as described in its approved application.
  - (2) That program is complying or has complied with the requirements of the Housing and Community Development Act of 1974, as amended, these Administrative Requirements, and other applicable laws and regulations.
  - (3) The recipient demonstrates or has demonstrated a capacity to carry out the approved program.
- b. Timing of Review - The review takes place when deemed necessary by Commerce but generally will take place prior to approval of a subsequent grant to the same recipient, and in the case of other recipients, prior to final close-out of the grant.
- c. Basis of Review - The review will consider all available evidence which may include but not be limited to:
  - (1) Approved block grant application, allowable costs, and any amendments and extensions there of
  - (2) Reports prepared by the recipient pursuant to the Administrative Requirements
  - (3) Records maintained by the recipient pursuant to the Administrative Requirements
  - (4) Audit reports
  - (5) Results of Commerce monitoring of the recipient’s performance

- (6) Records of comments and complaints by citizens and organizations or litigation
  - (7) Pending legal actions that may significantly impact on the capacity of the local government to undertake a CDBG project (such as initiative, referendum, recourse, and recall measures as provided in state law)
- d. Substantial Progress - The review will determine whether the recipient is making or has made substantial progress in carrying out its approved program. The review will take into account such factors as expenditure of funds, obligation of funds, award of third-party contracts, and other measures of progress. The recipient's progress will be compared with that of other recipients of comparable size with similar activities and grant amounts. If a recipient's progress lags substantially behind that of other similar recipients, further review may be conducted to determine the reasons for lack of progress.
  - e. Conformance with Approved Program - The review will be conducted to determine whether the program carried out conforms or has conformed with the approved application and whether the activities undertaken during the period under review conforms or has conformed substantially to the program described in the application, including any amendments and extensions thereto, approved by Commerce.
  - f. Compliance - The review will be conducted to determine whether the program carried out complies or has complied with the requirements of the Housing and Community Development Act of 1974, as amended, these Administrative Requirements, and other applicable laws and regulations.
  - g. Continuing Capacity - The review will be conducted to determine whether the recipient has the capacity to carry out the approved program in a timely manner or to carry out in a timely manner activities in a subsequent grant. The primary factors to be considered in arriving at a determination that a recipient has continuing capacity are those described in items (c), (d), (e), and (f) above.
- (1) If Commerce determines that the recipient is making or has made substantial progress in carrying out the approved program, that the program undertaken conforms or conformed substantially to the approved application, and that the program is being or was carried out in compliance with the Housing and Community Development Act of 1974, as amended, these Administrative Requirements, and other applicable laws and regulations, the recipient will generally be considered to have a continuing capacity.

- (2) Determination that a recipient lacks a continuing capacity may be based on any single factor or any combination of factors in items (c), (d), (e), and (f) above. If such a determination is made, Commerce will review the recipient's program to determine whether there is an administrative capacity to carry out the approved program in a timely manner or to carry out in a timely manner activities in a subsequent grant. Primary among the factors to be considered will be whether responsibility for administering the program has been or will be assigned to specific departments or persons, and whether necessary staff has been or will be, directly or contractually employed.

## **Grant Management**

This section outlines program requirements and the duties and responsibilities of the grantee, business, and Commerce staff when the project is officially approved. It is covered during the first meeting between the program representative and the grantee.

### **I. MEETING WITH GRANTEE, BUSINESS, & STAFF**

After the grant is officially approved by the Governor, a meeting with the grantee, the business, and officials will be conducted. The grantee will be represented by an elected official of the municipality. The business will be represented by the owner, the plant manager, or personnel manager. The purpose of this meeting is to explain program requirements and the duties and responsibilities of each entity. Specifically, the following topics will be covered during the meeting:

- A. Requirements for Contracting and Release of Funds
  - 1. Two original Grant Agreements between the state and the city/county; these must be accompanied by executed Loan Agreement, Promissory Note, and Security Agreement
  - 2. Executed Loan Agreements, Promissory Notes, and Security Agreements for each funding source
  - 3. Contract Project Budget Form
  - 4. City/county attorney's opinion letter
  - 5. Documentation resolving pre-contract conditions
  - 6. Environmental reviews
  - 7. Approved and revised project application
  - 8. Authorized Signature Form
  - 9. Appropriate lien/mortgage filings, insurance documents, and guarantees
  - 10. Other appropriate project-related documents



## B. Job Creation/Retention

The importance of job creation or retention will be discussed. The business will be asked to present evidence such as personnel files that the proposed number of jobs are created or retained, as indicated in the grant application. Commerce will make visits to verify the jobs created or retained, and make sure that 51 percent or more of their jobs are benefiting low- and moderate-income persons.

## C. Reporting Requirements

The grantee will be required to submit reports as follows:

1. Quarterly Progress Report - All grantees are required to submit a Quarterly Progress Report within ten days after the calendar quarter ending March 31, June 30, September 30, and December 31. This report includes such information as financial status of the project, accomplishments, and contractual obligations.
2. Employee Certification Forms - These forms are used to determine the low- and moderate-income status of employees created or retained.
3. Semi-Annual Program Income Report - All grantees retaining grant funds locally are required to submit a Program Income Report for economic development loans for the periods ending June 30 and December 31.
4. Audit Information Form
5. Other Reports - Depending on the nature of projects, grantees may be required to submit other reports to Commerce. The purpose of requiring other reports is to ensure that Commerce has up-to-date information on certain projects so that necessary steps can be taken early.

## II. DUTIES AND RESPONSIBILITIES OF STAFF, GRANTEE, AND BUSINESS

Duties and responsibilities of each party will be discussed and explained as follows:

### A. Economic development specialist will have the following responsibilities:

1. Provide technical assistance to grantees and businesses to fulfill federal and state requirements.
2. Assist grantees when they encounter difficulties in financing, repayment of principal or interest, and creating or retaining jobs.
3. Review draft documents prior to loan contracting.
4. Review all documentation necessary for drawdown of funds.

5. Monitor the project to see that all requirements and stipulations of the project have been fulfilled.

B. The grantee will have the following responsibilities:

1. Fulfill requirements of Release of Funds, job creation/retention, quarterly reporting, and financial reporting as discussed previously.
2. Fulfill drawdown requirements stipulated in the grant contract.
3. Maintain CDBG files and records for three years after HUD close-out and/or until loan is paid in full.
4. Maintain financial files and program income, if applicable.
5. Verify jobs created/retained by the business. (For detail, see Section 4.)
6. Verify equipment purchased, if applicable. (For detail, see Section 3.)
7. Insure the assisted business fulfills all obligations stipulated.
8. Submit all close-out documents when the project is completed.
9. Track and process all program income.

C. The business will have the following responsibilities:

1. Provide grantee documents needed for the drawdown of funds.
2. Provide grantee the information on the number of applicants for jobs, including racial, ethnic, disability, or female head-of-household information, and on the jobs created/retained, employee income level, minority status, and other information needed.
3. Obtain information on each employee's income prior to employment or retention using Employee Certification Form.
4. Maintain records that identify employees by race, sex, female head of household, or disability.

## **Loan Contracting and Documentation**

### **I. LOAN CONTRACTING**

Loan contracting involves the execution or the actual signing of all loan documents. Completion of this "formal" process, if all other drawdown requirements are fulfilled, allows the grantee to actually draw down grant funds.

This actual execution process is quite simple; however, the formulation of loan documents which conform to the particular transaction can be quite complex. In all cases, legal counsel should be involved. This will insure that all interests, whether it be the grantee's, the borrower's, the lender's, or Commerce's, are protected.

### **II. LOAN DOCUMENTATION**

The following is a list of the typical loan documents used in loan/fixed asset transactions. This list is intended to provide a general description of the purpose of each document. Sample documents are shown as exhibits in this handbook. Depending upon the nature of the transaction, different documents will be used. It is necessary that grantees consult their legal counsel in preparing these documents.

- A. Commitment Letter - Contract between lender and borrower that outlines the specific terms and conditions under which the lender will make a loan, provides the lender with a way out, and sets a time limit to the commitment.
- B. Promissory Note - The note is the instrument which obligates the borrower to the debt. It details the amount of the loan, the rate of interest, and the repayment terms, as well as the remedies of the lender with respect to the collateral and guarantees securing the loan in the event of default.
- C. Loan Agreement - The loan agreement is created to supplement the note. It details the specific conditions of the lending such as the disbursements, prepayment obligations, covenants outlining financial disclosure requirements, a description of the collateral and guarantees securing the loan, other special conditions of the loan such as any regulatory obligations "e.g., meeting Davis-Bacon Wage Guidelines," and also describes the remedies the lender has with respect to defaults in payments and violations of any of the loan covenants.
- D. Mortgage - If a loan is secured by real property, a mortgage instrument detailing the specifics of the property must be prepared and recorded in the county in which the property is located. This prevents the resale of the property without notification. The mortgage note provides a legal description of the property and details not only the debt but also the responsibility of the mortgagor for public charges (taxes, special assessments). If the mortgage is not properly prepared and recorded, the lien may become invalid, thereby losing the collateral which secures the loan. Mortgage filings can be technically complex. We suggest conferring with your attorney.

- E. General Security Agreements and UCC Filings – The Security Agreement authorizes lenders to take certain property as collateral until the loan is repaid, and the UCC filing provides notice to all creditors that the borrower has a financial obligation to the lender secured by described collateral on which the lender has priority claim. UCC filings can be technically complex and are important to appropriate secured lending practices. The filings need to be amended or updated every five years. We suggest conferring with your attorney.
- F. Personal Guarantees - The maker of a personal guarantee becomes personally liable for the obligation over and above statutory limitations in business law on the personal liability of shareholders or partners. Often the legal borrower is a corporation, not the principals of the company; and unless the lender obtains a personal guarantee, there will be no recourse against the principals after a company defaults on a loan.
- G. Corporate Guarantees - Corporate guarantees are obtained when you require the endorsement of another corporation is required as a condition of the loan. Guarantees should be accompanied by Certificate of Secretary from the corporate guarantor.
- H. Life Insurance Policy and Assignment - If a life insurance policy is required on any of the principals of the company as collateral on a loan, it must be accompanied by an assignment. An assignment is an agreement between the lender and the borrower which specifies the type of life insurance coverage required to secure the loan and names the lender as beneficiary. The assignment form is usually provided by the insurance company issuing the policy and who must record the assignment. Once a policy is assigned, the insurance company will send the lender notices of lapses in premium payments.

## *Section 2: Contracting Samples*

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STATE OF KANSAS

ECONOMIC DEVELOPMENT

GRANT AGREEMENT NO. \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
between the

STATE OF KANSAS  
DEPARTMENT OF COMMERCE

and the

\_\_\_\_\_

**I. Grant Agreement**

A. This Grant Agreement, hereinafter called "Agreement," is between the State of Kansas, Department of Commerce, hereinafter called "Department" and the \_\_\_\_\_, Kansas, hereinafter called the "Grantee." This Agreement consists of the instrument and the following attachments which are incorporated herein:

- Attachment A - SPECIAL CONDITIONS
- Attachment B - APPROVED PROJECT APPLICATION
- Attachment C - CONTRACT PROJECT BUDGET FORM
- Attachment D - ATTORNEYS OPINION
- Attachment E - REPAYMENT SCHEDULE

B. Together these documents embody the entire Agreement between the Department and Grantee with respect to this grant program. All prior agreements, representations, statements, negotiations, and understandings, either written or oral, with respect to this program are hereby superseded.

**II. Authority**

A. This Agreement is financed in part through a grant provided to the Department by the United States Department of Housing and Urban Development (HUD) under Title I of the Federal Housing and Community Development Act of 1974, as amended (42 USC 5301 et. seq.), hereinafter called "the Federal Act." As provided in the Federal Act, the State of Kansas, through the Department, has elected to administer the federal program of Small Cities Community Development Block Grants.

B. The Department, in accordance with the provisions of K.S.A. 74-5001 et. seq., hereinafter called "the State Act," has approved the application of the Grantee and awarded funds for the purpose of supporting the Grantee's Community Development Program.

C. In the event of changes in any applicable Federal regulations and/or law, this Agreement shall be deemed to be amended when required to comply with any regulation or law as amended.

**III. Description of Activities**

Grantee agrees to perform, or cause to be performed, the work specified in the APPROVED PROJECT APPLICATION (Attachment B).

**The Loan and the Rate**

Subject to the terms and the conditions of this Agreement and the written approval of the Department, the Grantee hereby agrees to lend to \_\_\_\_\_ hereinafter called the "Borrower" the amount of \$ \_\_\_\_\_ hereinafter called the "Loan," at an interest rate of \_\_\_\_\_ percent (\_\_\_\_\_%).

**The Term and the Repayment**

The term of the loan shall be \_\_\_\_\_ (\_\_\_\_) years and \_\_\_\_\_ (\_\_\_\_) months. This term includes an \_\_\_\_\_ (\_\_\_\_) month period during which principal repayment will be deferred, followed by an \_\_\_\_\_ (\_\_\_\_) month period during which amortizing principal and interest will be paid in equal monthly installments. Interest will accrue and be paid monthly during the principal deferral period on any outstanding balance of funds drawn down. The first monthly installment of principal and interest shall be due and payable on or before the 1st day of the \_\_\_\_\_ (\_\_\_\_) month following execution of this Grant Agreement.

Indicate the selection of either option (a) or (b). (\_\_\_\_)

- (a) Proceeds from the payment of principal and interest on the loan made pursuant to this Agreement and the interest on such proceeds will be committed to a Local Revolving Loan account and will be used in a manner described in a Re-Use Plan and a Local Revolving Loan Fund Capacity Agreement, both approved by the Department. Proceeds from the loan must be kept in a separate account for this specific grant. The determination of local re-use is made at close-out.
- (b) Proceeds from the payment of principal and interest on the loan made pursuant to this Agreement will be returned to the State.

**The Security for the Loan**

The Parties agree an important inducement for the making of this grant is the collateral proposed by the Borrower to secure any resulting loan from Grantee. The Department requires Grantee properly administer this grant. In addition to other provisions of this agreement, proper administration includes but is not limited to the investigation, registration, filing, and monitoring of the continued financial viability of the collateral through appropriately filed mortgages and UCC financing statements and the preservation of documents relating to the loan. Borrower proposes the following collateral:

- (a) To mortgage certain real or personal property whose description is more fully described below:

(1) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- See Appendix \_\_\_\_\_, attached.
- Legal Description attached to this agreement.
- Not Applicable.

Personal Property Description:

(2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- See Appendix \_\_\_\_\_, attached.
- Not applicable.

- (b) Corporate Resolutions. Grantee shall obtain from Borrower for Grantee’s records appropriate corporate or business entity resolutions authorizing the officers or officials of such entity to sign loan documents regarding personal property, fixtures, or other forms of collateral authorized to be pledged as collateral in such form as may be specified by Grantee’s legal counsel.

- (c) Prior Investigation and UCC Language. Before the filing of record of any initial financing statement, continuation statement, amendment, or mortgage, Grantee shall examine all mortgage and UCC filings of record relating to the Borrower, wherever situated, to assure the Grantee's collateral position is an accurate lien position when compared with all other existing creditor liens on Borrower. Grantee's attorney shall certify to the Department the date and the results of such investigation at the same time as the Attorney's Opinion Letter is filed.
- (d) Recording of Financing Documents. Grantee shall provide the Department written evidence of the filing of record of the mortgage and/or financing statements. Such documents shall show the date and time stamp of the filing office.
- (e) Change. No change in the collateral lien or mortgage position of the Grantee shall occur without the prior written approval of the Department.
- (f) Acknowledgement. Grantee acknowledges that as of July 1, 2001, material changes have been made to state laws affecting the rights, duties, and responsibilities of borrowers and lenders when creating security agreements and signing, using, and filing financing statements under Article 9 of Chapter 84 of the Kansas Uniform Commercial Code. Grantee further acknowledges that all necessary officers and employees have been advised of pertinent changes.
- (g) Administration. Grantee agrees to administer the loan with Borrower in a manner consistent with the manner in which a business loan is administered by a financial institution. This includes insuring the review of the adequacy of collateral from time to time, and prompt enforcement of any breach in the loan agreements.
- (h) Accounting. Grantee shall insure through appropriate language in such loan document that Borrower shall use a standard system of accounting in accordance with generally accepted accounting principles ("GAAP"), and shall make annual financial statements available to Grantee. Such statements shall include Borrower's balance sheet, a statement of income and expenses of Borrower, a statement of sources and uses of funds, and other reasonably available information as to the Borrower's financial condition or any Guarantor's financial condition. Whether such statements are prepared by independent certified public accountant shall be at the Grantee's discretion. Each financial statement furnished pursuant to this provision shall fairly present the respective financial condition as of the dates indicated and for the period involved and respectively show all material liabilities, direct and contingent, of the party indicated. Grantee shall insure that Borrower immediately notifies Grantee in the event there occurs a material adverse change in the business, condition or operations, of any party who is the subject of any such financial statement furnished to Grantee since the date of the latest of such financial statements.

### **Job Creation and Retention**

The Grantee hereby commits and agrees to retain at least \_\_\_\_\_ (\_\_\_) full-time permanent positions and create at least \_\_\_\_\_ (\_\_\_) full-time permanent positions, in addition to the base employment of \_\_\_\_\_ (\_\_\_) of the Borrower. Fifty-one percent (51%) or more of the aggregate number of jobs actually created and retained will be held by those whose household income was less than the Section 8 income levels issued prior to grant award date for \_\_\_\_\_ City/County, Kansas. For individuals filling created jobs, their household income will not include the wages or salary of the created jobs. The Grantee will require the Borrower to obtain an Employee Certificate Form from each new employee and/or each retained employee.

The full-time permanent positions must be in place at the verification date. The verification date may be no more than 90 days before the close-out is received and certified as complete by the Department.

### **Grantee Remedied Actions**

- (a) In the event that jobs created or retained fall short of the number committed, repayment of the grant shall be equal in proportion of the jobs not created or retained when compared to the total number of jobs committed.
- (b) In the event that 51 percent of the employees are not low- and moderate-income, the remaining principal and accrued interest as well as administrative funds, shall become due and payable immediately.



- (c) In the event that Borrower defaults during the term of the loan, then the Grantee will make immediate demand on the borrower for repayment and take prompt and appropriate legal recourse to recover all principal and accrued interest, and must return to the State all recaptured principal, accrued interest, and all funds captured through legal recourse against its secured position.
- (d) If there is a failure of the Grantee or loan recipient to perform pursuant to subsection (a), (b), or (c) above, the Grantee shall cause the deficiency to be corrected or shall correct such deficiency within 30 days. If the borrower is deficient in one or more contracts between Borrower and the Grantee, Grantee, at the direction of the Department, shall accelerate payment of Borrower's note, foreclose on any security provided, and use its best efforts, including but not limited to appropriate legal action, to collect any unpaid balance of the note. As funds are collected, the Grantee shall remit to the Department all funds so recovered after payment of reasonable recovery and collection costs and expenses. At the time such funds are first remitted to the Department, the Department and the Grantee shall negotiate any sums to be deducted from the amounts collected to reimburse the grantee's legal expenses and costs of collection.
- (e) This contract does not impose any direct obligation on the Grantee to guarantee Borrower's achievement of Borrower's obligations under the project unless the Grantee does not cooperate with the Department in the reasonable administration of the Grant. Unless the Grantee fails to cooperate in such administration, the taxing power of Grantee is not pledged to the refund of grant funds in the event of Borrower's default and the obligations of Grantee hereunder shall not be or constitute a general obligation of Grantee, nor shall it constitute an indebtedness of the Grantee within the meaning of any constitutional, statutory, or charter provision, limitation, or restriction.

**Change of Ownership**

The Grantee shall not permit, without the prior written permission of the Department, any material change in the ownership, structure, control, or operation of the Borrower including but not limited to:

- (a) Merger into or consolidation with any other person, partnership, firm, or corporation;
- (b) Significant issuance of any shares of its capital stock having ordinary voting power for the election of members of the Board of Directors or other governing body of the Borrower;
- (c) Any activity which would change the nature of its business as carried out at the date hereof; or
- (d) Substantial distribution, liquidation, or other disposal of the Borrower's assets to the stockholders.

In the event of a material change in the ownership, structure, control, or operation of the loan recipient, with or without knowledge of the Grantee, the Department reserves the right to renegotiate this Agreement or make the entire unpaid principal of the Note, and the interest then accrued thereon, immediately due and payable upon written demand by the Department. Upon receipt of notice as referenced under the Termination for Cause provision, the Grantee has 30 days in which to correct the deficiencies.

**IV. Period of Performance**

The period of performance for all activities provided for by this Agreement shall commence on \_\_\_\_\_, hereinafter called the "Commencement Date," and shall be complete on \_\_\_\_\_, hereinafter called the "Completion Date," except those activities required for close-out of the program such as the Final Program Report and the Final Audit Report.

**V. Compensation**

- A. In consideration of the Grantee's performance of the work required under this Agreement and the Grantee's compliance with the terms and conditions of this Agreement, the Department shall provide the Grantee the total sum of \$ \_\_\_\_\_ in Community Development Block Grant funds in addition to \$ \_\_\_\_\_ in local Grantee Program Income. Such funds shall be used by the Grantee in accordance with the Activities listed and budgeted on the APPROVED PROJECT APPLICATION (Attachment B) and the CONTRACT PROJECT BUDGET FORM (Attachment C).

