



# CDFA

Community Development Finance Authority

*Strengthening New Hampshire's Communities*

5 9/13

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### Requested Action

Authorize the Community Development Finance Authority (CDFA), under the Community Development Block Grant (CDBG) program, to amend a grant agreement with the County of Merrimack, 333 Daniel Webster Highway, Ste. 2, Boscawen, New Hampshire, in the amount of \$275,000 by extending the completion date to December 31, 2014 from the amended grant completion date of December 31, 2013, to allow for finalization of the road improvement project effective upon Governor and Council approval on December 20, 2013. No additional funding is involved in this time extension request. The original grant was approved by Governor and Council on March 30, 2011, agenda item #3, and was amended for time on March 7, 2012, agenda item #5, and was further amended for time on November 14, 2012, agenda item #3. **100% federal funds.**

### Explanation

CDFA is requesting a time extension on behalf of the County of Merrimack and Belknap-Merrimack Community Action Program's Newbury Elderly Housing project, due to considerable delays, including municipal approvals and an extensive delay due to a lawsuit filed seeking to stop the project. The Court has ruled to allow the project to go ahead. Both the road and the housing are now currently under construction. The CDBG funded road work will be substantially complete by December 31, 2013, but final paving will not be completed until Spring of 2014 which will allow the road to settle properly over the winter months. In addition, the housing will also not be complete until Spring of 2014. Although the construction activities will be completed in the Spring of 2014, the grantee requests an extension until December 2014 to allow time for all 34 of the units to be rented and occupied completing the beneficiary requirement and assuring close-out by the new agreement expiration date of December 2014.

This Agreement allocates a portion of the Community Development Block Grant (CDBG) funds provided to New Hampshire by the U. S. Department of Housing and Urban Development (HUD). CDFA is administering this program as provided by RSA 162-L. The funds for this contract are from the Community Development Block Grant Fund, which is intended to help municipalities solve development problems.

Sincerely,

Katharine Bogle Shields  
Executive Director

KBS/CB:ml

Attachments

### **AMENDMENT #3**

This Agreement (hereinafter called the “Amendment”) dated this 12<sup>th</sup> day of November, 2013 by and between the State of New Hampshire acting by and through the Community Development Finance Authority (CDFA), (hereinafter referred to as “Grantor”) and County of Merrimack, (hereinafter referred to as the “Contractor”).

WHEREAS, pursuant to an initial agreement (hereinafter called the “Agreement”) which was first entered into upon Governor and Council approval on March 30, 2011, agenda item #3, and as amended for time on March 7, 2012, agenda item #5, and as further amended for time on November 14, 2012, agenda item #3, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payments by Grantor of certain sums specified therein, and;

WHEREAS, pursuant to paragraph 18 of the General Provisions of the Agreement, the contract may be amended, waived or discharged by written instrument executed by the parties hereto and approved by the Governor and Council, and;

WHEREAS, CDFA has received a written request from the Contractor to amend the Agreement;

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions contained in the Agreement as set forth herein, the Contractor and CDFA hereby agree to amend the Agreement as follows:

1. Amendment of Agreement

A. To amend Section 1.7 of the General Provisions by extending the completion date from December 31, 2013 to December 31, 2014.

2. Effective Date of Amendment

This Amendment shall be effective upon its approval by the Governor and Council of the State of New Hampshire. If such approval is withheld, this document shall become null and void, with no further obligation or recourse to either party.

3. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions as set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands:

CONTRACTOR:

County of Merrimack

By: Kathleen Bateson  
Kathleen Bateson, County Administrator

GRANTOR:

State of New Hampshire acting through the  
Community Development Finance Authority

By: Katharine Bogle Shields  
Katharine Bogle Shields, Executive Director

NOTARY STATEMENT – FOR GRANTEE/CONTRACTOR SIGNATURE ONLY:

On this, the 9<sup>th</sup> day of November, 2013 there appeared before me  
Melinda A. Harrison (Notary Name) the undersigned officer personally appeared Kathleen  
Bateson who acknowledged herself to be the County Administrator of Merrimack County and that as  
such officer, she is authorized to do so, executed the foregoing instrument for the purposes herein  
contained, by signing herself in the name of the municipality.