- B. In addition, the Grantee shall provide \$\_\_\_\_\_ and \_\_\_\_\_ shall provide \$\_\_\_\_\_ in other sources of funds to this Economic Development project and such funds shall be used by the Grantee in accordance with the Activities and budget on the APPROVED PROJECT APPLICATION (Attachment B).
- C. It is expressly understood and agreed that in no event will the total program funds provided by the Department exceed the sum of \$\_\_\_\_\_. Any additional funds required to complete the program activities set forth in this Agreement will be the sole responsibility of the Grantee, and not the responsibility of the Department.
- D. The Grantee understands that this Agreement is funded in whole or in part by federal funds. In the unlikely event the federal funds supporting this Agreement become unavailable or are reduced, the Department may terminate or amend this Agreement and will not be obligated to pay the Grantee from state revenues.
- E. It is hereby agreed that funds committed to be provided by the Department are conditioned upon the availability and use of funds to be provided by the Grantee from other sources. In the event any portion of the funds required to be provided by the Grantee pursuant to subsection (B) of paragraph V are not made available or used for activities as listed and budgeted, the Department may, in its discretion, withdraw or reduce proportionately the funds to be provided to the Grantee pursuant to subsection (A) of paragraph V. It is understood that program income from any grant received from the Department either presently open or closed shall be used in lieu of drawing additional CDBG funds.
- F. The Grantee shall not anticipate future funding from the Department beyond the duration of this Agreement and in no event shall this Agreement be construed as a commitment by the Department to expend funds beyond the termination of this Agreement.

**VI. Indemnification**

The Grantee shall indemnify, defend, and hold harmless the State and its officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Grantee or any subgrantee, contractor, subcontractor, or person. The liability of the Grantee under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments, and damages resulting from acts occurring prior to termination of this Agreement.

**VII. Obligations of Grantee**

- A. Except as may otherwise be provided, the Grantee may subgrant, contract, or subcontract any of the work or services covered by this Agreement.
- B. All of the activities required by this Agreement shall be performed by personnel of the Grantee or by third parties (subgrantees, contractors, or subcontractors) under the direct supervision of the Grantee and in accordance with the terms of written contracts. All contracts are subject to review by the Department. For construction contracts Davis-Bacon Act requirements must be met. For Acquisition all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, (Uniform Act) must be met.
- C. The Grantee shall not use funds that have been granted by HUD under the Federal Act, or which may have been accrued as a consequence of activities supported with such grant funds (program income), in whole or in part, for the support of the Activities covered by this Grant Agreement without first having secured the express written approval of the Department.
- D. The Grantee shall remain fully obligated and liable under the provisions of this Agreement, notwithstanding its designation of any third party or parties for the undertaking of all or any of the program being assisted under this grant.
- E. The Grantee shall require any third party to comply with all lawful requirements necessary to insure that the program is carried out in accordance with this Agreement.

### **VIII. Program Costs**

- A. The Grantee may only incur such costs as are reasonable and necessary to the Grantee's program and as are allowable under the Department's Procedures (2 CFR Part 200). Cost items not specifically authorized may only be incurred after written approval by the Department.
- B. Cash and in-kind contributions made by the Grantee shall follow the criteria established by the Department's Procedures.
- C. The total "Small Cities CDBG Funds" expended for "Administration" shown in the APPROVED PROJECT APPLICATION (Attachment B) shall not exceed the lesser of the established maximum cost or ten (10) percent of the total funds received from the Department.
- D. Except as provided in subsection (E) of paragraph VIII., the Grantee shall not incur costs on any program activity until the Environmental Review required by 24 CFR 58 has been completed and the Department has issued the "Notice of Release of Funds."
- E. The Notification of Award for the grant under this Agreement is dated \_\_\_\_\_ at which date the Grantee may begin to incur reasonable costs for Environmental Studies, Planning, Administrative Costs, Program Engineering and Design, and Public Information; to the extent they are applicable to the program and after project commencement date. However, except as may be otherwise agreed to in writing by the Department, Grantee reimbursement will not exceed ten (10) percent of the total grant amount for costs incurred or monies spent prior to the successful resolution of all issues arising from the environmental-related local and State public comment periods.
- F. Any program activities performed by the Grantee in the period between notification of award and execution of this Agreement shall be performed at the sole risk of the Grantee. In the event this agreement should not become effective, the Department shall be under no obligation to pay the Grantee for any costs incurred or monies spent in connection with program activities, or to otherwise pay for any activities performed during such period. However, upon execution of this Agreement, all Program Costs incurred in connection with approved activities performed during this period shall be reimbursed in accordance with the terms and conditions of this Agreement.
- G. Grant funds may not, without prior written approval by the Department, be obligated after the Completion Date except for those activities required for close-out. Obligations incurred prior to and still outstanding as of the Completion Date shall be liquidated within sixty (60) days.
- H. At any time during the period of performance under this Agreement, and upon receipt of the progress and financial reports and the close-out documents, the Department may review all Program Costs incurred by the Grantee and all payments made to date. Upon such review the Department shall disallow any items of expense which are determined to not be allowable or are determined to be in excess of approved expenditures; shall by written notice specifying the disallowed expenditures and inform the Grantee of any such disallowance.
- I. If the Department disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made with respect to costs which are subsequently disallowed, the Department may deduct the amount of disallowed costs from any future payments under this Agreement or require that the Grantee refund the amount of the disallowed costs.

### **IX. Requisition of Grant Funds**

- A. The Grantee shall be entitled to receive requisitioned funds from the Department only in accordance with its actual and immediate cash requirements and only when the total of federal funds remaining on hand in the depository account does not exceed \$5,000 and is insufficient to meet immediate disbursement needs.
- B. A Request for Funds submitted by the Grantee shall include as part of the request a summary listing of invoice numbers and dates, payroll references, check numbers, dates, amounts, and other such information to substantiate use of Federal funds and local funds by source.

- C. Requisitions for cash advances shall be made on official forms and shall not ordinarily be made more frequently than twice a month or in amounts less than \$3,000, and in no cases more than \$200,000 unless prior written permission has been obtained from the Department.
- D. The Grantee shall establish procedures to insure that any amounts of cash in excess of the limits set forth in (A) above shall be expended within three (3) days of receipt of the funds in the depository account.
- E. Cash advances made by the Grantee to subgrantees shall conform to the same standards of timing and of amount as apply to the Grantee under this Agreement.
- F. Amounts withheld from contractor to assure satisfactory completion of work shall not be paid until the Grantee has received a final payment request from the contractor and has certified the work is complete and satisfactory.
- G. The Department may terminate advance financing and require the Grantee to finance its operations with its own working capital should it be determined by the Department that the Grantee is unwilling or unable to establish procedures to minimize the time lapsing between cash advances and disbursement. Payments to the Grantee should be made only as reimbursement for actual cash disbursements.

**X. Depositories for Program Funds**

- A. The Grantee shall maintain a separate record for money received under the Kansas Economic Development Program. Into this fund shall be deposited:
  1. Moneys received from the Department.
  2. Program income earned through program activities.
- B. Any interest earned, prior to disbursement, on advances of grant funds shall be remitted to the State for subsequent return to the U. S. Treasury.

**XI. Financial Management**

- A. Grantees shall establish and maintain a system which assures effective control over and accountability for all funds, property, and other assets used in the Economic Development Program.
- B. Grantees shall either adopt the system recommended by the Department or certify to the Department, in writing, prior to making the first requisition of funds that the alternative system proposed for use shall meet the following standards:
  1. Maintenance of separate accounting records and source documentation for the Economic Development Program;
  2. Provision for accurate, current, and complete disclosure of the financial status of the Program;
  3. Establishment of records of budgets and expenditures for each approved activity;
  4. Demonstration of the sequence and status of receipts, obligations, disbursements, and fund balance;
  5. Provision of financial status reports in the form specified by the Department;
  6. Compliance with the Department's audit requirements (2 CFR Part 200); and
  7. Consistency with generally accepted accounting principles as specified by the Kansas Department of Administration, unless a waiver of GAAP has been received by the grantee from the Kansas Director of Accounts and Reports.

## **XII. Monitoring and Reporting**

- A. The Grantee shall monitor the activities of the Economic Development Program, including those of contractors and subcontractors, to assure that all program requirements are being met.
- B. The Grantee shall submit progress and financial reports to the Department in accordance with the schedule set forth in SPECIAL CONDITIONS (Attachment A). These reports shall be in a format prescribed by the Department.
- C. The Grantee shall submit a Final Program Report with the close-out no later than ninety (90) days following the Completion Date specified in paragraph IV.
- D. From time to time, as requested in writing by the Department, the Grantee shall submit such data and other information as the Department may require.
- E. Failure on the part of a Grantee, its subgrantee, or the loan recipient to report as required or respond to requests for data or information shall be grounds for suspension or termination of the Grant.

## **XIII. Procurement Procedures**

- A. The Grantee shall use established procurement procedures which reflect applicable state and local laws and regulations and the Department's procedures for the establishment of procurement systems.
- B. These procurement standards do not relieve the Grantee of any contractual responsibilities under its contracts. The Grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

## **XIV. Bonding and Insurance**

- A. When administering federal grants and subgrants, a Grantee may follow its own requirements and practices with respect to: (1) bonding of employees and contractors, and (2) insurance. Federal grantor agencies are not permitted to impose requirements beyond those listed below. The government-wide grants management common rule, "Uniform Administrative Requirements for Grants to State and Local Governments," contains bonding requirements only for circumstances when a grantee contracts for construction or facility improvement (including alteration and renovation) and the bids and contracts exceed \$25,000. The following types of bonds are required in the "Procurement" section of the common rule:
  - A 100 percent "performance bond" on the part of the contractor to secure fulfillment of all of the contractor's obligations under the contract; and
  - A 100 percent "payment bond" on the part of the contractor to assure payment, as required by law, of all persons supplying labor and materials as part of work provided under the contract.
- B. The Department reserves the right to promulgate and enforce bonding procedures and requirements applicable to any project.
- C. All bonds shall be procured from a surety company registered and licensed to do business in the State of Kansas and countersigned by its Kansas resident agent.

## **XV. Program Income**

- A. Program Income, as defined in the Consolidated Plan means gross income earned by the Grantee from activities supported by grants made by the Department under the provisions of the Federal Act, or as otherwise defined by the Department.
  - 1. Program income includes, but is not limited to:
    - (a) proceeds from the disposition by sale or long-term lease of real property purchased with CDBG funds

- (b) income from the temporary use of leasing of properties acquired with CDBG funds pending the disposition or use for which the property acquired
  - (c) recapture of principal and interest from loans made with grant or revolving loan fund proceeds.
2. Program income:
    - (a) shall be used prior to drawdown of additional grant funds.
    - (b) of closed grants shall be treated as program income of an active grant and shall be used prior to drawdown of additional grant funds.
    - (c) shall be subject to the requirements of a local re-use plan submitted by the local government and approved in writing by the Department.
    - (d) shall be used in accordance with requirements of Title I of the Housing and Community Development Act, if applicable.
    - (e) shall not be used to increase the amount approved as necessary or appropriate for assistance to a for-profit entity. Local Income and Program Income, though required to be used first, will not be included in determining the required minimum injection to any other project.
  3. All Program Income from a project funded by this Agreement and received prior to the program's close-out being accepted by Department and not used to reduce the grant drawdowns shall be returned to the Department.
  4. Program income does not include interest earned on cash advances from the Department. Such interest shall be remitted to the U.S. Treasury.
  5. It is understood that this Agreement does not provide the Grantee the right to keep program income for the purpose of a Local Revolving Loan Fund.
  6. To be considered for a Local Revolving Loan Fund, the Grantee shall submit and have approved by the Department a Program Re-Use Plan and a Local Revolving Loan Fund Capacity Agreement. The Department reserves the right to allow local re-use.
  7. A Local Revolving Loan Fund Capacity Agreement between the Department and the Grantee shall be entered into prior to the close-out of the Grant.
  8. Local governments shall report the receipt and expenditure of program income to the Department for the six (6) month period ending June 30 and December 31 of each year. Reports are due within thirty (30) days following the end of the reporting period.

**XVI. Program Close-out Procedures**

- A. Program close-out is the process by which the Department determines that all applicable administrative and financial actions and all required work of the program, including audit and resolution of audit findings, have been completed or that there are no additional benefits likely to occur by the continuation of program activities or costs. All findings from Department monitoring visits must be cleared by Grantee prior to close-out certification.
- B. The Completion Date is the date specified in Section IV, Period of Performance, of this Agreement or amendments thereto, on which assistance ends for all program activities, except those required to complete the close-out or the date on which the Grant is terminated.
- C. The Grantee shall submit to the Department close-out documents covering the entire program within ninety (90) days of completion date. One copy of the documents must be placed where other program documents are available for public review and at least one copy must remain in the Grantee's files. The Department may grant extensions in writing to the time for submission of these documents when so requested by the Grantee in writing.

- D. Incomplete or incorrect close-out documentation will be returned to the Grantee by the Department. The Grantee shall have 30 days to return the close-out documentation corrected. If close-out documentation is not corrected within 30 days the Grantee surrenders any capacity for local re-use.
- E. The Department reserves the right to recover amounts of unobligated program funds.
- F. The Grantee shall account for any property acquired with grant funds, or received from the federal or state government in accordance with the Departments property management procedures.

**XVII. Suspension**

The Department may suspend the grant, in whole or in part, at any time during the grant period, and upon reasonable notice to the Grantee withhold further payments or prohibit the Grantee from incurring additional obligations of grant funds when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement. This will be done pending corrective action by the Grantee or a decision by the Department to terminate the grant. The Department shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension.

**XVIII. Termination for Convenience**

- A. The Department or Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the program would not produce beneficial results commensurate with the further expenditure of funds.
- B. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.
- C. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantee shall be allowed full credit for noncancelable obligations properly incurred prior to termination.

**XIX. Termination for Cause**

- A. The Department, after reasonable notice, may terminate the grant in whole or in part, at any time during the grant period when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement. The Department shall notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date and may initiate procedures to recapture all funds advanced to Grantee.
- B. Payments made to the Grantee or recoveries by the Department under grants which have been suspended or terminated for cause shall be in accordance with the legal rights and liabilities of the parties.

**XX. Audit Requirements**

- A. The Grantee shall arrange for the performance of annual financial/compliance audits of the grant project. All audits must be performed by an independent qualified auditor. The audit period is identical with the Grantee's regular fiscal year. The audit(s) will be conducted in accordance with the requirements set forth in the audit section of the Kansas CDBG Handbook, which are based on the amendments to the 2 CFR Part 200.
  - 1. If the grantee expends \$750,000 or more of federal financial assistance from all sources during the local fiscal year, a 2 CFR Part 200 audit is required. A 2 CFR Part 200 audit covers the Grantee's entire operation, not just the grant project.
  - 2. If the grantee expends **less** than \$750,000 or more in total federal financial assistance in a fiscal year, it will be the option of the Department to require an audit of the grantee. If such audit is required, the Department will pay for and procure the auditor.

- B. Grantees are required to submit one copy of a fiscal year audit report covering the program. The audit reports shall be sent within thirty (30) days after the completion of the audit, but no later than one year after the end of the audit period unless agreed to by the Department.
- C. If any expenditures are disallowed as a result of the Final Audit Report, the obligation for reimbursement to the Kansas Small Cities Community Development Block Grant Program shall rest with the Grantee.

**XXI. Retention of and Access to Records**

- A. Financial records, supporting documents, statistical records, and all other records pertinent to this program shall be retained in accordance with the Department's Procedures.
- B. Authorized representatives of the Department the Secretary of HUD, the Inspector General of the United States, or the U.S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, items, or property belonging to, or in use by, the Grantee and/or loan recipient pertaining to the administration of this grant and the receipt of assistance under the Small Cities CDBG program as may be necessary to make audits, examinations, excerpts, and transcripts for a period of three (3) years subsequent to a grant close-out.
- C. Any contract entered into by the Grantee shall contain language comparable to Paragraph (B) so as to assure access by authorized parties to the pertinent records of any subgrantee, contractor, or subcontractor.
- D. Failure on the part of a Grantee or a loan recipient to allow said access shall be cause for the Department to initiate suspension procedures.

**XXII. Conflict of Interest**

- A. In the procurement of supplies, equipment, construction, and services by Grantees and subgrantees, the conflict of interest provisions of the Department, as provided at CFR 570.611 shall apply.
- B. No member of the Governing Body, officer or employee of the Grantee, or its designees or agents, or any other person who exercises any functions or responsibilities with respect to the program assisted by this Agreement during his/her tenure or for one year thereafter, shall have any direct interest in any contract or subcontract, or the proceeds thereof, for the work to be performed in connection with the program.
- C. The Grantee shall incorporate, or cause to be incorporated, in all contracts a provision prohibiting such interest pursuant to the intent of this section.
- D. The Grantee shall not employ, nor shall permit any third party to employ any employee of the Department.

**XXIII. Equal Opportunity**

In addition to all equal opportunity provisions and the assurances incorporated by reference herein, the Grantee agrees to comply with all of the requirements of the Kansas Acts Against Discrimination relating to fair employment practices to the extent applicable and shall cause the foregoing provisions to be inserted in all contracts with third parties for any work covered by this Agreement so that such provisions will be binding upon such third parties.

Grantee will conduct and administer the grant in conformity with Title VI of the Civil Rights Act of 1964 (42 USC 200d et seq., as amended) and the Fair Housing Act (42 USC 3601-20) and will affirmatively further fair housing.

**XXIV. Waiver of Enforcement**

A waiver by the Department of the right to enforce any provision of this Agreement shall not be deemed a waiver of the right to enforce each and all of the provisions herein.

**XXV. Revisions, Amendments, and Approvals**

- A. The Grantee may revise the amounts listed in the "Total" column in the CONTRACT PROJECT BUDGET FORM (Attachment C) of the APPROVED PROJECT APPLICATION (Attachment B); provided that:



1. The cumulative effect of the revision(s) is not to increase or decrease the total amount(s) budgeted for any Activity by more than ten (10) percent of the total grant, or \$10,000, whichever is less, and the "Total Program Budget" is not changed;
  2. The revision does not increase any professional services of the CDBG-approved budget;
  3. The revision will not significantly change the scope, location, or objectives of the approved activities; and
  4. The Department is provided written notification of the revision(s).
- B. The Grantee shall notify the Department if, through the use of other funds, there is an intention to expand, enhance, or add to the scope of the program covered by the Agreement or there is a proposal to undertake activities that will have an impact upon the buildings, areas, or activities of this program. The Department must approve in writing any such proposed change of scope in the project.
- C. Any other changes to this Agreement shall constitute an amendment, including time extensions.
- D. Amendments to the terms and conditions of this Agreement shall not become effective unless submitted on the program's approved amendment form. The amendment form shall be submitted in duplicate, numbered, passed by Resolution of the governing body, and contain two original signatures of the duly authorized representative of the Grantee. The Grantee will be returned an executed form by the Business and Community Development Division Director, if the amendment is approved.
- E. This Agreement shall be construed in accordance with the laws of Kansas.
- F. We, the undersigned, have read and understood the above document and hereby agree to the terms and conditions contained herein. This Agreement is binding and legally enforceable on all heirs, successors, and assigns.

Dated by the Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

STATE OF KANSAS  
DEPARTMENT OF COMMERCE

By: \_\_\_\_\_  
Business and Community Development Division Director  
Kansas Department of Commerce

By: \_\_\_\_\_  
Notary Public, State of Kansas

\_\_\_\_\_, Kansas  
(Grantee)

By: \_\_\_\_\_  
(Name) (Title)

(SEAL)

ATTEST: \_\_\_\_\_  
(For the Grantee)

## SPECIAL CONDITIONS

In addition to the general terms and conditions of this Agreement, the Grantee and the Department hereby agree to the following Special Conditions:

1. As provided in Section VIII., Program Costs, E., the Notification of Award for the grant under this Agreement is dated \_\_\_\_\_.
2. As provided in Section XII., Monitoring and Reporting, B., the Grantee shall submit Quarterly Progress and Financial Reports to the Department. The reporting periods consist of January/February/March, April/May/June, July/August/September, and October/November/December. Quarterly Progress and Financial Reports are to be submitted to the Department on or before ten (10) days after the end of each quarter (April 10, July 10, October 10, and January 10). A Quarterly Progress and Financial Report shall be submitted for each quarter, or portion thereof, during the Period of Performance as provided in Section IV. Any extension of time approved by the Department will require additional Quarterly Progress and Financial Reports to be submitted in accordance with the above-referenced schedule.
3. As provided in Section IV., Period of Performance, all activities assisted by this Agreement shall be completed on \_\_\_\_\_, except for those activities required to close out the program, such as the Final Program Report and the Final Audit Report.
4. As provided in Section XII., Monitoring and Reporting, C., the Grantee shall submit close-out documents to the Department on or before \_\_\_\_\_.
5. The Grantee shall not use funds that have been granted by HUD under the Federal Act, or which may have been accrued as a consequence of activities supported with such grant funds (program income), in whole or in part for the support of the Activities covered by this Grant Agreement without first having secured the express written approval of HUD.
6. The Grantee shall be permitted to satisfy the program audit requirements of Section XX., Audit Requirements, by conducting a single municipal government-wide financial audit at the time of an annual audit provided for by Kansas law. Said audit will be completed on or before \_\_\_\_\_. Grantees receiving federal assistance in any fiscal year must have an audit made in accordance with 2 CFR Part 200 for such fiscal year unless exempted under 2 CFR Part 200. Those Grantees having expended \$750,000 or more of total federal funds from all sources must have an annual audit.
7. The Grantee shall submit a completed CONTRACT PROJECT BUDGET FORM and attach said form to the APPROVED PROJECT APPLICATION (Attachment B). The CONTRACT PROJECT BUDGET FORM shall fully account for all funds as stated in Section V., Compensation, A. and B.
8. An Economic Development grant loaned to a business entity for job creation or retention will be repayable to the Department upon termination of grant agreement in the event that jobs created or retained fall short of the number committed to be created or retained in the grant application (Attachment B). Any accelerated portion of grant repayment under this provision will be an amount equal to the proportion of jobs not created or retained to the total number committed, except all grant monies will be immediately repaid if at least 51 percent of jobs actually created and retained do not meet CDBG program low- and moderate-income requirements. Exceptions will be granted only on a case by case basis when extraordinary circumstances, as documented by the grantee, are judged to exist by the Department. The decision of the Department shall be final.
9. Will require each unit of local government to be distributed Title I funds to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-144, (the 1990 HUD Appropriations Act), and prohibiting the barring of entrance or exit to any facility or location which is the subject of such demonstration (Cranston-Gonzales National Affordable Housing Act).
10. In addition to the above certifications, the undersigned will also make the certification required which is attached regarding Lobbying.

**CERTIFICATION REGARDING GOVERNMENT-WIDE  
RESTRICTION ON LOBBYING  
(FOR CONTRACTS OVER \$100,000)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

---

Date

---

Chief Elected Official

**ECONOMIC DEVELOPMENT  
CONTRACT PROJECT BUDGET FORM**

GRANTEE NAME: \_\_\_\_\_ GRANT NO.: \_\_\_\_\_

BUSINESS NAME: \_\_\_\_\_ \*DUNS #: \_\_\_\_\_

ACTIVITY	CDBG FUNDS	LOCAL/OTHER FUNDS	TOTAL COST
1. Administration	\$	\$	\$
2. Planning/Design			
3. Infrastructure			
a. Water			
b. Sewer/Storm Drainage			
c. Streets/Roads			
d. Other			
4. Acquisition			
a. Land			
b. Building			
5. Site Work			
a. Improvements			
b. Clearance/Demolition			
6. Building			
a. New Construction			
b. Rehabilitation			
7. Working Capital			
a. Payroll			
b. Inventory			
c. Other			
8. Machinery/Equipment			
a.			
b.			
c.			
9. Other			
a.			
b.			
c.			
10. TOTAL PROJECT COST	\$	\$	\$

ED-B01  
1/2016 (Rev)

**SAMPLE**

**ATTORNEY'S OPINION LETTER**

Sample wording for the required “Attorney's Opinion Letter” which must accompany CDBG contracting documents (to be signed by the City or County Attorney)

Addressed to:

Kansas Department of Commerce  
Small Cities CDBG Program  
1000 S.W. Jackson Street, Suite 100  
Topeka, Kansas 66612-1354

RE: Specify project ID number, name of city or county applicant,  
and the name of the business which is involved

Gentlemen:

In my opinion, the city/county of \_\_\_\_\_ and its chief elected official have the authority to enter into legally binding contracts.

Furthermore, I have examined the various contracting documents related to the CDBG project specified above, and believe them to be legally binding on the parties executing those documents. I have reviewed all of the loan documentation on this project, specifically including mortgages, security agreements, and proposed financing statements, and find they adequately reflect the lien or mortgage position represented by the Borrower to the City/County in the grant application. I [have caused][will cause] such documents to be signed and filed of record in the appropriate filing agency or agencies and will insure time-stamped copies of these documents [have been][will be] forwarded to the Department.

Sincerely,

Jane Doe  
City/County Attorney

**SAMPLE**  
**JOB CREATION/RETENTION AGREEMENT**  
(Infrastructure Only)

This agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and between the City of \_\_\_\_\_, Kansas, hereinafter referred to as “City” and \_\_\_\_\_ Company, hereinafter referred to as “Company.”

Whereas, the City is entering into an Economic Development Grant Agreement No. \_\_\_\_-\_\_\_\_-\_\_\_\_ with the State of Kansas, Department of Commerce;

And, Whereas, the grant awarded under said agreement will facilitate the \_\_\_\_\_ Company’s plant located at \_\_\_\_\_, Kansas;

Now, therefore, in consideration of the mutual covenants herein contained, and in consideration of the execution of said Grant Agreement by the City and completion of the project contemplated by the said Grant Agreement, it is understood and agreed by the parties as follows:

1. The Company recognizes and acknowledges the terms of the Grant Agreement, is familiar with the terms thereof, and agrees to comply with the terms thereof.

2. The Company especially acknowledges the terms of the Grant Agreement in Parts III and IV thereof.

3. The Company shall upon completion retain \_\_\_\_\_ ( ) full-time permanent positions and create at least \_\_\_\_\_ ( ) full-time permanent positions in addition to the base employment of \_\_\_\_\_ ( ) of the Company. Fifty-one (51) percent of these jobs will be held by those whose household income, prior to employment, was less than the Section 8 income levels issued prior to grant award date for \_\_\_\_\_ County, Kansas. The Company shall obtain an Employee Certificate Form from each new employee. The full-time permanent positions must be in place at the verification date under the grant agreement.

4. In the event the City shall be notified of failure to create or retain the number and kind of jobs required under the Grant Agreement, the City shall immediately notify the Company which shall have thirty (30) days from the date of notification to the City from the Department of Commerce in which to correct such deficiency.

5. The Company acknowledges and understands that in the event the jobs created and retained do not satisfy the terms of the Grant Agreement, the terms of which the Company fully understands, the City may be compelled to repay to the Department of Commerce all or part of the funds provided under the grant. The Company agrees to fully indemnify the City against loss of any grant funds by virtue of failure of the Company to create the number and type of jobs anticipated and in the event of any funds being paid or lost by the City to the Department of Commerce by virtue thereof the Company shall immediately pay unto the City a sum equal to the amount so paid or lost.

6. The Company further agrees to immediately pay back to the City all monies owed if it moves its facility out of \_\_\_\_\_, Kansas, within ten (10) years of grant award.

7. Any sums due to the City from the Company hereunder shall bear interest at the rate of four (4) percent per annum from the date said funds are paid or lost by the City to the Department of Commerce.

8. The failure of the City to enforce at any time any of the provisions of this agreement, or to exercise any option which is herein provided, or to require at any time performance by the Company of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to effect the validity of this agreement of any part thereof, or the right of the City to thereafter enforce each and every such provision.

9. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein.

In witness whereof, the parties have hereunto set their hands the day and year first above written.

The City of \_\_\_\_\_, Kansas

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Company

By: \_\_\_\_\_  
President

**SAMPLE  
LOAN AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between  
(\_\_\_\_\_), (\_\_\_\_\_), \_\_\_\_\_, Kansas, hereinafter sometimes referred to as  
(Name of Corporation) (Street Address)  
“Corporation,” and the (\_\_\_\_\_), Kansas, hereinafter sometimes referred to as “City.”  
(Name of City)

WITNESSETH:

WHEREAS, the City has been notified that it will receive a grant in the amount of \_\_\_\_\_  
dollars (\$\_\_\_\_\_) under the Kansas Small Cities Community Development  
Block Grant principally to benefit low-and moderate-income persons by making loans to private for-profit  
companies; and

WHEREAS, the Corporation applied for a loan of \$\_\_\_\_\_ to be paid out of the grant proceeds, and

WHEREAS, the purpose of the loan is to enable the Corporation to \_\_\_\_\_,  
all as specified in the CDBG application submitted by the City to the Kansas Department of Commerce,  
and

WHEREAS, the City is authorized to make this loan under applicable Kansas Law.

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements, the  
parties agree as follows:

A. As soon as practicable after receipt of the grant funds from Commerce, the City shall loan to the  
Corporation the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) upon the terms and conditions hereinafter  
set forth. Said sum shall be advanced to the Corporation in accordance with grant conditions and  
applicable Commerce regulations.

B. This loan agreement is subject to:

1. The accuracy of representations made by the Corporation to the City in the application and  
documentation presented by the Corporation to the City.
2. The City’s determination, in its sole discretion, that there has been no unremedied adverse  
change in the financial or any other condition of the Corporation’s initial application.
3. An agreement executed by the Corporation that the funds and capital provided by all sources,  
more particularly identified in the grant application, will allow the Corporation to operate its  
facility as indicated in the application.
4. An agreement executed by the Corporation providing that in the event the Corporation  
refinances its debt to the City, relocates to another area outside the City, or sells thirty (30)  
percent or more of its assets, this loan shall be accelerated and immediately due and payable.  
Further, the loan may be immediately due and payable in the event there is a change of  
ownership or control of the business without prior consent of the City.
5. Execution of a note in the principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in the  
form and manner designated by the City, including but not limited to the following provisions:



- a. No principal shall be due, except as modified by Paragraph 4, for a period of eighteen (18) months from the date the City enters into the grant agreement with the Kansas Department of Commerce.
  - b. Commencing on the date of execution of the grant agreement between the City and the Kansas Department of Commerce, any outstanding note balance shall draw interest at the rate of \_\_\_\_\_percent (\_\_\_)% per annum, with monthly interest payments to be placed in an Escrow Account in the City's name.
  - c. Principal and interest shall be paid in \_\_\_\_\_ (\_\_\_) consecutive equal monthly installments of principal and interest in the amount of \$\_\_\_\_\_, with the first payment due and payable the 1st day of the nineteenth (19th) month after the grant agreement has been signed by the Kansas Department of Commerce, and continuing on the same day of each month thereafter until paid in full.
  - d. The Corporation shall have the right to prepay any part or all of the unpaid balance at any time without penalty.
6. Personal Guaranty executed by \_\_\_\_\_ on a loan guaranty form provided by the City.
  7. To secure repayment of the note designated above, said note shall be secured by the following collateral:
    - a. (First) mortgage upon real estate, buildings, fixtures, and improvements of the Corporation at its plant site located in \_\_\_\_\_ County, Kansas. Such mortgage held by in, \_\_\_\_\_ Kansas, having a loan balance of not more than \$\_\_\_\_\_.
    - b. Security interest properly attached, recorded, and perfected pursuant to the Kansas Uniform Commercial Code, securing all business machinery, equipment, furnishings and furniture, proceeds or products, accounts receivable, and inventory now owned, to be acquired with loan proceeds, or hereafter acquired.
  8. Before disbursement, the City will assure that its lien position is or will be as designated herein.
  9. The Real Estate Mortgage and Security Agreement shall remain in full force and effect until the principal and interest on said note have been paid in full and at which time the city agrees to fully release the Mortgage and Security Agreement.
  10. The Mortgage and Security Agreement shall contain the usual provisions to protect the mortgage, including but not limited to requirements concerning payment of taxes and insurance and conditions precipitating default and notice of such default and remedies upon default, including but not limited to foreclosure of the Mortgage and Security Agreement.
- C. In consideration of this loan, the Corporation further agrees as follows:
1. To fully complete the project as described in the application and grant submitted to and approved for funding by Commerce within the time schedule set forth in the application or grant. A copy of said application and grant is either attached to this loan agreement and the same is hereby incorporated herein by reference.
  2. To provide expanded employment opportunities at the \_\_\_\_\_, Kansas, facility and in particular to fulfill its commitment to maintain base employment of \_\_\_\_\_ employees, and to hire \_\_\_\_\_ full-time permanent positions and retain at least \_\_\_\_\_ full-time permanent employees, of whom

fifty-one (51) percent or more shall be low- and moderate-income within the time schedule set forth in the funding application approved by Commerce.

3. To cooperate fully with the grant administrator and their authorized employees and agents with respect to all administrative requirements and functions in administration of the grant funds.
  4. To indemnify the City against any loss incurred by reason of the Corporation's failure to fully comply with the terms of this agreement.
- D. It is further understood and agreed that in the event the Corporation is unable to create the number of jobs committed to be created in the job application, then upon such determination, grant funds shall, within thirty (30) days of notification by the Corporation, be repaid by the Corporation to the City in an amount equal to the proportion of jobs not created or retained to the total number committed, unless an exception is made by the City and Commerce because of extraordinary circumstances then existing. Furthermore, failure to meet the fifty-one (51) percent LMI level as referenced under Grantee Remedial Actions in the Grant Agreement will require immediate repayment of all outstanding principal and accrued interest. The fifty-one (51) percent LMI requirement applies to the total number of jobs which are actually created and retained in connection with this CDBG job creation project.
- E. The Corporation agrees to operate its facilities in \_\_\_\_\_, Kansas, in full compliance with applicable federal, state, and local laws including without limitations federal laws relating to equal employment opportunity and occupational health and safety standards and the Kansas Building Code and local ordinances, resolutions, or regulations which may be applicable.
- F. The Corporation further agrees that until this transaction is closed and all indebtedness repaid by the Corporation to the City, the Corporation will make available to the City and to the Grant Administrator and their authorized employees and agents, the corporation's books, accounts, records, reports, files, and other papers pertaining to funds provided under this agreement for the purpose of making audits, examinations, and monitoring. The Corporation will retain such records for a period of three (3) years following closing or repayment of debt in full. If the corporation is a limited liability company, the Corporation agrees to provide City with a current full and complete copy of its operating agreement or agreements and, if any material change is made to such agreement, forward additional complete copies to the City as changes are made.
- G. The Corporation agrees to provide the City and the Grant Administrator and their authorized employees and agents, yearly financial statements (balance sheet, profit and loss, and cash flow statement) until the Corporation fully repays its indebtedness to the City.
- H. The Corporation agrees to provide and maintain at its own expense casualty and hazard insurance in a total amount sufficient to pay the City in full, together with accrued interest thereon. Said insurance shall provide coverage for loss by fire or wind with extended coverage and shall cover all of the real estate, buildings, fixtures and improvements, and all business machinery, equipment, furnishings, and furniture secured by the Mortgage and Security Agreement between the Corporation and the City. Standard Mortgage and Loss Payee shall be attached to all policies.
- I. Before or at the time of Grant Agreement execution between the City and Commerce, the Corporation must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the note, mortgage, and security instruments is authorized to act on behalf of the corporation in such a transaction.

- J. The Corporation shall provide evidence that it has injected the necessary capital to comply with requirements designated in the grant application.
- K. The Corporation and the City acknowledge the execution of the Grant Agreement between the City and Commerce which provides the source of funds underlying this Loan Agreement, and agree that any conflict between the provisions, requirements, duties, or obligations of this Agreement and the Grant Agreement shall be resolved in favor of the Grant Agreement. The Corporation acknowledges that the terms and conditions of the Grant Agreement between the City and Commerce which are the responsibility of the Corporation to perform are included as part of this agreement.
- L. The Corporation further agrees to pay back to the City, within thirty (30) days of receipt of written notice from the City, any and all sums previously disbursed to the Corporation which are determined by the Department of Housing and Urban Development (HUD) or the State of Kansas or any of their agencies to have been either improperly disbursed to the Corporation, or in violation of the guidelines, procedures, and regulations of the Community Development Block Grant program.
- M. The Corporation further agrees to immediately pay back to the City all monies owed if it moves its facility out of \_\_\_\_\_, Kansas.
- N. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof.
- O. The parties further agree that this agreement may not be assigned by either party without prior approval of the other party.
- P. The parties further agree that this agreement shall be binding upon their successors and assigns.

IN WITNESS WHEREOF, the parties have signed their names on the day and year first above written.

Corporation

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

The City of \_\_\_\_\_, Kansas

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**SAMPLE  
PROMISSORY NOTE**

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, \_\_\_\_\_, hereinafter referred to as “Borrower,” promises to pay to the order of \_\_\_\_\_, Kansas, a municipal corporation, hereinafter referred to as Municipality at the office of the city or county clerk in \_\_\_\_\_, Kansas, the principal sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) with interest thereon at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum, after execution of this note, all in accordance with the following terms and conditions:

- A. **Loan Agreement.** The Borrower and the Municipality acknowledge that this note is made pursuant to and subject to the terms and conditions of the Loan Agreement dated \_\_\_\_\_, 20\_\_\_\_, entered into between the parties referred to herein as the “Loan Agreement.”
- B. **Payment of Principal and Interest.** This Promissory Note evidences the Borrower’s obligation to repay the loan made to the Borrower by the Municipality pursuant to the Loan Agreement, and the principal amount of the loan proceeds together with interest shall be repaid in the following manner:
1. No principal shall be due, except as may be modified by Paragraph 4 of the Loan Agreement, for a period of 18 months from the date the Municipality enters into the grant agreement with the Kansas Department of Commerce.
  2. Commencing with the date of execution of the grant agreement between the Municipality and the Kansas Department of Commerce, the note shall accrue interest at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum on all monies drawn down. Such accrued interest shall be paid monthly and placed in an Escrow Account in the Municipality’s name. This note is further secured by \_\_\_\_\_  
  

**[[a mortgage on real estate]] [[certain personal property as collateral]]**

a copy of which is attached hereto as Appendix “A”.
  3. Principal and interest shall be paid in \_\_\_\_\_ (\_\_\_\_\_) consecutive, equal, monthly installments of principal and interest in the amount of \$\_\_\_\_\_, with the first payment due and payable first day of the 19<sup>th</sup> month after the grant agreement has been signed by the Kansas Department of Commerce, and continuing on the same day of each month thereafter until paid in full.
  4. The Borrower shall have the right to prepay any part or all of the unpaid balance at any time without penalty.
  5. The Borrower agrees to immediately pay back to the Municipality all monies owed if it moves its place of business out of \_\_\_\_\_, Kansas.
- C. **Waivers.** The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this note shall operate as a waiver of any other payment or right.
- D. **Security.** This note is secured by a security interest dated \_\_\_\_\_, 20\_\_\_\_, in \_\_\_\_\_ located in, \_\_\_\_\_ Kansas, more specifically described in the Loan Agreement, security and perfection documents, and attachments.

E. **Default.** This note shall be considered in default on the occurrence of any one or more of the following events:

1. The Borrower shall fail to pay when due any principal, interest, fee or other liability, or amount required to be paid by the Borrower under or in connection with any Note and this Agreement. This failure to pay shall include any failure to pay an installment payment when due;
2. The breach of any representation or warranty made, deemed made, or furnished by the Borrower under or in connection with any project application, loan document, or any financial statement shall prove to have been false or incorrect in any material respect when made, deemed made, or furnished;
3. The Borrower shall fail to perform or observe (i) any of the terms, covenants, or agreements contained in this document or (ii) any other term, covenant, or agreement contained in any other Loan Document that is part of this transaction and loan, if such failure remains unremedied for the earlier of ten working days from (A) the date on which the Municipality has given the Borrower written notice of such failure and (B) the date on which the Borrower knew or should have known of such failure;
4. The Borrower shall deny or disaffirm its obligations under any of the Loan Documents or any Liens granted in connection therewith or shall otherwise challenge any of its obligations under any of the Loan Documents; or any Liens granted in any of the Collateral shall be determined to be void, voidable, or invalid, are subordinated or are not given the priority contemplated by this Agreement; or any Loan Document shall for any reason cease to create a valid and perfected Lien on the Collateral purported to be covered thereby;
5. Any event which results in the acceleration of the maturity of the indebtedness of Borrower to others under any indenture, agreement, or undertaking;
6. The loss, theft, damage, destruction, sale, or encumbrance to or of any of the Collateral, or the making of any levy, seizure, or attachment thereof or thereon;
7. Death or disability of the president or chief executive officer of the Borrower, except that the Municipality shall decide in its sole discretion whether such event in this subparagraph is an event of default;
8. Dissolution, liquidation of, termination of existence, insolvency, business failure, winding up of affairs, the cessation of the Borrower's business, appointment of a receiver of any part of the property of, assignment for the benefit of creditors by, failure of the Borrower generally to pay its debts as they mature, admission in writing by the Borrower of its inability generally to pay its debts as they mature, or calling of a meeting of the Borrower's creditors for purposes of compromising any of the Borrower's debts; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or any guarantor or surety for Borrower;
9. A judgment being obtained against the Borrower by any other creditor in any jurisdiction unless within 60 days of the filing of such judgment, Borrower demonstrates that it has paid or caused such judgment to be fully satisfied;
10. The commencement by or against the Borrower of any bankruptcy, insolvency, arrangement, reorganization, receivership, collection, or similar proceedings under any federal or state law

and, in the case of any such involuntary proceeding, such proceeding is not remedied to the satisfaction of the Municipality for 30 days following the commencement thereof, or any action by the Borrower is taken authorizing any such proceedings;

11. An assignment for the benefit of creditors is made by the Borrower, whether voluntary or involuntary, the appointment of a trustee, custodian, receiver, or similar official for the Borrower or for any substantial property of the Borrower, or any action by the Borrower authorizing any such proceeding;
12. The Borrower shall default in (i) the payment of principal or interest on any indebtedness provided in the instrument or agreement under which such indebtedness was created, and such payment default has not been cured within any applicable grace period unless such default has been waived by such Person; or (ii) the observance or performance of any other agreement or condition relating to any such indebtedness or contained in any instrument or agreement relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such indebtedness to cause such indebtedness to become due prior to its stated maturity, and such default has not been cured within any applicable grace period unless such default has been waived by such Person; or (iii) any loan or other agreement under which the Borrower has received financing from Municipality.
13. The Borrower suffers or sustains a Material Adverse Change in its business, including the loss of one or more major customers or the default on any loan or obligation to another financial institution;
14. Any federal, state, or local tax lien or lien for payment of wages to employees is filed of record against the Borrower or others responsible for the actions of the Borrower, if such lien is not bonded or discharged within ten business days;
15. Any judgment or order for the payment of money in excess of \$10,000 and not otherwise covered by applicable insurance shall be rendered against the Borrower and such judgment or order shall not be stayed, vacated, bonded, or discharged within 30 days;
16. Any material covenant, agreement, or obligation, as determined in the sole discretion of the Municipality, made by the Borrower and contained in or evidenced by any of the Loan Documents shall cease to be enforceable, or shall be determined to be unenforceable, in accordance with its terms; the Borrower shall deny or disaffirm the Obligations under any of the Loan Documents or any liens granted in connection therewith; or any liens granted on any of the Collateral in favor of the Municipality shall be determined to be void, voidable, or invalid, or shall not be given the priority contemplated by this Agreement;
17. There is a change in more than 30 percent of the ownership of any equity interests of the Borrower on the date hereof or more than 30 percent of such interests become subject to any contractual, judicial, or statutory lien, charge, security interest, or encumbrance; or,
18. A good faith belief by the Secured Party that the obligations secured by this agreement and other loan documents are inadequately secured or that the prospect of payment of, or performance under, such obligations is impaired;

In the event of continued default after 15 days written notice of default, the Municipality may, at its option, declare all unpaid indebtedness evidence by this note and any modifications hereof, immediately due and payable, without further notice, and regardless of date of maturity. The Municipality's failure to

exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the sums due under this note through an attorney, the Borrower agrees to pay all costs of collecting this note, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

F. **Loan Documents.** The loan documents referred to in this Note shall include the loan application documents, this Note, the Security Agreement, Loan Agreement, mortgages and UCC documents, the grantee agreement between the Municipality and the State, and any duly acknowledged documents amending, modifying, or altering these named documents.