In witness whereof I hereunto set my hand and official seal (provide seal, stamped name and expiration  
date)

By: Melinda A. Harrison



APPROVAL BY NEW HAMPSHIRE ATTORNEY GENERAL AS TO FORM, SUBSTANCE AND  
EXECUTION:

By: Rosemary Skid, Assistant Attorney General, on 11-27-13  
~~Michael Brown~~

APPROVAL BY THE NEW HAMPSHIRE GOVERNOR AND COUNCIL:

By: \_\_\_\_\_, on \_\_\_\_\_



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only, Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

|   |                              |  |
|---|------------------------------|--|
| <b>Participating Member:</b><br>Merrimack County<br>333 Daniel Webster Highway<br>Suite 2<br>Boscawen, NH 03303 | <b>Member Number:</b><br>604 | <b>Company Affording Coverage:</b><br>NH Public Risk Management Exchange - Primex <sup>3</sup><br>Bow Brook Place<br>46 Donovan Street<br>Concord, NH 03301-2624 |
|---|------------------------------|--|

| X | Type of Coverage   | Effective Date<br>(mm/dd/yyyy) | Expiration Date<br>(mm/dd/yyyy) | Limits - NH Statutory Limits May Apply, If Not:           |                |
|---|--|--------------------------------|---------------------------------|---|----------------|
|   | <b>General Liability (Occurrence Form)</b><br><b>Professional Liability (describe)</b><br><input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence | 1/1/2013 ✓<br>1/1/2014 ✓       | 1/1/2014<br>1/1/2015            | Each Occurrence   | \$ 5,000,000 ✓ |
|   |  |                                |                                 | General Aggregate   | \$ 5,000,000 ✓ |
|   |  |                                |                                 | Fire Damage (Any one fire)                                | \$             |
|   |  |                                |                                 | Med Exp (Any one person)                                  | \$             |
|   | <b>Automobile Liability</b><br>Deductible    Comp and Coll: \$1,000<br><input type="checkbox"/> Any auto   |                                |                                 | Combined Single Limit<br>(Each Accident)                  |                |
|   |  |                                |                                 | Aggregate   |                |
| X | <b>Workers' Compensation &amp; Employers' Liability</b>  | 1/1/2013 ✓<br>1/1/2014 ✓       | 1/1/2014<br>1/1/2015            | X    Statutory  |                |
|   |  |                                |                                 | Each Accident   | \$2,000,000    |
|   |  |                                |                                 | Disease - Each Employee                                   | \$2,000,000    |
|   |  |                                |                                 | Disease - Policy Limit                                    | \$             |
|   | <b>Property (Special Risk includes Fire and Theft)</b>   |                                |                                 | Blanket Limit, Replacement Cost (unless otherwise stated) |                |

**Description:** Proof of Primex Member coverage only.

|   |                                 |                   |  |
|---|---------------------------------|-------------------|--|
| <b>CERTIFICATE HOLDER:</b>  | <b>Additional Covered Party</b> | <b>Loss Payee</b> | <b>Primex<sup>3</sup> - NH Public Risk Management Exchange</b>   |
|   |                                 |                   | <b>By:</b> <i>Tammy Denver</i>   |
|   |                                 |                   | <b>Date:</b> 11/15/2013    tdenver@nhprimex.org  |
| NH Community Development Finance Authority<br>Attn: Chris Conlogue<br>14 Dixon Ave, Ste 102<br>Concord, NH 03302-0095 |                                 |                   | Please direct inquires to:<br><b>Primex<sup>3</sup> Claims/Coverage Services</b><br>603-225-2841 phone<br>603-228-3833 fax |

**CERTIFICATE**

I, Elizabeth Blanchard, Clerk of Merrimack County, New Hampshire do hereby certify that 1) at the public hearings and meeting held on July 15, 2011, the Board of Commissioners voted to accept Community Development Block Grant funds and enter into a contract with the Community Development Finance Authority; 2) the Board of Commissioners further authorized the County Administrator to execute any documents which may be necessary to effectuate this contract; 3) I further certify that this authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and 4) the following person has been appointed to and now occupies the office indicated under item (2) above:

Kathleen Bateson, County Administrator  
Name and Title of Officer Authorized to Sign

IN WITNESS WHEREOF, I have hereunto set my hand as the Clerk of Merrimack County, New Hampshire this 20th day of November, 2013.