G. **Binding Effect.** The provisions of this note shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Borrower

By: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**List of Collateral**



**SECURITY AGREEMENT**

For value received, receipt of which is hereby acknowledged, the undersigned and each of the undersigned on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, hereby assigns and grants to the [City/County] of \_\_\_\_\_ (hereinafter, Municipality) a continuing general, lien on, and security interest in, all the Borrower’s right, title, and interest in and to the following property and any and all increases, additions, accessions, substitutions, and proceeds thereto and therefore, together with all rights relating thereto, (herein collectively called “Collateral”) to secure the payment and performance of the obligations described in other loan documents contained in Loan Documents signed by the parties as part of a Loan made pursuant to Community Development Grant #\_\_\_\_\_ of the Kansas Department of Commerce, subject only to Permitted Liens. The Collateral is hereby described as follows:

Should the Municipality deem any Collateral inadequate or unsatisfactory, or should the value of the Collateral decline, the Municipality shall have the right to call for additional Collateral to its satisfaction.

The security interest granted to the hereunder shall secure all obligations of the undersigned to the Municipality, howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due to become due (“Liabilities”).

If any notification of intended disposition by the Municipality of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed at least ten (10) days before such disposition, postage prepaid, addressed to the undersigned either at the address shown below, or at any other address of the undersigned appearing on the records of or loan documents possessed by, the Municipality. The rights, duties, and obligations hereunder of the Municipality and the undersigned shall unless otherwise required by law, be governed by the provisions of the Uniform Commercial Code as in effect from time to time in the State of Kansas and other laws of the State of Kansas, or the laws in the State where filed.

If more than one party shall sign the Agreement, the term “undersigned” shall mean and include all parties signing this Agreement and each of them, jointly and severally.

The Borrower agrees that Borrower’s duly authorized agents have read this agreement and that this agreement includes and is subject to the additional provisions set forth below and on the reverse side hereof, such additional provisions, without limitation because of enumeration, being incorporated herein by reference. The person or persons signing this document on behalf of the Borrower are duly authorized on behalf of such principal to execute this agreement.

\_\_\_\_\_  
\_\_\_\_\_

## Additional Provisions

Borrower warrants and covenants the following: (1) That except for the security interest granted hereby Borrower is, or the extent that this agreement states that Borrower's collateral is to be acquired after the date hereof, will be, the owner of the Collateral free from any adverse lien, security interest, or encumbrance; and that Borrower will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. (2) The Borrower agrees to do such acts and things as the Municipality may from time to time request to maintain a valid security interest on the part of the Municipality in the Collateral (free of all other liens and claims whatsoever) to secure the payment of the liabilities. (3) That no financing statement covering the Collateral or any thereof is on file in any public office and that at the request of the Municipality, Borrower will join with Municipality in executing one or more financing statements pursuant to the Kansas Uniform Commercial Code in form satisfactory to Municipality and will pay the cost of filing such financing statement, this Security Agreement and any continuation or termination statement, in all public offices wherever filing is deemed by Municipality to be necessary or desirable; and if the Collateral is attached to real estate prior to the perfection of the security interest granted hereby or if the Collateral includes crops or oil, gas or minerals to be extracted to timber to be cut, Borrower will, on demand of Municipality, furnish Municipality with a disclaimer or disclaimers or subordination agreement signed by all persons having an interest in the real estate, disclaiming, or subordinating any interest in the Collateral which is prior the to the interest of Municipality. (4) Not to sell, transfer, or dispose of the Collateral, nor take the same or attempt to take the same from the county where kept as above stated, without the prior written consent of the Municipality. (5) To pay all taxes and assessments of every nature which may be levied or assessed against the Collateral. (6) Not to permit or allow any adverse lien, security interest, or encumbrance whatsoever upon the Collateral, and not to permit the same to be attached or replevined. (7) That the Collateral is in good condition, and that Borrower will at Borrower's own expense, keep the same in good condition and from time to time, forthwith, replace, and repair all such parts if the Collateral as may be broken, worn out, or damaged without allowing any lien to be created upon the Collateral on account of such replacement or repairs, and that the Municipality may examine and inspect the Collateral at any time, wherever located. (8) The Borrower will at Borrower's own expense keep the Collateral insured with a company satisfactory to Municipality against loss, as appropriate, by theft, collision, fire, and extension coverage, will loss payable to Municipality as its interest may appear, and will on demand deliver said policies of insurance or furnish proof of such insurance to Municipality. (9) At its option Municipality may procure such insurance, discharge taxes, liens, or security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the repair of any damage or injury to or for the preservation and maintenance of the Collateral. Borrower agrees to reimburse Municipality on demand for any payment or expense incurred by Municipality pursuant to the foregoing authorization. Until such reimbursement, the amount of any such payment, with interest at the rate of 6 percent per annum from date of payment until reimbursement, shall be added to the indebtedness owed by Borrower and shall be secured by this agreement. (10) That Borrower will not use the Collateral in violation of any applicable statute, regulation, or ordinance and if any of the Collateral is motor vehicles that same will not be rented, used in rental service, nor in any speed or endurance contest. (11) That Borrower will not sell or alienate the collateral in a manner not previously approved by the Municipality; and (12) That in the event legal action is required to enforce Municipality's rights in the collateral hereunder, Borrower will pay the reasonable attorney's fees of Municipality to the extent allowed by law, and will pay Municipality any and all costs and expenses incurred in recovering possession of the Collateral and incurred in enforcing this Security Agreement, and the same shall be secured by this Security Agreement.

UNTIL DEFAULT Borrower may have possession of the Collateral and use it in any lawful manner not inconsistent with this agreement and not inconsistent any policy of insurance thereon, and upon default Municipality shall have the right to the immediate possession of the Collateral.

Borrower shall be in default under this agreement upon the happening of any of any Event of Default listed in the Promissory Note.

UPON SUCH DEFAULT and at any time thereafter, or if it deems itself insecure, Municipality may declare all obligations secured hereby immediately due and payable and shall have the remedies of a Municipality under the Kansas Uniform Commercial Code or other appropriate Kansas law. The Municipality may assess a collection charge on each installment in default for a period of ten (10) days or more as an additional charge against the Borrower(s), in an amount not in excess of five (5) percent of such installment or \$250, whichever is less. Municipality may require Borrower to assemble the Collateral and deliver or make it available to Municipality at a place to be designated by Municipality that is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Municipality will give Borrower reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. Expenses or retaking, holding, preparing for sale, selling, or the like shall include Municipality's reasonable attorney's fees and legal expenses.

No waiver by Municipality of any default shall operate as a waiver of any other default on a future occasion. The taking of this Security Agreement shall not waive or impair any other security said Municipality may have hereafter acquire for the payment of the above indebtedness, nor shall the taking of any such additional security waive or impair this Security Agreement, but said Municipality may resort to any security it may have in the order it may deem proper, and notwithstanding any collateral security, Municipality shall retain its rights of setoff against Borrower.

All rights of Municipality hereunder shall inure to the benefit of its successors and assigns; and all promises and duties of Borrower shall bind heirs, executors, administrators, successors, or assigns. If there be more than one Borrower, their liabilities shall be joint and several. If this Security Agreement entitles Municipality to after-acquired rights to personal property acquired, Borrower agrees such phrase shall include collateral in which the Borrower has no rights at the time this Security Agreement is executed, but which later may be included as collateral.

This agreement shall become effective when it is signed by the duly authorized agents of the Borrower.

## UCC FILING INFORMATION

1. As grantee, the City or County is providing an important piece of the financing of this project. A loan is an agreement from the borrower that, in return for your municipality's economic development assistance, the borrower will repay the loan. Certain collateral is pledged to assure repayment. The "security interest" needs to be filed "of record" to be valid. The date and time of a UCC financing statement filing determines the priority of the competing Security Agreements of creditors if a later default occurs. It is important to protect your municipality's rights in this project. If you are unsure how to make these filings, please consult legal counsel.
2. Recently, major changes were enacted in Article IX of the Uniform Commercial Code (UCC). For example, you may need to file UCC statements in more than one state under certain conditions. Alternatively, you can file UCC statements without the need for the debtor's signature if the debtor has signed a valid Security Agreement. There are six new forms of collateral that can be pledged, including such things as an interest in the debtor's pending commercial litigation proceeds. If your borrowing company is representing that you have a certain level of claim on collateral (a "lien,"), you must independently verify that position and file the statement correctly. Rearranging creditor priorities after a loan is in trouble is nearly impossible. Please consult legal counsel if you are unsure.
3. The language used in the financing statement is important. Someone must perform a careful UCC search on the proposed company *before* the loan documents are completed and the financing statement prepared and filed. The search may occur at the Register of Deeds' office in the county where the collateral is located (if the collateral is an interest that runs with real estate, such as fixtures or standing timber). Most filings on personal property collateral are filed "centrally," that is, with the Kansas Secretary of State's office, using a UCC-1 financing statement. If your borrower-company has headquarters in another state you may need to investigate whether necessary to file there, too. Suggested ideas to create language for a security interest are discussed in the next few pages. Contact your attorney for assistance.
4. If real estate is pledged as collateral, a mortgage is required to be filed with the county Register of Deeds where the land is located. A mortgage is a security interest. If a mortgage is all of the collateral, no separate security interest needs to be created. A search at the County Register of Deeds is performed. Confirm if other lenders have filed a mortgage on the same property dated prior to the mortgage you are about to file. Insure that the legal description is correct.
5. Keep at least one copy of the filed and stamped UCC filing statement (from the Secretary of State's office) and the notes and results of your search. Keep at least one copy of any signed and stamped mortgage in your files. Send Commerce one copy of all such documents.

## PURCHASE MONEY SECURITY INTERESTS

A Purchase Money Security Interest (PMSI) is most often used when a lender is financing the purchase of goods, equipment, or other personalty collateral. Since most lenders have blanket UCC filings, that include “all after acquired” property of a similar type, and since priority of claims is determined by the date of filing, Bank B would not lend money to a debtor to buy a new widget machine if Bank A had a prior UCC filing that gave “A” priority over “B”. The UCC solves that problem with PMSI filings.

Most PMSI filings are over equipment and machinery. If your project has this sort of collateral, merely filing a UCC financing statement will not result in a proper PMSI filing. Please review the following procedures.

### **Filing the PMSI Financing Statement**

1. Prepare your customary loan documents. The Security Agreement should reflect that the interest is a purchase money security interest for certain specific collateral listed as an Appendix to the Security Agreement. The Security Interest must be specific – it should list the manufacturer, the model year and model, serial numbers (when known) of any collateral that is purchased with the proceeds of the loan. If pictures of the equipment or machinery or drawings of the model in an industry catalog are available, attach to the Security Agreement. In the space for the description of collateral, describe the collateral specifically, then add in all caps: “THIS IS A PURCHASE MONEY SECURITY INTEREST.”

2. Get a list of all UCC filings against this borrowing company filed in Kansas. If the company intends to move the newly purchased collateral to another state for its operations, you’ll need a list of UCC filings in those state(s) too.

3. Read the other UCC filings. Look for other creditors’ “after acquired” clauses (e.g. “... and all after-acquired equipment...”) in these UCC filings. Prepare a Notice of PMSI form for each such creditor. If there are no such previous creditors, skip this step.

Practice Hint: Send these notices to all the other creditors even if they do not conflict with your collateral. That way you don’t have to worry about where there is an appropriate after-acquired property clause; you’ve taken steps to file your PMSI with everyone.

4. Fill out the “Personalty Pre-UCC Filing Corporate Affidavit”. The expected dates of purchase and receipt of the collateral should be obtained as soon as possible. Remove the footnote references. The corporate CEO should sign and date it. The Municipality keeps the original, and copies are sent to the corporate CEO and Commerce.

This is a new requirement. Commerce requires the Pre-UCC Filing Affidavit because of the different roles a commercial bank plays versus our Municipality-Grantee. A commercial bank, when taking collateral in return for making a loan, requires the borrower sign the Security Agreement and UCC statement at the same time the bank hands over the loan proceeds. The bank quickly files its UCC documents, preserving its priority. The Municipality-Grantee (and the State) is not a commercial bank, but it is making a collateralized loan. Often weeks occur between the time of signing the lending documents with the Grantee and draw-downs from CDBG begin to flow to the borrower, who then uses the money to buy equipment that becomes

the collateral. During that time “window,” other creditors could gain a higher priority by filing their UCC statements with a blanket “all after acquired property” clause. State law requires PMSI filings occur within 20 days of the borrower taking delivery of the purchased equipment or it is not a valid PMSI filing. What this affidavit does is obligate the borrowing company to notify the Municipality-Grantee of the approximate date the first delivery of the equipment is expected.

5. Prepare your draft financial statement. Insure that the phrase “PURCHASE MONEY SECURITY INTEREST” is included prominently in the description window (if filing electronically) and several times anywhere on the written form.

6. Make sure the magic words “AND PROCEEDS THEREFROM” are included after the description of the collateral. If your borrower sells or trades the collateral for money or something else, this entitles you to the “proceeds” money, and the “something else.”

7. When the Company begins drawdowns and uses those funds to purchase the equipment, that is lawful consideration.

8. At the expected date of delivery of the collateral, check periodically with the company (at least once each week) to see if the purchased equipment actually has been delivered. The Pre-UCC Filing Affidavit requires the company to notify the Municipality when the equipment is delivered to them.

9. Once the first pieces of the equipment are delivered to the company, you have 20 days to file the UCC financing statement with the Secretary of State. If serial numbers of the equipment are known, attached them to the filing. Do not miss this filing deadline!

10. After you have filed the PMSI with the Secretary of State, send out the notices to prior creditors prepared under Step 3, and send copies to the CDBG office.

11. Once filed, the PMSI is handled like other UCC financing statements. They must be continued every five years to remain in force. If the loan is paid off, they must be formally “terminated.”

12. Periodically check to insure that your equipment and machinery is at the site where it is supposed to be. If not, where did it go? If collateral is sent to another state, you will need to file a new Security Agreement in that state.

13. Update. Update your filed PMSI UCC filing when you know the exact serial numbers of the equipment or machinery. This can be done with a UCC “amended” filing.

If you have any questions, please call the CDBG Attorney at (785) 296-3004.

**PRE-UCC FILING  
CORPORATE AFFIDAVIT**

I, \_\_\_\_\_,<sup>1</sup> hereby swear or affirm that I am the \_\_\_\_\_<sup>2</sup> of the \_\_\_\_\_,<sup>3</sup> (hereafter COMPANY) and that COMPANY has sought and received authority for a loan in the amount of \$\_\_\_\_\_ (hereafter LOAN) from the \_\_\_\_\_,<sup>4</sup> Kansas (hereafter MUNICIPALITY), for certain diverse economic development purposes. In my capacity as an officer in COMPANY, I make the following statements:

1. **Authority.** COMPANY has authorized me to sign these documents as a company representative.
2. **No Undisclosed Material Liabilities.** Except as may be set forth in Appendix "A" or previously was disclosed in the application documents for the LOAN, COMPANY has disclosed all material liability, indebtedness, obligation, expenses, claims, guaranties, or endorsements of any kind that has or might impair the COMPANY's present or future business practices.
3. **Purchase Money Security Interest.**<sup>5</sup> COMPANY has given authority for MUNICIPALITY to take a purchase money security interest in certain collateral.
4. Such COLLATERAL will be purchased on or about \_\_\_\_\_, 20\_\_\_\_; and COMPANY expects to take initial delivery of such COLLATERAL on or about \_\_\_\_\_, 20\_\_\_\_.
5. Affiant shall cause notification to be given to MUNICIPALITY's attorney of the date when the first of such collateral is delivered to the COMPANY.
6. **Compliance.** COMPANY is duly licensed and authorized to do business in Kansas.

**Declaration**

I hereby swear, affirm, or verify under penalty of perjury and pursuant to K.S.A. 53-601(a) and the laws of Kansas that I signed the above document, and that the statements made in this document by me are true and correct.

NAME OF COMPANY

\_\_\_\_\_

\_\_\_\_\_

(Title)

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

<sup>1</sup> Full name of affiant

<sup>2</sup> Affiant's title with the business

<sup>3</sup> Name of Borrowing Corporation or business

<sup>4</sup> "City of \_\_\_\_\_," or "County of \_\_\_\_\_,"

<sup>5</sup> This paragraph is necessary only if MUNICIPALITY is taking a Purchase Money Security Interest in the collateral

## Appendix “A”

(If there is an entry under any individual subparts, refer to the Affidavit paragraph number which is referred to. Otherwise, state “NA” or “none.”)



Grantee letterhead

**NOTICE TO PRIOR SECURED PARTY  
OF  
PURCHASE MONEY SECURITY INTEREST**

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

TO: (prior secured party)

FROM: Grantee Attorney or Administrator of the Project

This is to notify you that the undersigned has or expects to acquire a purchase money security interest in and to the collateral attached hereto as appendix "A", property rights to which will be obtained by \_\_\_\_\_[[name of borrowing company]] \_\_\_\_\_.

The undersigned is acting as an agent of the City/County of \_\_\_\_\_, Kansas.

Insofar as you have an existing security interest on record as against the same type collateral, this notice informs you of our priority claim to the property.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address, City, and Zip Code

## Appendix “A” Notice

The property is described as:

[[Grantees: NOTE this page is NOT to be included with the Security Agreement. It is informational only.]]

## CREATION IDEAS FOR SECURITY INTERESTS

For your information there are various types of personal property for which a security interest can be obtained to create “collateral” for a loan. Each type is listed below, with special notes regarding each. This is helpful for determining the language to place in the portion of a UCC financing statement where the collateral is “described.” Generally, the UCC requires that Security Agreements be in writing and be very specific on what property is taken as collateral, but UCC financing statements can be very general in nature.

There are two types of Security Agreements – one for personalty collateral and one for real estate. A mortgage on real estate is a Security Agreement by itself and thus a document entitled Security Agreement is necessary only if items of personal property in the business is going to be collateral in addition to real estate. If the collateral is just real estate, or real estate and fixtures, then only a mortgage needs to be drawn, signed, and filed.

A mortgage is filed only with the county Register of Deeds’ office where the land is located. If the land straddles a county line, file the mortgage in both counties.

If the Security Agreement allows collateral on all the personal assets of the borrower, a general statement can be used in the Security Agreement and the UCC financing statement:

All inventory, chattel paper, accounts, contract rights, equipment, general intangibles, furniture, fixtures, machinery and all other business assets; whether any of the foregoing is owned now or acquired later; and all accessions or additions thereto.

The following is a list of property from standard treatises on the financing and filing of UCC statements:

1. **Accessions** – are goods that are physically united with other goods in such a manner that the identity of the original goods is not lost. Typically these are not fixtures, since fixtures attach to real estate and real estate is not “goods.” Example: Bank finances major changes to a large motorized RV. The new goods used in the renovation of the old RV are accessions. Both the accessions and the old RV retain their separate identity.

2. **Accounts** – often called accounts receivables, this category covers license fees payable for the use of software, credit card receivables, and healthcare insurance receivables. Recommended language by the Kansas Secretary of State:

All rights I now have or may have in the future to the payment of money including, but not limited to:(a) payment for goods sold or leased or for services rendered, whether or not I have earned such payment by performance; and (b) rights to payment arising out of all present and future debt instruments, chattel paper, and loans and obligation receivable. The above includes any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

Or alternative language:

All present and future accounts and accounts receivable, together with all security therefore and guaranties thereof and all rights and remedies relating thereto, including any right of stoppage in transit.

3. **Extracted Collateral** – usually this is extracted oil and gas and related receivables generated by the sale of the minerals at the wellhead.

4. **Chattel Paper** – means monetary obligations in a lease of specific goods, such as software used in specific goods. Includes chattel paper stored in electronic medium. See Accounts above.

5. **Commercial Tort Claims** – means the right of the debtor to sue third parties for “business-related” torts, not personal injuries. Examples would be business libel, interference with contract rights, intentional frauds, etc.

6. **Commingled Goods** – goods physically united with other goods in such a manner their identity is lost in the product. The opposite of Accessions. Example: lender financing the purchase of chemical solvents where the solvents are used in manufacturing to make widgets, the security interest is in the end product, the widgets, since without the solvents the manufacturing could not happen.

7. **Consumer Goods** – are all sorts of goods that are not goods, equipment, farm products or inventory. However, since most CDBG borrowers are businesses, consumer goods are rarely part of a security interest.

8. **Deposit Accounts** – bank accounts, including savings accounts. Generally not part of a CDBG loan because it requires special “control agreements” with the bank where the account is located or the Municipality becoming a bank customer. See Accounts above.

9. **Documents** – means documents of title or receipts, such as warehouse receipts or bills of lading. Not usually part of a CDBG project. See Accounts above.

10. **Equipment** – very common form of collateral in CDBG loans. Inventory is not equipment. Nor is farm products or consumer goods. The Security Agreement usually includes a detailed description of the collateral including serial numbers of the equipment attached as “Attachment ‘A’”. The Security Agreement should be specific. The Kansas Secretary of State recommends equipment language as follows:

All equipment including, but not limited to: All machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, and parts and tools. Any equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

Or optional longer language,

*Equipment* means all machinery, equipment, furniture, fixtures, conveyors, tools, materials, storage and handling equipment, hydraulic presses, cutting equipment, computer equipment and hardware, including central processing units, terminals, drives, memory units, printers, keyboards, screens, peripherals and input or output devices, molds, dies, stamps, vehicles, and other equipment of every kind and nature and wherever situated now or hereafter owned by Borrower or in which Borrower may have any interest as lessee or otherwise

(to the extent of such interest), together with all additions and accessions thereto, all replacements and all accessories and parts therefore, all manuals, blueprints, know-how, warranties and records in connection therewith, all rights against suppliers, warrantors, manufacturers, sellers, or others in connection therewith, and together with all substitutes for any of the foregoing.

If the equipment is simple to describe, do so. (Example: “1989 GMC Forklift serial #23488FHE55I5”)

11. **Farm Products** – not usually taken as collateral on CDBG loans except when loaning to agricultural interests, like dairy operations. If you use the phrase “farm products,” it automatically includes some items. The recommended language is:

All farm products including, but not limited to: (a) all poultry, livestock, and their young whether born or unborn, including aquatic goods produced in aquaculture operations, along with their products, produce, and replacements; (b) all crops, annual or perennial, grown or growing, and all products of the crops; and (c) all feed, seed, fertilizer, medicine, and other supplies used or produced in my farming operations, without limitation as to location of such farm products.

*BEWARE: Because the farm products language above is so general, do not limit your Security Agreement by naming the type of livestock or taking a collateral interest in a given number of livestock, e.g. “400 Holstein cows”. With that sort of limitation, other creditors would insist that you are entitled only to Holstein cows (if any are there) and only 400. You would not be entitled to Holstein steers, bulls, or the additional offspring calves of the cows.*

Because farm products are mobile, if the borrower’s farm products are located in another state, the UCC filing should be made in that state or states, plus Kansas.

Finally, because farm operations also are entitled to some government agricultural program payments, if you are taking farm products as collateral, include the following in the Security Agreement:

All payments, accounts general intangibles, or other benefits (including, but not limited to: payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments and conservation reserve payments) in which I now have (or may have in the future) any rights or interest which arise under or as a result of any current or future Federal or State governmental program (including, but not limited to all programs administered by the Commodity Credit Corporation and the ASCS).

12. **Fixtures** – goods that have become so related to particular real estate that an interest in them arises under real property law. Example: Bank finances pipe and pumps that are put into the ground on a farm. The pipes and pumps are now fixtures and stay with the land. To perfect the security interest in fixtures, the UCC must be filed at the County Register of Deeds’ office where the real estate is located, and the appropriate box on the UCC must include a legal description of that land. CDBG recommends that the UCC filing statement be filed with the County *but also* with the central filing office (Kansas: the Secretary of State’s office). While duplication has additional filing fees, duplication of filing helps insure protection.

13. **General Intangibles** – this is a “leftover” category. Whatever property not otherwise specifically covered in the other categories is a general intangible. Examples: payment intangibles and software. Should be used in the Security Agreement and then in the UCC financing statement. Recommended Kansas language from the Secretary of State:

All general intangibles including, but not limited to: tax refunds, patents, applications for patents, copyrights, trademarks, trade names, trade secrets, goodwill, customer lists, permits and franchises, and the right to use my name.

Or optional more detailed language,

All general intangibles including without limitation: all contract rights, tax refunds, rights to receive tax refunds, patents, patent applications, copyrights (registered and unregistered), royalties, licenses, permits, franchise rights, authorizations, customer lists, rights of indemnification, contribution and subrogation, computer programs, discs and software, trade secrets, computer service contracts, trademarks, trade names, service marks and names, logos, goodwill, deposits, choses in action, designs, blueprints, plans, know-how, telephone numbers and rights thereto, credits, reserves, and all forms of obligations whatsoever now or hereafter owing to Borrower.

14. **Health Care Insurance Receivables** – Possible CDBG collateral if the borrower is a health care provider, e.g. a hospital, nursing home, or physician’s office, and the borrower has the right to receive Medicaid, Medicare, or health insurance payments. Contact CDBG’s attorney for use of this one.

15. **Instruments** – *Excludes* investment property, letters of credit and credit card receivables, but *includes* promissory notes. Example: Borrower has the right to collect on a \$100,000 promissory note from Mr. Jones. Lender can take a security interest in that promissory note. See Accounts language above, and language below.

*Other property* means all present and future instruments, documents, documents of title, notes, promissory notes, drafts, acceptances, letters of credit and rights to receive proceeds of letters of credit, deposit accounts, chattel paper, certificates, insurance policies, insurance proceeds, leases, computer tapes, judgments, commercial claims against third parties, leasehold rights in any personal property, books, ledgers, files and records.

16. **Inventory** – Often used as financing vehicle in CDBG notes. Inventory includes goods leased by the debtor to others as well as goods held for lease. In the ordinary course of business, inventory flows into and out of businesses quickly. Inventory is usually listed in financial statements as having a set value. If you take inventory as collateral, you need to monitor the rise and fall of inventory as a cost of sales item. It requires that you get periodic financial statements from the business, and monitor the ratio of inventory costs to overall cost of sales. Please call the CDBG attorney if you have questions. Recommended language from the Kansas Secretary of State:

All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in progress, or materials used or consumed in my business, including goods in possession of outside processors or other third parties or consigned to me as a consignee and all documents of title representing the same.

17. **Investment Property** – These are certificated securities (stocks and bonds) and security entitlements (the right to buy or sell stock at higher or lower prices than the stock market). Includes commodity contracts and accounts. The Security Agreement should insure that the right to dividends from stock is also taken. These are highly unusual security vehicles in CDBG loans, but we have taken stocks as security before.

18. **Letter of Credit Rights** – This refers to the right of the borrower to draw down on a letter of credit. The lender takes the right to make the drawdown at some future time if the borrower is in default. Not typical in CDBG loans. See Instruments above.

19. **Manufactured Homes** – Not generally taken as security in CDBG loans.

20. **Money** – Allows perfection in actual currency owned by the borrower. Lender must perfect by actual possession of the currency, not filings. Example: borrower is a business with \$20,000,000 in Japanese yen in a safety deposit box for use in purchasing products in Japan.

21. **Patents** – Patents are general intangibles. See recommended language for general intangibles above. The Security Interest should probably include the patent numbers issued by the U.S. or other country's patent office. See general intangibles above.

22. **Payment Intangibles** – If the borrower has the right to get paid by third parties, that is a payment intangible and the lender to the borrower can take a security interest in that right to get paid. Not usually part of CDBG lending.

23. **Proceeds** – This is a broad term like stock dividends, equipment rental receipts, royalties from licensing of patents and intellectual property, and amounts owing due to a third party's destruction or infringement on the original collateral. It also includes the money obtained for selling original collateral. Example: Lender files financing statement on widget machine worth \$20,000 and the borrower later sells the machine to third party for \$18,000. The \$18,000 is proceeds from the machine and *if the Security Agreement and UCC statement authorize*, the lender has rights to receive the \$18,000.

24. **Software** – While software is a "general intangible," it can be listed in the Security Agreement separately. Goods usually includes software embedded in the goods and supporting information.

25. **Standing Timber** – Timber on land can be collateral but it must be filed like fixtures – with the local county Register of Deeds where the timber stands. As the name implies, the timber must be uncut. Timber that is cut down is now farm products, or inventory or goods. If land is taken as collateral in a mortgage, the Security Agreement should decide whether the standing timber (if any) is part of the mortgage or exempt. See Fixtures.

26. **Supporting Obligations** – These are credit enhancements. A personal guaranty agreement or a letter of credit which helps secure a loan where equipment is the collateral is a "supporting obligation." *No separate filing is necessary.* The attachment and perfection of the equipment, for example, automatically perfects the guaranty agreement.

## ALL ABOUT MORTGAGES

A mortgage is a Security Agreement that creates a security interest in real estate for collateral on a loan. A mortgage substitutes as the security interest for real estate. If your collateral is a mortgage, you'll fill out the documents on the following pages.

It is extremely important that when typing legal descriptions from one document into the mortgage document (or appendix) that such typing is totally accurate. The county Register of Deeds can provide the correct legal description. Do not assume the legal description given to you by the borrower is correct. Double check the accuracy of your metes and bounds descriptions.

Make sure that all blanks are filled in correctly. If you have questions, check with legal counsel.

Below is a Pre-Mortgage Filing Affidavit. Please use it when obtaining the signature of the Company officer on the mortgage. Here is why and how to use it.

1. The Pre-Mortgage Affidavit is a new requirement in our program. Commerce requires the Affidavit because of the different roles a commercial bank plays versus our Municipality-Grantee. A commercial bank, when making a real estate loan, runs a title search that covers the time up to and including the closing date. At closing, the borrower signs the mortgage and at the same time the bank hands over the loan proceeds. The bank quickly files its mortgage, preserving its priority.
2. However, the Municipality-Grantee is not a commercial lender. It is making a mortgage-collateralized loan. Yet often weeks occur between the dates of signing of the mortgage and loan documents, and the date when the proceeds first are drawn down by the Grantee and sent to the company. During that "window," other creditors could file a mortgage and gain a higher priority. This Pre-Mortgage Filing Affidavit obligates the borrowing company to notify the Municipality-Grantee of any unpaid bills against the property or other mortgages not disclosed in the application.
3. Other mortgages are not the only problems. If there is work done on the property that remains unpaid, a contractor might file a mechanics lien. This might be done after filing the mortgage. A mechanics lien has priority over the mortgage. The only way to insure against a hidden mechanics lien is to get the company officers to sign documents indicating there are no unpaid bills outstanding for work performed on the property.
4. Procedure:
  - a. Set a date for the signing of the documents.
  - b. Create your mortgage documents, including the following Affidavit. When using our forms, remove the footnote references.
  - c. Make sure legal descriptions are correct.
  - d. To cover the period between the approval of the application and this signing date, conduct a title search on the property to be mortgaged that covers the time up to date of signing the mortgage.
  - e. Get the CEO or signing party to swear under oath that to that person's knowledge there are no unpaid bills outstanding that might give rise to a mechanics lien, and that there are no undisclosed mortgages on the property.
  - f. Once you have the signed Affidavit, include a copy with the documents sent to CDBG. Keep the original. It is not filed as part of the mortgage.



- g. File the mortgage when the first draw-down is made. This protects the grantee or the borrower from paying mortgage registration taxes and then seeing the rare event that a project falls through and no draw-downs occur.
- h. When the mortgage is date stamped by the Register of Deeds, send a copy to CDBG.

If you have any questions on this procedure or these documents, call the CDBG attorney at (785) 296-3004.

**REAL ESTATE PRE-MORTGAGE AFFIDAVIT<sup>6</sup>**

I, \_\_\_\_\_,<sup>7</sup> hereby swear or affirm that I am the \_\_\_\_\_<sup>8</sup> of the \_\_\_\_\_,<sup>9</sup> (hereafter COMPANY) and that COMPANY has sought and received authority for a loan in the amount of \$ \_\_\_\_\_ (hereafter LOAN) from the \_\_\_\_\_,<sup>10</sup> Kansas (hereafter MUNICIPALITY), for certain diverse economic development purposes.

In my capacity as an officer in COMPANY, I make the following statements:

1. The property to which this Affidavit corresponds is commonly addressed at \_\_\_\_\_,<sup>11</sup> \_\_\_\_\_, County of \_\_\_\_\_, Kansas.
2. The COMPANY is duly authorized to do business in Kansas.
3. Affiant states that to the best of his knowledge and belief, no one has any right, title, or interest in said property except as shown by records in and for said County and State, not otherwise disclosed in COMPANY’s application for this Loan.
4. That there are no unpaid bills for labor or material which have been used or expended on said property during the four (4) months before the date of this affidavit, and that there are no outstanding bills on which mechanic's liens can be obtainable in favor of any materialman or laborer.

**Declaration**

I hereby swear, affirm, or verify under penalty of perjury and pursuant to K.S.A. 53-601(a) and the laws of Kansas that I signed the above document, and that the statements made in this document by me are true and correct.

COMPANY

\_\_\_\_\_  
(Title)

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<sup>6</sup> This Affidavit is signed by the company CEO  
<sup>7</sup> Full name of Affiant  
<sup>8</sup> Affiant’s title with the business  
<sup>9</sup> Name of Borrowing Corporation or business  
<sup>10</sup> “City of \_\_\_\_\_,” or “County of \_\_\_\_\_,”  
<sup>11</sup> Street address of the mortgaged property, if any

## MORTGAGE

**THIS MORTGAGE** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the Mortgagor, \_\_\_\_\_<sup>12</sup> a corporation, (herein “COMPANY”), and the Mortgagee, the City/County of \_\_\_\_\_, Kansas, a municipal corporation (herein “MUNICIPALITY ”).

**WHEREAS**, COMPANY is indebted to MUNICIPALITY in the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_), which indebtedness is evidenced by a certain Promissory Note (hereafter “NOTE”), executed by COMPANY to the MUNICIPALITY, and dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, containing certain terms of the agreement and providing for annual installments of principal and interest; and which is hereby incorporated by reference as part of this document;

**WHEREAS**, COMPANY has given a Loan Agreement (hereafter “LOAN AGREEMENT”) to MUNICIPALITY dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, which sets forth the terms of the agreement of the parties; and which is hereby incorporated by reference as part of this document;

**TO SECURE** to the MUNICIPALITY the repayment of the indebtedness evidenced by the NOTE and LOAN AGREEMENT, and the performance of the covenants and agreements of COMPANY therein contained, COMPANY does hereby mortgage, grant, and convey to MUNICIPALITY the following described real estate:

A tract of land commencing 612.0 feet East and 503.7 feet South of the Northwest Corner of the Northeast Quarter of the N \_\_\_\_\_ Township Eight (8) South, Range \_\_\_\_\_ Southeast corner of the Tebo tract, \_\_\_\_\_ E 1/4 NE 1/4) of Section Thirteen (13), of beginning, thence South 748.452 feet, thence West 291.0 feet, thence North 578.452 feet to the Southwest corner of the Tebo tract, thence East along the South line of the Tebo tract, 582.0 feet, to the point of beginning, all in \_\_\_\_\_ County, Kansas

SAMPLE;  
Be specific

which has the street address of \_\_\_\_\_.

**TOGETHER** with all the improvements now or hereafter erected on the property, and all easements of record or obvious by viewing the property, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this mortgage; and all of the foregoing, together with said property herein referred to as the “Property”.

COMPANY covenants that COMPANY is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, and convey the Property, that the Property is unencumbered except for any prior mortgage as set forth in Appendix “A”. COMPANY will warrant and defend the title to the Property against all claims and demands, except said prior mortgages.

<sup>12</sup> Name of company that is borrowing funds.

## COVENANTS

Further, COMPANY and MUNICIPALITY covenant and agree as follows:

1. **Payment of Principal and Interest.** COMPANY shall promptly pay when due the principal of and interest, if any, on the indebtedness evidenced by the NOTE and LOAN AGREEMENT, and any corresponding amortization schedules.

2. **Charges; Liens.** COMPANY shall pay all taxes, assessments and other charges, fines, and impositions attributable to the Property which may attain a priority over this mortgage, including the payments, when due, and all other obligations associated with the first and prior mortgage. COMPANY shall promptly discharge any lien, except a previously disclosed first and prior mortgage which has priority over this mortgage; provided, that COMPANY shall not be required to discharge any such lien so long as COMPANY shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the MUNICIPALITY, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

3. **Hazard Insurance.** COMPANY shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term “extended coverage”, and such other hazards as the MUNICIPALITY may require and in such amounts and for such periods as the MUNICIPALITY may require; provided, that MUNICIPALITY shall not require that the amount of such coverage exceed that amount of coverage required to pay, the sums secured by this mortgage, plus the first and prior mortgage, or the replacement value of the improvements, whichever amount is less.

4. **Prepayment.** Mortgagor, or anyone on behalf of Mortgagor, shall have the right to prepay any or all of the unpaid balance on the NOTE and LOAN AGREEMENT, without penalty.

5. **Policies and Form.** All insurance policies and renewals thereof shall be in form acceptable to the MUNICIPALITY and shall include a standard mortgage clause in favor of, and in form acceptable to, the MUNICIPALITY. The MUNICIPALITY shall have the right to hold the policies and renewals thereof, and COMPANY shall promptly furnish to the MUNICIPALITY all renewal notices and all receipts of paid premiums. In the event of loss, COMPANY shall give prompt notice to the insurance carrier and the MUNICIPALITY. The MUNICIPALITY may make proof of loss if not made promptly by COMPANY.

6. **Application of proceeds.** Unless the MUNICIPALITY and COMPANY otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this mortgage, after applying such sums as are required by the first and prior mortgage, with the excess, if any, paid to COMPANY. If the Property is abandoned by COMPANY, or if COMPANY fails to respond to the MUNICIPALITY within 30 days from the date notice is mailed by the MUNICIPALITY to COMPANY that the insurance carrier offers to settle a claim for insurance benefits, MUNICIPALITY is authorized to collect and apply the insurance proceeds at MUNICIPALITY’s option either to restoration or repair of the Property or to the sums secured by this mortgage.

7. **Pass Through.** If under the provisions hereof the Property is acquired by the MUNICIPALITY, all right, title and interest of COMPANY in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to the MUNICIPALITY to the extent of the sums secured by this mortgage immediately prior to such sale or acquisition.

8. **Preservation and Maintenance of Property.** COMPANY shall keep the mortgaged property in good repair and shall not commit waste or permit impairment or deterioration of such mortgaged property.

9. **Protection of Lender's Security.** If COMPANY fails to perform the covenants and agreements contained in this mortgage, or if any action or proceeding is commenced which materially affects the MUNICIPALITY's interest in the Property, including, but not limited to, foreclosure of a prior mortgage, naming of mortgaged property in an action for eminent domain, insolvency of the COMPANY, code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then MUNICIPALITY at MUNICIPALITY's option, upon notice to COMPANY, may make such appearances, disburse such sums and take such action as is necessary to protect MUNICIPALITY's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

10. **Inspection.** The MUNICIPALITY may make or cause to be made reasonable entries upon and inspections of the Property, provided that the MUNICIPALITY shall give COMPANY notice prior to any such inspection specifying reasonable cause therefore related to the MUNICIPALITY's interest in the Property.

11. **Condemnation, Takings and Abandonment.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to MUNICIPALITY, up to the amount of the outstanding indebtedness under the NOTE. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this mortgage, with the excess, if any, paid to COMPANY. In the event of a partial taking of the Property, unless COMPANY and MUNICIPALITY otherwise agree in writing, there shall be applied to the sums secured by this mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to COMPANY. If the Property is abandoned by COMPANY, or if, after notice by MUNICIPALITY to COMPANY that the condemnor offers to make an award or settle a claim for damages, COMPANY fails to respond to MUNICIPALITY within 30 days after the date such notice is mailed, MUNICIPALITY is authorized to collect and apply the proceeds, at MUNICIPALITY's option, either to restoration or repair of the Property or to the sums secured by this mortgage.

12. **Acceleration of Due Date.** Unless MUNICIPALITY and COMPANY otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

13. **Company Not Released.** Extension of the time for payment, or modification of amortization of the sums secured by this mortgage granted by the MUNICIPALITY to any successor in interest of COMPANY shall not operate to release, in any manner, the liability of COMPANY and COMPANY's successors in interest. The MUNICIPALITY shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this mortgage by reason of any demand made by COMPANY or by COMPANY's successors in interest.

14. **Nonwaiver.** Any forbearance by the MUNICIPALITY in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of, any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the MUNICIPALITY shall not be a waiver of the MUNICIPALITY's right to accelerate the maturity of the indebtedness secured by this mortgage.

15. **Remedies Cumulative.** All remedies provided in this mortgage are distinct and cumulative to any other right or remedy under this mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

16. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the MUNICIPALITY and COMPANY. The captions and headings of the paragraphs of this mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Notice.** Except for any notice required under applicable law to be given in another manner,

- a. Any notice to COMPANY shall be given by mailing such notice by certified mail addressed to

COMPANY  
[[address]]\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or such other address as COMPANY may designate by notice to MUNICIPALITY as provided herein.

- b. Any notice to the MUNICIPALITY shall be given by certified mail, return receipt requested to:

MUNICIPALITY Manager,  
City of \_\_\_\_\_,  
[[address]]\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or to such other address as MUNICIPALITY may designate by notice to COMPANY as provided herein.

Any notice provided for in this mortgage shall be deemed to have been given to COMPANY or the MUNICIPALITY when given in the manner designated herein.

18. **Governing Law; Severability.** Kansas law shall govern construction of this mortgage. In the event that any provision or clause of this mortgage or the NOTE conflicts with applicable law, such conflict shall not affect other provisions of this mortgage or the NOTE which can be given effect without the conflicting provision, and to this end the provisions of the mortgage and the NOTE are declared to be severable.

19. **Company's Copy.** COMPANY shall be furnished a conformed copy of the NOTE and of this mortgage at the time of execution or after recordation hereof.

20. **Transfer of the Property; Assumption.** If all or any part of the Property or an interest therein is sold or transferred by COMPANY without the MUNICIPALITY's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this mortgage, or, (b) the grant of any leasehold interest of three years or less not containing an option to purchase, the MUNICIPALITY may, at the MUNICIPALITY's option, declare all the sums secured by this mortgage to be immediately due and payable.

21. **Company's Right to Reinstate.** Notwithstanding the MUNICIPALITY's acceleration of the sums secured by this mortgage, COMPANY shall have the right to have any proceedings begun by the MUNICIPALITY to enforce this mortgage discontinued at any time prior to entry of a judgment enforcing this mortgage if all of the following occur:

- a. COMPANY pays the MUNICIPALITY all principal and interest sums which would be then due under this mortgage and the NOTE, had no acceleration occurred;
- b. COMPANY cures all breaches of any other covenants or agreements of COMPANY contained in this mortgage; and,
- c. COMPANY pays all reasonable expenses, including attorney's fees, incurred by MUNICIPALITY in enforcing the covenants and agreements of COMPANY contained in this mortgage and in enforcing MUNICIPALITY's remedies as provided herein;

Upon such payment and cure by COMPANY, this mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

22. **Release.** Upon payment of all sums secured by this mortgage, the MUNICIPALITY shall release this mortgage without charge to COMPANY.

**IN WITNESS WHEREOF**, COMPANY has executed this mortgage, consisting of five pages, on the date first above written.

COMPANY \_\_\_\_\_

By: \_\_\_\_\_  
PRESIDENT OR CEO

**STATE OF KANSAS,**  
\_\_\_\_\_ **COUNTY**                      **ss:**

**BE IT REMEMBERED**, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared \_\_\_\_\_, President of \_\_\_[[borrowing company]]\_\_\_ to me personally known to be the same person who executed the above and foregoing instrument of writing, and duly acknowledged the execution of same on behalf of COMPANY.

**IN WITNESS WHEREOF**, I have hereunto set my hand and Notarial Seal on the day and year last above written.

Subscribed and sworn to before me on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_

## Appendix "A"

### Prior Mortgages:

Mortgagee	Date Given	Principal Amount to limit of _____
1.		
2.		



**SAMPLE  
INDIVIDUAL GUARANTY AGREEMENT**

For good and valuable consideration, the **receipt** and sufficiency of which are hereby acknowledged, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. We the undersigned \_\_\_\_\_, (hereinafter “Guarantor” or “Guarantors”) absolutely and unconditionally guarantee the payment of the following debts when due (whether at maturity or upon acceleration).

The following applies:

1. Municipality intends to loan to \_\_\_\_\_, hereinafter “Borrower”, an aggregate sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), received by the Municipality as financing from the State of Kansas Department of Commerce, and,

2. A certain Promissory Note has been executed by Borrower as maker, and to the Municipality, on or about \_\_\_\_\_, 20\_\_, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) to secure obligations under a Promissory Note and Loan Agreement and other documents between Municipality and the Borrower; and,

3. As inducement to the Municipality to make the aforementioned loan to Borrower, I am willing to absolutely and unconditionally obligate myself to guarantee the full, prompt and timely payment of said debts to the Municipality; and

4. I desire the Municipality make the loan to Borrower; and,

5. The Municipality will not make the loan to Borrower without my personal guarantee; and,

6. I individually acknowledge that at the date and time of executing this Guarantee Agreement, I am fully capable of financially complying with the obligations in this Agreement; and,

NOW THEREFORE: I further agree as follows:

**I. Definitions.** As used in this agreement, the terms “I,” “we,” and “my” mean all persons signing this guaranty agreement, individually and jointly, and their heirs, executors, administrators, and assigns.

“Debt” or “the debt” means all liabilities, and obligations of the Borrower to the Municipality or third parties whose obligations guaranteed by the Municipality (including, but not limited to, all amounts agreed to be paid under the terms of any Notes or Security Agreements; the payment of any debt, liability or obligation; accrued and unpaid interest on any such note or agreement, overdrafts; advances for taxes; insurance; repairs and storage; and all extensions, renewals, refinancing, and modifications of these liabilities and obligations) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent. The term shall include all renewals, extensions, refinancing, and modifications of the original debt, but shall not include letters of credit and guarantees of the Borrower unless specifically required in the Loan documentation between the Borrower and Municipality, or such letters or guarantees are guaranteed by the Municipality to some third party financing another loan to Borrower.

**II. Delivery.** Each of the persons who has signed this guaranty has unconditionally delivered it to the Municipality. The failure by a co-guarantor to sign this or any other guaranty shall not discharge the liability in my guarantee. My unconditional liability applies whether it is jointly and severally liable for

the entire amount of the debt or for only a pro-rata portion, notwithstanding any applicable common law doctrine to the contrary.

**III. Revocation.** This is an absolute and continuing guaranty of payment and not of collection. If the amount of this guaranty is limited to the payment of a specific debt of the Borrower described above, this agreement cannot be revoked and will remain in effect until the debt is paid in full or the Municipality releases me from the obligations hereunder. Such release, if made, shall be in writing. If this guaranty covers both the Borrower's present and future debts, I agree that this guaranty will remain binding on me, whether or not there are any debts outstanding, until Municipality has actually received written notice of my revocation or written notice of my death or incompetence.

I agree that if any other person signing this agreement provides a notice of revocation to Municipality, I will still be obligated under this agreement until I provide a notice of revocation to Municipality. If any other person signing this agreement dies or is declared incompetent, such fact will not affect my obligations under this agreement.

**IV. Obligations Unconditional.**

- A. I agree that I am obligated to pay according to the terms of this guaranty even if any other person or business entity of any kind has agreed to pay, or pays part of, the Borrower's debt.
- B. Municipality may, without notice to me of any kind or nature: (1) release any Borrower or other person who may be liable for Borrower's debt; (2) release or substitute any collateral; (3) fail to perfect any security interest or otherwise impair any collateral; (4) waive or impair any right Municipality may have against any Borrower or other person who may be liable for Borrower's debt; (5) settle or compromise any claim against the Borrower or any person who may be liable for the Borrower's debt; (6) procure any additional security or persons who agree to be liable for Borrower's debt; (7) delay or fail to pursue enforcement of the debt; (8) apply amounts Municipality receive from the Borrower or other persons to payment of the debt in any order Municipality select; (9) make any election with respect to the debt provided by law or any agreement with any person liable for the debt; (10) exercise or fail to exercise any rights Municipality has with respect to the debt; (11) extend new credit to the Borrower; or (12) renew, extend, refinance, or modify the Borrower's debt on any terms agreed to by Municipality and the Borrower (including, but not limited to, changes in the interest rate or in the method, time, place, or amount of payment) without affecting my obligation to pay under this guaranty.
- C. Because of the nature of this guarantee agreement, I expressly waive: (1) surrender, release, exchange, substitution, dealing with or taking any additional collateral; (2) abstaining from taking advantage of or realizing upon any security interest or other person's guaranty; (3) any defense based on suretyship or any defense the borrower may assert, including but not limited to impairment of collateral or the failure to perfect a security interest in the collateral; or (4) any defenses the Borrower may assert on the underlying debt, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, accord and satisfaction, and usury.
- D. I warrant to the Municipality that I have adequate means to obtain from the Borrower, on a continuing basis, information concerning the financial condition of the Borrower, and I am not relying on the Municipality to provide such information, now or in the future. Because I have such independent means to obtain such information, the Municipality need not make formal demands or provide notices of any kind mentioned in this section, including notices of default on the Borrower's note. Because of such independent means of verification such waiver is not manifestly unreasonable.

**V. Limitation on Guarantee.** This guaranty shall not exceed the amount owed by Borrower in this loan denominated as debt. I will remain obligated to pay on this guaranty an amount owed by Borrower even if any other person or entity who is obligated to pay the Borrower's debt (including the Borrower) has such obligation discharged in bankruptcy or otherwise discharged by law. I also agree that if my liability is limited to a stated principal amount (plus other agreed charges), the Municipality may allow the Borrower to incur debt in excess of the specified amount and apply to the payment of such excess any amounts the Municipality receives for payment of the debt from the Borrower or any other person, any amounts resulting from any collateral, or amounts received from any other source, without affecting my obligations under this agreement.

**VI. Waiver.** I waive notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, including presentment, demand for payment, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands of any kind whatsoever. Municipality may without notice to me and without my consent, enter into agreements with the Borrower from time to time for purposes of creating, continuing, or modifying the Borrower's debt. I further waive any act or omission of the Municipality (except acts or omissions in bad faith) that materially increases the scope of my risk, including the negligent administration of the loan. It can be waived (3-605(i)): All waivers herein contained shall not limit the Municipality's right at the Municipality's option to proceed against the Borrower, whether by separate action or by joinder for all or part of the debt. I agree that this Agreement shall not be discharged except by payment of the debt in full either by other persons or the Borrower, or my complete performance of all obligations contained in this Agreement.

**VII. Foreclosure and Bankruptcy.** Although the Municipality is not required to do so, if Municipality elects to proceed against the Borrower's collateral and realizes part of the outstanding debt from the proceeds of such action, I agree that I will be liable for any deficiency in the debt and the costs of collection remaining after foreclosure (or repossession) and sale of any collateral without regard to whether Borrower's obligation to pay such deficiency is discharged by law, and notwithstanding any termination of this guaranty agreement or the cancellation of any note or other agreement evidencing the obligation of the Borrower. If any payments on the debt are set aside, recovered, or required to be returned in the event of the insolvency, bankruptcy, or reorganization of the Borrower, or for any other reason at law, my obligations under this agreement will continue as if such payments had never been made.

**VIII. Other Remedies.** If I fail to keep any promise contained in this agreement or any agreement securing this agreement, Municipality may make this agreement and the Borrower's debt immediately due and payable, Municipality may set-off this obligation against any right I have to receive money from Municipality, if any, Municipality may use any remedy Municipality has under state or federal law, and Municipality may use any remedy given to Municipality by any agreement securing this agreement. [[Stricken language is because under the UCC the right of setoff first requires a bank-like account and cities / counties do not have such accounts with debtors]]. If I die, am declared incompetent, or become insolvent (either because my liabilities exceed my assets or because I am unable to pay my debts as they become due), Municipality may make the debt immediately due and payable against my estate. I hereby obligate my estate to pay said debt.

**IX. Cost of Collection.** If in the sole determination of the Municipality there is a requirement of litigation to collect the debts due or amounts guaranteed under this agreement, I jointly and severally agree to pay as costs of collection all expenses and charges (including but not limited to court costs, photocopies, postage, travel and meals, investigations of credit or assets, deposition costs and expenses, and a reasonable attorney's fee) to the extent allowed by law paid or incurred by the Municipality in realizing any of the sums hereby guaranteed or in enforcing this agreement, as well as the Loan Agreement, Security Agreement, or Promissory Note of the Borrower. This provision applies to

expenses or charges wherever incurred or paid, in Kansas or any other jurisdiction. All payments by any Guarantor shall be made in lawful money of the United States of America.

**X. Subrogation and Contribution.** I shall be subrogated and have rights of contribution and reimbursement under all rights of the Municipality against the Borrower in respect of any amounts I pay to the Municipality under this Agreement. Such subrogation, contribution or reimbursement is effective only against any person liable for all or part of the Borrower's debt or any claim against the collateral for such debt, and only after I pay the Municipality the sum agreed to and the Municipality assigns such rights to me.

**XI. Entirety.** No modification of this agreement is effective as to any Guarantor unless in writing and incorporates this agreement and is signed by the Guarantor and the Municipality.

**XII. Soldiers and Sailors.** None of the guarantors herein are infants, incompetent persons, or in the military service of the United States within the purview of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

**XIII. Legal Counsel.** I acknowledge this document creates rights, duties, and obligations on me. I have had opportunity to consult independent legal counsel in this matter before signing this agreement.

**XIV. Applicable Law.** This agreement is governed by the laws of the State of Kansas. Any term of this agreement that does not comply with applicable laws will not be effective if that law does not expressly or impliedly permit variations by agreement. If any part of this agreement cannot be enforced according to its terms, this fact will not affect the balance of this agreement.

**XV. Beneficiary.** Guarantors acknowledge that the Small Cities Community Development Block Grant program of the Kansas Department of Commerce is a direct beneficiary of the loan documents between Borrower and the Municipality, and this guarantee.

IN WITNESS WHEREOF, I have signed my name on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Guarantor

\_\_\_\_\_  
Guarantor

Notary Public

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_

**SAMPLE  
INDIVIDUAL GUARANTY AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. We the undersigned \_\_\_\_\_, (hereinafter “Guarantor” or “Guarantors”) absolutely and unconditionally guarantee the payment of the following debts when due (whether at maturity or upon acceleration).

The following applies:

A. Municipality intends to loan to \_\_\_\_\_, hereinafter “Borrower”, an aggregate sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), received by the Municipality as financing from the State of Kansas Department of Commerce; and,

B. A certain Promissory Note has been executed by Borrower as maker, and to the Municipality, on or about \_\_\_\_\_, 20\_\_, in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_ ) to secure obligations under a Promissory Note and Loan Agreement and other documents between Municipality and the Borrower; and,

C. As inducement to the Municipality to make the aforementioned loan to Borrower, I am willing to absolutely and unconditionally obligate myself to guarantee the full, prompt, and timely payment of said debts to the Municipality; and

D. I desire the Municipality make the loan to Borrower; and,

E. The Municipality will not make the loan to Borrower without my personal guarantee; and,

F. I individually acknowledge that at the date and time of executing this Guarantee Agreement, I am fully capable of financially complying with the obligations in this Agreement, and,

NOW THEREFORE: I further agree as follows:

**I. Definitions.** As used in this agreement, the terms “I,” “we,” and “my” mean all persons signing this guaranty agreement, individually and jointly, and their heirs, executors, administrators, and assigns.

“Debt” or “the debt” means all liabilities and obligations of the Borrower to the Municipality or third parties whose obligations guaranteed by the Municipality (including, but not limited to, all amounts agreed to be paid under the terms of any Notes or Security Agreements; the payment of any debt, liability, or obligation; accrued and unpaid interest on any such note or agreement, overdrafts; advances for taxes; insurance; repairs and storage; and all extensions, renewals, refinancing, and modifications of these liabilities and obligations) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent. The term shall include all renewals, extensions, refinancing, and modifications of the original debt, but shall not include letters of credit and guarantees of the Borrower unless specifically required in the Loan documentation between the Borrower and Municipality, or such letters or guarantees are guaranteed by the Municipality to some third party financing another loan to Borrower.

**II. Delivery.** Each of the persons who have signed this guaranty has unconditionally delivered it to the Municipality. The failure by a co-guarantor to sign this or any other guaranty shall not discharge the

liability of mine. My unconditional liability applies whether it is jointly and severally liable for the entire amount of the debt or for only a pro-rata portion, notwithstanding any applicable common law doctrine to the contrary.

**III. Revocation.** This is an absolute and continuing guaranty of payment and not of collection, subject to Section V. If the amount of this guaranty is limited to the payment of a specific debt of the Borrower described above, this agreement cannot be revoked and will remain in effect until the debt is paid in full or the Municipality releases me from the obligations hereunder. Such release, if made, shall be in writing. If this guaranty covers both the Borrower's present and future debts, I agree that this guaranty will remain binding on me, whether or not there are any debts outstanding, until Municipality has actually received written notice of my revocation or written notice of my death or incompetence.

I agree that if any other person signing this agreement provides a notice of revocation to Municipality, I will still be obligated under this agreement until I provide a notice of revocation to Municipality. If any other person signing this agreement dies or is declared incompetent, such fact will not affect my obligations under this agreement.

**IV. Obligations Unconditional.**

A. I agree that I am obligated to pay according to the terms of this guaranty even if any other person or business entity of any kind has agreed to pay, or pays part of, the Borrower's debt.

B. Municipality may, without notice to me of any kind or nature: (1) release any Borrower or other person who may be liable for Borrower's debt; (2) release or substitute any collateral; (3) fail to perfect any security interest or otherwise impair any collateral; (4) waive or impair any right Municipality may have against any Borrower or other person who may be liable for Borrower's debt; (5) settle or compromise any claim against the Borrower or any person who may be liable for the Borrower's debt; (6) procure any additional security or persons who agree to be liable for Borrower's debt; (7) delay or fail to pursue enforcement of the debt; (8) apply amounts Municipality receive from the Borrower or other persons to payment of the debt in any order Municipality select; (9) make any election with respect to the debt provided by law or any agreement with any person liable for the debt; (10) exercise or fail to exercise any rights Municipality has with respect to the debt; (11) extend new credit to the Borrower; or (12) renew, extend, refinance, or modify the Borrower's debt on any terms agreed to by Municipality and the Borrower (including, but not limited to, changes in the interest rate or in the method, time, place, or amount of payment) without affecting my obligation to pay under this guaranty.

C. Because of the nature of this guarantee agreement, I expressly waive: (1) surrender, release, exchange, substitution, dealing with or taking any additional collateral; (2) abstaining from taking advantage of or realizing upon any security interest or other person's guaranty; (3) any defense based on suretyship or any defense the borrower may assert, including but not limited to impairment of collateral or the failure to perfect a security interest in the collateral; or (4) any defenses the Borrower may assert on the underlying debt, including but not limited to, failure of consideration, breach of warranty, fraud, statute of frauds, bankruptcy, lack of legal capacity, statute of limitations, accord and satisfaction, and usury.

D. I warrant to the Municipality that I have adequate means to obtain from the Borrower, on a continuing basis, information concerning the financial condition of the Borrower, and I am not relying on the Municipality to provide such information, now or in the future. Because I have such independent means to obtain such information, the Municipality needs not make formal demands or provide notices of any kind mentioned in this section, including notices of default on the Borrower's note. Because of such independent means of verification such waiver is not manifestly unreasonable.

**V. Limitation.** I shall guarantee the payment of \$ \_\_\_\_\_ of Borrower's debt. Such Guarantee is a guarantee of payment not collection. I will remain obligated to pay such amount in this guaranty even if any other person or entity that is obligated to pay the Borrower's debt (including the Borrower) has such obligation discharged in bankruptcy or otherwise discharged by law. Municipality may allow the Borrower to incur debt in excess of the specified amount and apply to the payment of such excess any amounts Municipality receives for payment of the debt from the Borrower or any other person, any amounts resulting from any collateral, or amounts received from any other source, without affecting my obligations under this agreement.

**VI. Waiver.** I waive notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, including presentment, demand for payment, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands of any kind whatsoever. Municipality may without notice to me and without my consent, enter into agreements with the Borrower from time to time for purposes of creating, continuing or modifying the Borrower's debt. I further waive any act or omission of the Municipality (except acts or omissions in bad faith) that materially increases the scope of the risk, including the negligent administration of the loan. It can be waived (3-605(i)): All waivers herein are subject to Section V and shall not limit the Municipality's right at the Municipality's option to proceed against the Borrower, whether by separate action or by joinder for all or part of the debt. I agree that this Agreement shall not be discharged except by payment of the debt in full either by other persons or the Borrower, or my complete performance of all obligations contained in this Agreement.

**VII. Foreclosure and Bankruptcy.** Although the Municipality is not required to do so, if Municipality elects to proceed against the Borrower's collateral and realizes part of the outstanding debt from the proceeds of such action, I agree that I will be liable for any deficiency in the debt and the costs of collection remaining after foreclosure (or repossession) and sale or any collateral without regard to whether Borrower's obligation to pay such deficiency is discharged by law, and notwithstanding any termination of this guaranty agreement or the cancellation of any note or other agreement evidencing the obligation of the borrower. If any payments on the debt are set aside, recovered, or required to be returned in the event of the insolvency, bankruptcy, or reorganization of the Borrower, or for any other reason at law, my obligations under this agreement will continue as if such payments had never been made. [[The stricken portion is restated in the Subrogation section, infra.]]

**VIII. Other Remedies.** If I fail to keep any promise contained in this agreement or any agreement securing this agreement, Municipality may make this agreement and the Borrower's debt immediately due and payable, Municipality may set-off this obligation against any right I have to receive money from Municipality, if any, Municipality may use any remedy Municipality has under state or federal law, and Municipality may use any remedy given to Municipality by any agreement securing this agreement.

[[Stricken language is because under the UCC the right of setoff first requires a bank-like account and cities / counties do not have such accounts with debtors]]. If I die, am declared incompetent, or become insolvent (either because my liabilities exceed my assets or because I am unable to pay my debts as they become due), Municipality may make the debt immediately due and payable against my estate, subject to the limits in Section V. I hereby obligate my estate to pay said debt.

**IX. Cost of Collection.** If in the sole determination of the Municipality there is a requirement of litigation to collect the debts due or amounts guaranteed under this agreement, I jointly and severally agree to pay as costs of collection all expenses and charges (including but not limited to court costs, photocopies, postage, travel and meals, investigations of credit or assets, deposition costs and expenses, and a reasonable attorney's fee) to the extent allowed by law paid or incurred by the Municipality in realizing any of the sums hereby guaranteed or in enforcing this agreement, as well as the Loan Agreement, Security Agreement, or Promissory Note of the Borrower. This provision applies to

expenses or charges wherever incurred or paid, in Kansas or any other jurisdiction. All payments by any Guarantor shall be made in lawful money of the United States of America.

**X. Subrogation and Contribution.** Subject to Section V, I shall be subrogated and have rights of contribution and reimbursement under all rights of the Municipality against the Borrower in respect of any amounts I pay to the Municipality under this Agreement. Such subrogation, contribution or reimbursement is effective only against any person liable for all or part of the Borrower's debt or any claim against the collateral for such debt, and only after I pay the Municipality the sum agreed to and the Municipality assigns such rights to me.

**XI. Entirety.** No modification of this agreement is effective as to any Guarantor unless in writing and incorporates this agreement and is signed by the Guarantor and the Municipality.

**XII. Soldiers and Sailors.** None of the guarantors herein are infants, incompetent persons or in the military service of the United States within the purview of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

**XIII. Legal Counsel.** I acknowledge this document creates rights, duties, and obligations on me. I have had opportunity to consult independent legal counsel in this matter before signing this agreement.

**XIV. Applicable Law.** This agreement is governed by the laws of the State of Kansas. Any term of this agreement that does not comply with applicable laws will not be effective if that law does not expressly or impliedly permit variations by agreement. If any part of this agreement cannot be enforced according to its terms, this fact will not affect the balance of this agreement.

**XV. Beneficiary.** Guarantors acknowledge that the Small Cities Community Development Block Grant program of the Kansas Department of Commerce is a direct beneficiary of the loan documents between Borrower and the Municipality, and this guarantee.

IN WITNESS WHEREOF, I have signed my name on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Guarantor

\_\_\_\_\_  
Guarantor

Notary Public

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My appointment expires: \_\_\_\_\_



### ***Section 3: Financial Verification***

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Equipment Verification	Page 81
Authorized Signature Form (Form No. FM-1)	Page 83
Request for Payment Instructions	Page 85
Estimated Cash Disbursement Report Instructions	Page 86

## EQUIPMENT VERIFICATION

For projects which require fixed asset acquisition, grantees are responsible for verification of the fixed asset purchases. Acquisitions of \$5,000 or larger must be verified. At a minimum, verification procedures will include one on-site visit to ascertain that the fixed asset acquisition was made in accordance with the grant and loan agreements. In addition, grantees must maintain records which identify the fixed assets held as security for CDBG funds committed to the project.

Since most fixed asset acquisitions involve the purchase of equipment, verification of this type of purchase would involve the following procedures:

### **I. Establish an Equipment Inventory Listing**

The grantee should prepare a listing of all equipment which is to be used to secure the CDBG funds and purchased from CDBG funds. Information on this list should include:

- A. Description of the equipment
- B. Manufacturer
- C. Model number
- D. Serial number
- E. Date of purchase
- F. Purchase price
- G. Location

Most, if not all, of this information can be obtained from invoices submitted by the business at the time of drawdown.

The equipment inventory must be maintained and updated if necessary throughout the loan. The business should notify the grantee promptly of any changes to the inventory such as equipment which is lost, stolen, or beyond repair.

### **II. On-Site Inspection**

The grantee should physically inspect all equipment purchases made by the business including both equipment purchased with CDBG funds and equipment purchased with leveraged funds. (If a large number of items were purchased, a representative sample of items from equipment inventory lists should be selected for inspection, paying particular attention to high cost items used as security for CDBG funds). The inspection should include identification of equipment by model and serial numbers whenever possible.

The information for each piece of information inspected should be compared to the inventory equipment list. Note the inventory list location of each piece of equipment inspected. Be careful to note and have the business explain any discrepancies noted (i.e. equipment not found, variances in model numbers, etc.).

Finally, the on-site verification should include a discussion with the business as to the inventory control procedures the business maintains. For example, does the business have an inventory numbering system and how often are physical inventories taken? These types of controls on the part of the business would be of particular concern if the equipment purchased involves numerous relatively small items. Again, any concerns regarding control procedures should be discussed with the business.

**AUTHORIZED SIGNATURE FORM**

Grantee Name: \_\_\_\_\_ Grant No.: \_\_\_\_\_  
Street Address: \_\_\_\_\_ F.E.I.N.: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**AUTHORIZED SIGNATURES FOR REQUEST FOR PAYMENT**

Typed Name and Title	Typed Name and Title
Name: _____	Name: _____
Title: _____	Title: _____
_____	_____
(Signature)	(Signature)

Typed Name and Title	Typed Name and Title
Name: _____	Name: _____
Title: _____	Title: _____
_____	_____
(Signature)	(Signature)

I hereby certify that the above signatures are authorized to sign the request for payment of CDBG funds (Form No. RP-1).

Typed Name and Title  
Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Signature of Certifying Official)

## **INSTRUCTIONS - AUTHORIZED SIGNATURE FORM**

**1. GRANTEE NAME AND ADDRESS**

Insert name and complete address of grantee.

**2. GRANT NO.**

Enter assigned Grant Agreement Number.

**3. F.E.I.N.**

Enter grantee's Federal Employee Identification Number.

**4. AUTHORIZED SIGNATURES FOR REQUEST FOR PAYMENT**

Enter the typed name, title, and signature of the individuals who are authorized to sign the request for payment of CDBG funds (Form No. RP-1). It is suggested that a minimum of three persons be designated as signees on this form to assure availability of personnel.

**5. SIGNATURE OF CERTIFYING OFFICIAL**

Enter the typed name, title, and signature of the highest elected official not named in Paragraph 4 above to certify that the signatures are authorized to request payment of CDBG funds. Please enter the date the Authorized Signature Form was signed.

**\*\*PLEASE SEE SECTION 5 OF THE CDBG GRANTEE HANDBOOK FOR LINKS TO THE REQUEST FOR PAYMENT AND CASH DISBURSEMENT FORMS.\*\***

**INSTRUCTIONS - REQUEST FOR PAYMENT AND STATUS OF CDBG FUNDS**

**PART I – REQUEST FOR PAYMENT**

- GRANTEE NAME AND ADDRESS  
As it appears on your Grant Agreement.
- GRANT NO.  
As it appears on your Grant Agreement.
- REQUEST NO.  
Sequential number of your request.
- E-mail address  
Enter grantee e-mail address for notification of ACH deposit.

**PART II – STATUS OF CDBG FUNDS**

1. PAYMENTS DUE & AMOUNT OF THIS REQUEST  
Enter total amount of all CDBG payments due.  
  
Enter amount being requested on this Request for Payment (cannot be less than \$3,000 or no more than \$200,000. Must be in exact amount (dollars and cents) supported by invoices, bills or vouchers.

**PART II – STATUS OF CDBG FUNDS CONT.**

2. CDBG GRANT AWARD  
Enter amount of award.
3. (ADD) PROGRAM INCOME  
Enter total amount of program income received on this grant.
4. TOTAL  
Enter amount of grant award plus any program income received.
5. CDBG FUNDS RECEIVED TO DATE
6. TOTAL  
Add lines 3, 5, and 9.
7. REMAINING CDBG FUNDS  
Enter the balance of funds in the grant which are unrequested to date. Line 4 minus line 6.

**PART III -- CERTIFICATION**

- Signatures must be exact as they appear on the Authorized Signature Form.

**PART IV -- APPROVAL**

- Will be completed by Commerce for state processing.

(rev 12-2013)

## **INSTRUCTIONS – CASH DISBURSEMENT REPORT**

1. In the upper left hand corner, record the Grantee Name, the Grant Number, the Reporting Period and the Report Number. The Reporting Period is the date of the last Request for Payment to the date of this Request for Payment.
2. The Activity, Budget and Total Cost Columns refer to the line items found on the Project Budget Form [CDBG-A(01)] in the grant contract. List all line items and number as shown on the contract budget.
3. The CDBG \$ and Local/Other \$ Columns also refer to the line items found on the Project Budget Form [CDBG-B(01)], and are to show the cash disbursements for this Request for Payment (RFP), the disbursements to date and the available balance. The disbursements to date column includes this disbursement, plus all previous disbursements.
4. Add up each column and enter the totals on the bottom line of the chart (if you use more than one page, enter page subtotals on each page and a final total on the last page of the report).
5. Email the Cash Disbursement Report Form with your Request for Payment to your Project Manager:
  - \* For Economic Development the RFP shall include a summary listing invoice numbers, dates, payroll references, check numbers/dates/amounts and other information to substantiate uses of federal funds and local funds by source.

***Section 4:***  
***Job Forms***

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Job Certification Definitions  
Employee Certification Form

Page 87  
Page 89



## JOB CERTIFICATIONS FOR ECONOMIC DEVELOPMENT PROJECTS

### I. Job Retention

Job retention is determined by income level only at time of award and any reasonable turnover in two years. Retention jobs are those jobs that would be lost, by company certification, if the company had not been funded. Jobs are certified at the award stage and at the end of the project for any jobs that may have been replaced.

### II. Job Creation

Taken by: Income level at time of employment.

### III. Base Employment

Base employment is the number of current employees on the payroll, not counted as retentions, that would keep their job if the grant were not funded. These do not have to be income-qualified.

### IV. Jobs in Excess of Requirement

The agreement (state contract), should state that at a minimum, at least 51 percent of all jobs created or retained (**including any in excess of the number specified which result from the assisted activity**) must benefit low- and moderate-income persons.

FTE's (Full-Time Equivalent) will be figured by the following formula by the Department.

#### 40 Hour Week

0 - 5 hours	0 Person
6 - 15 hours	1/4 Time Person
16 - 25 hours	1/2 Time Person
26 - 35 hours	3/4 Time Person
36 - 40 hours	Full-Time Employee

**STATE OF KANSAS  
DEPARTMENT OF COMMERCE  
EMPLOYEE CERTIFICATION FORM**

Name of Company: \_\_\_\_\_

Project #: \_\_\_\_\_

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

Family Income-Total income from all family members during the prior year from all sources. This includes but is not limited to wages, salary, interest, dividends, royalties, and farm income.

In the left column below, check off the box that indicates your family size. Using the income limits on the line corresponding to your family size, check off the appropriate income box on the right side.

FAMILY SIZE	Section 2: INCOME LIMITS			
	A (30%)	B (50%)	C (80%)	
1 <input type="checkbox"/>	<u>10,100</u> TO	<u>16,800</u> TO	<u>26,950</u>	<input type="checkbox"/> Income below Column A
2 <input type="checkbox"/>	<u>11,550</u> TO	<u>19,200</u> TO	<u>30,800</u>	<input type="checkbox"/> Income between Column A & B
3 <input type="checkbox"/>	<u>13,000</u> TO	<u>21,600</u> TO	<u>34,650</u>	
4 <input type="checkbox"/>	<u>14,450</u> TO	<u>24,050</u> TO	<u>38,500</u>	<input type="checkbox"/> Income between Column B & C
5 <input type="checkbox"/>	<u>15,600</u> TO	<u>25,950</u> TO	<u>41,550</u>	
6 <input type="checkbox"/>	<u>16,750</u> TO	<u>27,850</u> TO	<u>44,650</u>	<input type="checkbox"/> Income Above Column C
7 <input type="checkbox"/>	<u>17,900</u> TO	<u>29,800</u> TO	<u>47,700</u>	
8+ <input type="checkbox"/>	<u>19,050</u> TO	<u>21,700</u> TO	<u>50,800</u>	

**RACE/ETHNICITY & DISABILITY STATUS**

Do you have a handicap or disability?  Yes  No

Are you Hispanic?  Yes  No

Are you a female head of household?  Yes  No

**RACE**

<input type="checkbox"/> White	<input type="checkbox"/> American Indian/Alaskan Native & White
<input type="checkbox"/> Black/African American	<input type="checkbox"/> Asian & White
<input type="checkbox"/> Asian	<input type="checkbox"/> Black/African American & White
<input type="checkbox"/> American Indian/Alaskan Native	<input type="checkbox"/> American Indian/Alaskan Native & Black/African American
<input type="checkbox"/> Native Hawaiian/Other Pacific Islander	<input type="checkbox"/> Other

Does your employer offer a health care plan for this job?  Yes  No

Were you unemployed before taking this job?  Yes  No

To the best of my knowledge, the above information is true and can be verified if requested by proper officials of the city/county or the State of Kansas. I also certify that I am authorized to work in the United States and can produce evidence of work authorization.

\_\_\_\_\_  
**Job Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Signature Required**

***Section 5:***  
***Quarterly Reporting***

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Quarterly Progress Reports	Page 91
Notice of Fair Housing/Civil Rights Contact Person	Page 93

**QUARTERLY PROGRESS REPORT - PAGE 1**  
**KANSAS DEPARTMENT OF COMMERCE**  
**SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

Grantee: \_\_\_\_\_ Report #: \_\_\_\_\_  
 Grant #: \_\_\_\_\_ Quarter Ending: \_\_\_\_\_  
 Address: \_\_\_\_\_ Contract Award End Date: \_\_\_\_\_  
 Company Name (ED Projects): \_\_\_\_\_ Date Prepared: \_\_\_\_\_  
 Current Chief Elected Official: \_\_\_\_\_  
 Name and telephone number of person who prepared this report: \_\_\_\_\_  
 Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

Financial Status:

Total Grant: \$ \_\_\_\_\_ Total Local Injection \$ \_\_\_\_\_

Drawdowns received to date: \$ \_\_\_\_\_ Local spent to date \$ \_\_\_\_\_

Drawdowns requested and not yet received: \$ \_\_\_\_\_ Initial Monitoring Conducted

Total Grant available \$ \_\_\_\_\_ Final Monitoring Conducted

Contracts Awarded This Quarter With CDBG Monies: \*

Name & Address ID # or SS #	Contract Amount	Activity		Contractor Data				
		No.	Title	Type of Procurement	Section 3	** MBE	** WBE	Davis- Bacon

\* Attach additional pages if needed.  
 \*\* Categories are: 1-White, 2-Black/African American, 3-Asian, 4-American Indian/Alaskan Native, 5-Native Hawaiian/Other Pacific Islander, 6-American Indian/Alaskan Native & White, 7-Asian & White, 8-Black/African American & White, 9-American Indian/Alaskan Native & Black/African American, 10-Other Multi Racial, 11-Hispanic, 12-Non-Hispanic

Describe project accomplishments this quarter:

Planned activities next quarter:

Technical assistance needs:

## Quarterly Progress Report - Page 2

**You must complete this page if you have a:**

1. Community Improvement, Urgent Need or KAN STEP grant and this is your **first** or **final** report
2. Economic Development grant or grant containing an economic development component (all reports)

<b>Complete for all circumstances listed above:</b>
---

		Number of Beneficiaries	Number of LMI Beneficiaries
1.	Target		
2.	Total to Date		

	*	White	BAA	BAA/W	AI/AN	NH/PI	A	A/W	AI/AN/BAA	AI/AN/W	Other
1.	Total Beneficiaries										
2.	Hispanic Beneficiaries										

\*BAA-Black African American; BAA/W-Black African American & White; AI/AN-American Indian or Alaskan Native; NH/PI-Native Hawaiian or Pacific Islander; A-Asian; A/W-Asian & White; AI/AN/BAA-American Indian or Alaskan Native & Black African American; AI/AN/W-American Indian or Alaskan Native & White

3. Total Number of Households Benefiting to Date \_\_\_\_\_
4. Total Number of Female Heads of Households Benefiting \_\_\_\_\_
5. Total Number of Disabled Persons Benefiting \_\_\_\_\_

NOTE: Beneficiaries are to be reported cumulatively as they occur

<b>Economic Development Grants only:</b>
--

Proposed (FTE - Jobs Count)

		QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	QTR 7	QTR 8
1. Total Jobs Retained	_____								
2. Total LMI Jobs Retained	_____								
3. Total Jobs Created	_____								
4. Total LMI Jobs Created	_____								
5. Total Jobs to be generated	_____								

Accomplishments

	a. Planned this Quarter	b. Completed this Quarter	c. Completed to Date
6. Number of Jobs Retained			
7. Number of LMI Jobs Retained			
8. Number of Jobs Created			
9. Number of LMI Jobs Created			

10. Explain any variances from planned number of jobs:

**NOTICE OF FAIR HOUSING/CIVIL RIGHTS CONTACT PERSON**

TO: Field Representative  
Kansas Department of Commerce  
Small Cities CDBG Program  
1000 S.W. Jackson Street, Suite 100  
Topeka, Kansas 66612-1354

NOTE: THIS FORM IS TO BE  
SUBMITTED WITH FIRST  
QUARTERLY PROGRESS REPORT.

DATE: \_\_\_\_\_

RE: \_\_\_\_\_

Grantee

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Grant Number

1. List all grants received in the past three years and the fair housing activity completed for each grant.
- | <u>Grant Year</u> | <u>Type of Grant</u> | <u>Activity</u> | <u>Closed (Y or N)</u> |
|-------------------|----------------------|-----------------|------------------------|
|-------------------|----------------------|-----------------|------------------------|

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. List activity proposed for first year of this grant: \_\_\_\_\_

\_\_\_\_\_

3. The local city/county contact person designated to handle any fair housing/civil rights complaint is:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

4. Does the grantee have more than 15 employees? If so, who is the Section 504 Coordinator?

Name: \_\_\_\_\_ Title: \_\_\_\_\_

## ***Section 6: Program Income***

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Program Income and Re-use Plan	Page 95
Review of Federal/State Requirements	Page 951
Local Options	Page 96
Semi-Annual Revolving Loan Fund Reports	Page 96
Program Income Report Form	Page 97
Grant/Local Loan Collection Report Form	Page 100
Local Revolving Loan Fund Capacity Agreement (LRLF-A01)	Page 106

## **I. Program Income and Re-use Plan**

This chapter deals with program income – money which is earned from the use of CDBG funds. The Department of Housing and Urban Development (HUD) requires the state to ensure that the CDBG program income is used in accordance with statutory and regulatory requirements. Commerce expects the local government to meet these same requirements and additional state requirements as set forth in the Consolidated Plan of Objectives and Projected Use of Funds, the Application Guidelines and the CDBG contract between the local government and Commerce. It is important to remember that program income funds are the same as additional CDBG funds and are subject to the same provisions of law as the original grant contract.

## **II. Review of Federal and State Requirements Which Regulate the Use of Program Income**

Section 104(i) of the amended Housing and Community Development (HCD) Act of 1974 allows the state to require the local government to return program income unless the local government can continue the same activity which earned the program income. HUD policy allows the state to place additional restrictions on the use of program income, including reasonable time limits to complete activities funded with program income.

The Consolidated Plan sets forth the state's policy and the definition for continuing the same activity and the time limits for doing so. This section states:

Program income shall be returned to the state except where the grantee can demonstrate its ability to continue, within a reasonable time, the same activity as described in the approved application.

- A. Same Activity: For economic development projects, as another loan to the same business from which the program income was received. This same business must expand the state's economic base by selling or having the potential to sell products or services to non-state markets; or by replacing or competing with products or services imported into the state.
- B. Reasonable Time: For economic development projects as: (1) successful completion of the initial grant in 24 months from the date of execution of the contract with the state and successful close-out within 90 days of project completion; (2) program income must be recommitted to the same business within three months after repayment of principal begins or it reverts to the state program.
- C. Below are two options the grantee has regarding program income. If neither option is exercised, program income will be returned to the state.
  1. Voluntarily return program income to the state at the time of application.



2. Submit a program income re-use plan and Local Revolving Loan Fund Capacity Agreement. If the grantee selects this option, Commerce will review the re-use plan to determine whether the grantee demonstrates its ability to continue, within a reasonable time, the same activity as described in the approved application. This will be determined at close-out.

This must be a very structured and formal plan to be acceptable.

### **III. Local Options**

The local government applicant must decide for economic development loan funds whether to return program income to the statewide revolving loan fund or to prepare a re-use plan.

Costs associated with preparing a re-use plan are not an eligible CDBG expenditure since that activity does not relate to the implementation of the approved activity.

The local re-use plan will be reviewed by Commerce and, if approved, the local government will be given a timeline for conditioned first use of the program income. Conditions for first re-use include, but are not limited to:

- A. The original project is expected to achieve compliance with the national objective as presented in the approved application
- B. The local government shows continuing capacity, as judged by Commerce, to administer CDBG funds

Program income returned to the state is committed to the statewide economic development revolving loan for distribution according to the guidelines. Funds in this loan pool are available to all eligible applicants to further the purposes of the state's CDBG Economic Development program.

### **IV. Semi-Annual Revolving Loan Fund Reports**

When the local municipality accepted the economic development grant, they were given the option to retain the funds locally and create a Revolving Loan Fund or return them to the state. When the decision was made to retain the funds locally, your municipality also accepted the requirement to report the activities and accomplishments of the Revolving Loan Fund.

The forms and the accompanying instructions, as presented on the subsequent pages, are designed to help facilitate this requirement. It is important to note that this is required on a semi-annual basis and are necessary to substantiate fulfillment of the municipalities' responsibility. This should be filled out regardless if recapture has begun or not.

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**Program Income Report for Economic Development**

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A. GRANTEE NAME: \_\_\_\_\_ B. GRANT NUMBER: \_\_\_\_\_

C. SEMI-ANNUAL – FOR PERIOD ENDING JUNE 30, 20\_\_\_\_ OR DECEMBER 31, 20\_\_\_\_

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**ACCOUNT BALANCES**

---

- 1) BALANCE BROUGHT FORWARD \_\_\_\_\_
- 2) PLUS: ALL DEPOSITS THIS PERIOD \_\_\_\_\_
- 3) INTEREST ON BANK ACCOUNT EARNED THIS PERIOD \_\_\_\_\_
- 4) \*OTHER INCOME \_\_\_\_\_
- 5) SUBTOTAL \_\_\_\_\_
- 6) MINUS: ALL LOANS MADE DURING PERIOD \_\_\_\_\_
- 7) ADMINISTRATIVE FEES \_\_\_\_\_
- 8) \*OTHER LOSSES (include funds returned to state) \_\_\_\_\_
- 9) TOTAL \_\_\_\_\_

\*EXPLANATION OF LOSS OR INCOME:

---

10) NAME AND ADDRESS OF BANK OF DEPOSIT:

---

---

CERTIFICATION: I certify to the best of my knowledge and belief that the information contained in this report is true and correct.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

TYPED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

---

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PREPARER'S NAME: \_\_\_\_\_

PREPARER'S EMAIL ADDRESS: \_\_\_\_\_

PREPARER'S PHONE NUMBER: \_\_\_\_\_

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## INSTRUCTIONS – PROGRAM INCOME REPORT FOR ECONOMIC DEVELOPMENT

The purpose of this form is to track the original grant account. It is important that the activity of each Revolving Loan Fund from an original grant be identifiable as though it were in a separate account. Each secondary loan will be paid from a specific original grant revolving fund and returned to that fund. All revolving accounts should be interest bearing. It is only necessary to complete this form for the original grant since all subsequent loans from this account return to the original account.

- A. **Grantee Name:** This is the name of the city/county that received the grant award.
- B. **Grant Number:** This is the number that was assigned to the grant by the Kansas Department of Commerce. It is comprised of the year, a classification, and a number code.
- C. **Semi-annual - For Period Ending: June 30, 20\_\_ or December 31, 20\_\_:** This is the reporting period being reported. It is either January 1 through June 30 or July 1 through December 31. The blank space is the reporting year.

### Account Balances

- 1. **Balance Brought Forward:** If this is the first report, the balance brought forward will be zero. If this is not the first report, the balance brought forward will be the TOTAL from the last reporting period. If all funds are being returned to the state, the Balance Brought Forward will continue to be zero.
- 2. **All Deposits This Period:** This is all payments from the original loan as well as all payments from each secondary loan made from a specific revolving account during this reporting period. This will include all partial payments. This does not include loan origination fees, late fees, or other administrative fees collected from the businessman.
- 3. **Interest on Bank Account Earned This Period:** This is only the interest that the bank pays on this specific bank account during this reporting period. It does not include the interest that is paid by the secondary borrowers. Secondary interest will be part of the deposits.
- 4. **Other Income:** This would include payments in lieu of interest, service charges for loan origination, late fees, etc., made during this reporting period. Include all payments other than interest and principal or bank interest. Please explain other income items in the appropriate space provided on this form.
- 5. **Subtotal:** Balance Brought Forward (1), plus All Deposits This Period (2), plus Interest on Bank Account Earned This Period (3), plus Other Income (4).

6. All Loans Made During Period: This is the amount that has been loaned from this account during this reporting period. (Please list loans made during this reporting period on the back of this form. List both name of company and amount loaned.)
7. Administrative Fees: List the total of all administrative fees paid from the revolving loan account during this reporting period.

Attach a Breakdown of Administrative Expenses: Expenditures should be categorized as follows:

- a. Contractual
  - b. Travel
  - c. Professional Services
  - d. Supplies
  - e. Other
8. Other Losses (include funds returned to the state): The amount of funds that have been returned to the state during this reporting period. Please explain other loss items in the appropriate space provided on this form.

Please Note: Any amount which is determined to be lost and not returnable to this account, i.e., the firm goes bankrupt with the city/county receiving no remedy from court proceedings. This should be explained in the appropriate space provided on this form.

9. Total: Subtotal (5), minus All Loans Made During Period (6), minus Administrative Fees (7), minus Other Losses (8).
10. Name and Address of Bank of Deposit: This is the name and address of the bank where this particular revolving loan fund is held.

## Grant/Local Loan Collection Report

- A. GRANTEE NAME: \_\_\_\_\_ B. GRANT NUMBER: \_\_\_\_\_
- C. NAME OF COMPANY: \_\_\_\_\_
- D. SEMI-ANNUAL -- FOR PERIOD ENDING: JUNE 30, 20 \_\_\_\_\_ OR DECEMBER 31, 20 \_\_\_\_\_
- E. GRANT AMOUNT TO BE REPAYED: \_\_\_\_\_ F. FREQUENCY OF PAYMENT: \_\_\_\_\_
- G. TERM OF REPAYMENT: \_\_\_\_\_ MOS. H. INTEREST RATE: \_\_\_\_\_ %
- I. DUE DATE OF FIRST PAYMENT OF COMBINED PRINCIPAL AND INTEREST: \_\_\_\_\_

1. CURRENT PERIOD INFORMATION:

- a. ACTUAL DATE OF FIRST PAYMENT THIS PERIOD: \_\_\_\_\_
- b. ACTUAL DATE OF LAST PAYMENT THIS PERIOD: \_\_\_\_\_
- c. NUMBER OF PAYMENTS RECEIVED THIS PERIOD: \_\_\_\_\_
- d. DOLLAR AMOUNT OF INTEREST RECEIVED THIS PERIOD: \_\_\_\_\_
- e. DOLLAR AMOUNT OF PRINCIPAL RECEIVED THIS PERIOD: \_\_\_\_\_
- f. DOLLAR AMOUNT OF ADMINISTRATIVE FEES PAID THIS PERIOD: \_\_\_\_\_

2. AGGREGATE INFORMATION:

- a. TOTAL NUMBER OF PAYMENTS RECEIVED TO DATE: \_\_\_\_\_
- b. TOTAL DOLLAR AMOUNT OF INTEREST RECEIVED TO DATE: \_\_\_\_\_
- c. TOTAL DOLLAR AMOUNT OF PRINCIPAL RECEIVED TO DATE: \_\_\_\_\_
- d. TOTAL DOLLAR AMOUNT OF ADMINISTRATIVE FEES PAID TO DATE: \_\_\_\_\_
- e. BALANCE OF PRINCIPAL AND INTEREST DUE: \_\_\_\_\_

3. JOB INFORMATION:

- |   | PROPOSED | ACTUAL |
|---|----------|--------|
| a. NUMBER OF JOBS RETAINED WITH THIS PROJECT:     |          |        |
| b. NUMBER OF LMI JOBS RETAINED WITH THIS PROJECT: |          |        |
| c. NUMBER OF JOBS CREATED WITH THIS PROJECT:      |          |        |
| d. NUMBER OF LMI JOBS CREATED WITH THIS PROJECT:  |          |        |
| e. NUMBER OF BASE JOBS:                           |          |        |

**MUST ATTACH DATED AMORTIZATION SCHEDULE OF PAYMENTS**

IS THIS LOAN CURRENT?  YES  NO

IF NOT, WHY AND WHAT STEPS ARE BEING TAKEN?

## INSTRUCTIONS – GRANT/LOCAL LOAN COLLECTION REPORT

- A. Grantee Name: This is the name of the city/county that received the grant award.
- B. Grant Number: This is the number that was assigned to the grant by the Kansas Department of Commerce. It is comprised of the year, a classification, and a number code. If secondary loans have been made from the recapture of program income, the secondary loan will have the same grant number assigned to it; however, a three-number extension will need to be added to that number. If this is the first time a loan has been made from program income, that extension will be 001. If this is the second loan made from program income, the number will be 002 and so forth.
- C. Name of Company: The name of the company that received the loan.
- D. Semi-Annual – For Period Ending: June 30, 20\_\_ or December 31, 20\_\_: This is the reporting period being reported. It is either January 1 through June 30 or July 1 through December 31. The blank space is the reporting year.
- E. Grant Amount to be Repaid: This is the amount of grant to be paid but does not include interest; only principal. It does not include administrative fees if they are not being repaid. It might in the case of an interest roll include the accrued interest.
- F. Frequency of Payment: This is the number of payments per year. Annually=1, Semi-Annually=2 and so forth.
- G. Term of Repayment: This is the number of months of repayment of principal and interest combined. This does not include the number of months of interest only payments.
- H. Interest Rate: This is the rate of interest for which the loan was made. If the interest is not constant, an explanation should be given on the back of this form.
- I. Due Date of First Payment of Combined Principal and Interest: This is the date, that according to loan documentation, that the first payment of combined principal and interest is due. This date will not change from period to period.
  - 1. Current Period Information: The current period information should reflect what has actually happened during this reporting period. Payments are considered to be payments in full of combined principal and interest. Partial payments are not considered as a payment. When providing the number and amount of payments, partial payments are not to be included. If a partial payment has been made, provide the amount of the partial payment on the “IS THIS LOAN CURRENT?” line. Once enough partial payments have been made to equal a full payment, then it should be shown as a payment for the period

that the equivalent of a full payment was received. It should also be noted on the “IS THIS LOAN CURRENT?” line that enough partial payments have been collected to equal a payment in full and the amount is being recognized as a payment in this period.

- a. Actual Date of First Payment This Period: This is the date that the first payment of combined principal and interest was collected during this reporting period.
- b. Actual Date of Last Payment This Period: This is the date that the last payment of combined principal and interest was collected during this reporting period.
- c. Number of Payments Received This Period: This is the number of full payments of combined principal and interest received during this period.
- d. Dollar Amount of Interest Received This Period: This is the amount of interest received from the business this period from combined principal and interest payments. This does not include interest earned on funds in the bank.
- e. Dollar Amount of Principal Received This Period: This is the amount of principal received from the business this period from combined principal and interest payments.
- f. Dollar Amount of Administrative Fees Paid This Period: This is the actual dollar amount spent this period to facilitate the operation of lending from the revolving loan fund.

## 2. Aggregate Information:

The aggregate information should reflect what has actually happened during the life of the loan. Payments are considered to be payments in full of combined principal and interest. Partial payments are not to be considered as a payment. When providing the number and amount of payments, partial payments are not to be included. If a partial payment has been made, provide the amount of the partial payment on the “IS THIS LOAN CURRENT?” line. Once enough partial payments have been made to equal a full payment, then it should be shown as a payment for the period that the equivalent of a full payment was received. It should also be noted on the “IS THIS LOAN CURRENT?” line that enough partial payments have been collected to equal a payment in full and the amount is being recognized as a payment in this period.

- a. Total Number of Payments Received to Date: This is the total number of payments received up to the end of this reporting period from combined principal and interest payments.
- b. Total Dollar Amount of Interest Received to Date: This is the total dollar amount of interest collected up to the end of this reporting period from interest payments as well as combined principal and interest payments.

- c. Total Dollar Amount of Principal Received to Date: This is the total dollar amount of principal collected up to the end of this reporting period from combined principal and interest payments.
- d. Total Dollar Amount of Administrative Fees Paid To Date: This is the actual dollar amount spent to date to facilitate the operation of lending from the revolving loan fund.
- e. Balance of Principal and Interest Due: This is the actual dollar amount of principal and interest still due and payable on this loan.

3. Job Information:

An economic development project must demonstrate the intent to, and the project must result in, the creation of new jobs and/or the retention of existing jobs, primarily for the benefit of low- and moderate-income individuals. Jobs must be created and/or retained within 24 months of the local loan. The jobs only need to be reported for secondary loans.

- a. Number of Jobs Retained With This Project: This is the total number of jobs that this project will directly retain. It is important to note that the positions being retained must have been notified in writing of their pending dismissal in the event that funding would not have been obtained.
- b. Number of LMI Jobs Retained With This Project: This is the total number of retained LMI jobs that this project will directly retain.
- c. Number of Jobs Created With This Project: This is the total number of jobs that this project will directly create.
- d. Number of LMI Jobs Created With This Project: This is the total number of LMI jobs that this project will directly create.
- e. Number of Base Jobs: This is the total number of base jobs to be maintained.



**Kansas Department of Commerce (CDBG Program)**

**LOCAL REVOLVING LOAN PROGRAM CLOSE-OUT CERTIFICATE**

City or County Name: \_\_\_\_\_

Original Grant Number: \_\_\_\_\_

Company Name: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

**Description of Project:**

Loan Amount \$ \_\_\_\_\_ Match Amount \$ \_\_\_\_\_

Term \_\_\_\_\_

Interest Rate \_\_\_\_\_

Collateral Position \_\_\_\_\_

Applicable HUD requirements:	Completed	N/A
Governing Body Approval	<input type="checkbox"/>	<input type="checkbox"/>
Loan Committee Approval	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Review (submit to Commerce)	<input type="checkbox"/>	<input type="checkbox"/>
Signed Loan Agreements	<input type="checkbox"/>	<input type="checkbox"/>
Security Agreements	<input type="checkbox"/>	<input type="checkbox"/>
Job Certifications	<input type="checkbox"/>	<input type="checkbox"/>
Filed UCC's or Mortgage	<input type="checkbox"/>	<input type="checkbox"/>
Davis Bacon Wage Rates paid if applicable	<input type="checkbox"/>	<input type="checkbox"/>

**A. Jobs**

Job Creation/Retention

	Total Job Count		Total Weekly Hours		Percent	Race	Hispanic
	<u>Full Time</u>	<u>Full Time Low/Mod</u>	<u>Part Time</u>	<u>Part Time Low/Mod</u>	<u>Low/Mod Jobs</u>		
Actually Created	_____	_____	_____	_____	_____	_____	_____
Actually Retained	_____	_____	_____	_____	_____	_____	_____
Actual FTE Jobs	_____					_____	_____

**B. Created**

Of Jobs Created, number of jobs with employer sponsored health care benefits \_\_\_\_\_

Of Jobs Created, number of persons unemployed prior to taking Jobs Created under this activity \_\_\_\_\_

**Retained**

Of Jobs Retained, number of jobs with employer sponsored health care benefits \_\_\_\_\_

**C. Types of Jobs Created/Retained**

<u>Jobs Category</u>	<u>Jobs Created</u>	<u>Jobs Retained</u>
Officials and Managers	_____	_____
Sales	_____	_____
Office and Clerical	_____	_____
Craft Workers (Skilled)	_____	_____
Laborers (Unskilled)	_____	_____
Service Workers	_____	_____

We hereby certify that all applicable requirements have been met.

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

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

STATE OF KANSAS

LOCAL REVOLVING LOAN FUND

CAPACITY AGREEMENT NO. \_\_\_\_\_-BF-\_\_\_\_\_

between the

STATE OF KANSAS  
DEPARTMENT OF COMMERCE

and the

\_\_\_\_\_, Kansas

I. LOCAL REVOLVING LOAN FUND AGREEMENT

- A. This Local Revolving Loan Fund Agreement (hereinafter called the Agreement) is between the state of Kansas, Department of Commerce (hereinafter called the Department) and the \_\_\_\_\_, Kansas (hereinafter called the Grantee). The Local Revolving Loan Fund will hereinafter be called LRLF. This Agreement consists of the body and the following attachments which are incorporated herein:

Attachment A - Original Loan Agreement  
Attachment B - Original Promissory Note  
Attachment C - Original Security Agreement  
Attachment D - Filed UCCs and Mortgage  
Attachment E - Approved LRLF  
Attachment F - Attorney's Opinion

- B. Together they embody the entire Agreement between the Department and Grantee with respect to this re-use program. All prior agreements, representations, statements, negotiations, and understandings either written or oral with respect to this re-use program are superseded hereby.

II. AUTHORITY

- A. The funds to provide this LRLF were financed by a grant/loan provided to the Department by the United States Department of Housing and Urban Development (HUD) under Title I of the Federal Housing and Community Development Act of 1974, as amended (42USC5301 et. seq.), (hereinafter called the Federal Act). As provided in the Federal Act, the state of Kansas, through the Department, has elected to administer the federal program of Small Cities.
- B. The Department in accordance with the provisions of K.S.A. 74-5001 et. seq., (hereinafter called the State Act), approved the LRLF for the purpose of supporting the Grantee's LRLF Program, on \_\_\_\_\_.

- C. In the event of changes in any applicable federal regulations, policies, and/or law, this Agreement shall be deemed to be amended when required, to comply with any such regulations, policies, and/or law so amended, so long as Grantee's obligations hereunder are not in violation of Kansas law.

### III. DESCRIPTION OF ACTIVITIES

The Grantee agrees to perform the following specific activities in relation to its LRLF and the re-use of the LRLF fund. In the event of any failure of this performance the "Grantee" will follow remedy measures herewithin disclosed.

- A. All activity of the LRLF must be done in the form of a loan and/or loan guarantee.
- B. LRLF plans passed in resolution by governing body must be submitted to and approved by the Department prior to execution of the LRLF Agreement.
- C. All loan proceeds must create and/or retain jobs. In order to be considered as a retained job, the public must be notified in the official newspaper of the municipality, by the borrower, of its intent to close, or lay off employees in the event that a LRLF loan is not received.
- D. Of the jobs created and/or retained as a result of the loan from the LRLF, 51 percent must be held by LMI persons. The LMI Family Income requirements must be based on the most updated Section 8 numbers at the time of the loan.
- E. The Grantee will have on file the appropriate certification forms to verify that the LMI requirements have been met.
- F. The Grantee will have on file all legally binding documents such as Loan Agreements, Promissory Notes, and Security Agreements for all sources of funding in the project to which the loan has been made.
- G. Loans may only be made to projects meeting "same activity" and within a "reasonable time."
  - 1. 1984 – 1988 and Subsequent Same Activity: For economic development as another loan to a business that will expand the state's economic base by selling or having the potential to sell products or services to non-state markets or by replacing or competing with services imported to the state and by retaining or creating jobs.
  - 2. 1989 to Date Same Activity: For economic development as another loan to the same business from which program income was received.
  - 3. Reasonable Time: Funds must be committed to other projects within the reasonable time of ninety (90) days from the first principal payment received.
- H. The Grantee will have on file documentation of how financial need was determined and documentation that a thorough financial analysis was completed prior to the loan.

- I. No loan shall be provided to replace existing financing.
- J. Semi-annual reporting of LRLF activity shall be submitted to the state no later than thirty (30) days after June 30 and December 31. Failure to comply shall result in the returning of the entire LRLF to the Department. The Department shall have the authority to request additional information when it deems necessary.
- K. Project must be completed within twenty-four (24) months of the local loan, this includes job creation and/or retention.
- L. The Grantee is required to have the LRLF audited each year, by an independent auditor.
- M. The Grantee will make semi-annual Program Income reports to the state on the designated form, and the LRLF will be monitored by state personnel.
- N. The Grantee will assure that Title I will be followed when applicable. This will be determined at the time the Department approves the loan for eligibility.
- O. The Grantee may spend up to three (3) percent of the annual recapture for actual administrative costs.
- P. Each LRLF must be kept in a separate account which is identified as to which Commerce grant from which it was derived.
- Q. No interest moratoriums will be approved.
- R. Principal moratorium can be granted for up to eighteen (18) months. If longer moratorium is required, must have the Department's written approval.
- S. Loans must generate a reasonable rate of return. Interest can be no less than three and a half (3 1/2) percent below prime without the Department's prior written approval.
- T. The balance of the local revolving loan fund will be reviewed at the December 31 report each year. If any balances exist in the account longer than twelve (12) months with no activity, dollars must be returned to the state.

#### IV. REMEDY

The Grant which was provided to the Grantee by the Department then loaned to a business is hereinafter the Original Loan. All local loans made from the recapture of program income from the Original Loan are hereinafter Subsequent Loans.

- A. The Grantee agrees that in the event of the failure of the Original Loan it will follow the remedy measures herein:

1. The Grantee will take all legal remedies available and return to the Department all monetary remedy received. All non-monetary remedies will be sold and the proceeds from that sale returned to the Department.
  2. The Grantee will return to the Department all unencumbered LRLF monies associated with the failed Original Loan.
  3. In the event of fraud by the Grantee, non-federal funds shall replace the amount from the LRLF. In the event of fraud by the recipient, all possible legal remedies will be taken by the Grantee within a reasonable time.
- B. It is agreed that in the event of the mismanagement or failure of a Subsequent Loan, the remedy measures herein shall apply:
1. In the event of a Title I violation, when applicable, the Grantee will have the following options of:
    - a. Replacing the loan amount in violation from non-federal funds,
    - b. Surrendering the capacity to keep all program income associated with the LRLF account.
  2. In the event of failure of a subsequent loan all legal remedy must be exercised by the Grantee within a reasonable time.
  3. In the event that national objective of at least fifty-one (51) percent LMI is not met by project completion by the subsequent loan recipient, the loan becomes due and payable immediately and the Grantee must take all legal remedies available to it.
- C. The Department has the authority to make a decision to determine the capacity of a Grantee in the event of mismanagement of an Original or a Subsequent Loan.

Capacity is defined as the minimum performance required by the Department in order for a Grantee to administer an Original Loan or Subsequent Loans.

We, the undersigned, have read and understood the above document and hereby agree to the terms and conditions contained herein.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Council or Commission Members

State of Kansas,  
Department of Commerce

By: \_\_\_\_\_  
Business and Community Development Division Director  
for the Kansas Department of Commerce

By: \_\_\_\_\_  
Notary Public, State of Kansas

\_\_\_\_\_, Kansas  
Grantee

By: \_\_\_\_\_  
Chairman/Mayor

(SEAL)

ATTEST: \_\_\_\_\_  
Clerk