Elizabeth Blanchard  
Elizabeth Blanchard, County Clerk



# CDFA

Community Development Finance Authority  
Strengthening New Hampshire's Communities

Approval by the Governor  
and Council on 11/14/12  
Agenda Item #3

His Excellency, Governor John H. Lynch  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Amendment #2

### Requested Action

Authorize the Community Development Finance Authority (CDFA), under the Community Development Block Grant (CDBG) program, to amend a grant agreement with the County of Merrimack, 333 Daniel Webster Highway, Ste. 2, Boscawen, New Hampshire, in the amount of \$275,000 by extending the completion date to December 31, 2013 from the amended grant completion date of December 31, 2012, to allow for finalization of road improvement work. No additional funding is involved in this time extension request. The original grant was approved by Governor and Council on March 30, 2011, agenda item #3 and was amended for time on March 7, 2012, agenda item #5. **100% federal funds.**

### Explanation

CDFA is requesting a time extension on behalf of the County of Merrimack and Belknap-Merrimack Community Action Program's Newbury Elderly Housing project, due to delays involving an abutter lawsuit against the zoning board after the plans had been approved for the project. The Superior Court ruling favored the town and project, but the judicial process slowed progress. Since all state and local approvals are now in place, the HUD closing is now proceeding. Completion of the 34-unit elderly housing project is now expected in the fall of 2013.

This Agreement allocates a portion of the Community Development Block Grant (CDBG) funds provided to New Hampshire by the U. S. Department of Housing and Urban Development (HUD). CDFA is administering this program as provided by RSA 162-L. The funds for this contract are from the Community Development Block Grant Fund, which is intended to help municipalities solve development problems.

Sincerely,

Katharine Bogle Shields  
Executive Director

KBS/CB:acc

G&C: 11/14/12

Attachments

## AMENDMENT 2

This Agreement (hereinafter called the "Amendment") dated this 9th day of October, 2012 by and between the State of New Hampshire acting by and through the Community Development Finance Authority (CDFA), (hereinafter referred to as "Grantor") and County of Merrimack, (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an initial agreement (hereinafter called the "Agreement") which was first entered into upon Governor and Council approval on March 30, 2011, agenda item #3, and as amended for time on March 7, 2012, agenda item #5, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payments by Grantor of certain sums specified therein, and;

WHEREAS, pursuant to paragraph 18 of the General Provisions of the Agreement, the contract may be amended, waived or discharged by written instrument executed by the parties hereto and approved by the Governor and Council, and;

WHEREAS, CDFA has received a written request from the Contractor to amend the Agreement;

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions contained in the Agreement as set forth herein, the Contractor and CDFA hereby agree to amend the Agreement as follows:

1. Amendment of Agreement

A. To amend Section 1.7 of the General Provisions by extending the completion date from December 31, 2012 to December 31, 2013.

2. Effective Date of Amendment

This Amendment shall be effective upon its approval by the Governor and Council of the State of New Hampshire. If such approval is withheld, this document shall become null and void, with no further obligation or recourse to either party.

3. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions as set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands:

CONTRACTOR:

County of Merrimack

By: Kathleen Bateson  
Kathleen Bateson, County Administrator

GRANTOR:

State of New Hampshire acting through the  
Community Development Finance Authority

By: Katharine Bogle Shields  
Katharine Bogle Shields, Executive Director

NOTARY STATEMENT:

On this the 12<sup>th</sup> day of October, 2012 there appeared before me  
Barbara J. Weir (Notary Name) the undersigned officer personally  
appeared Kathleen Bateson (Designated Officer Name) who acknowledged him/herself to  
be County Administrator (Designated Officer Title) and that such officer, they are authorized to  
do so, executed the foregoing instrument for the purposes herein contained, by signing him/herself in  
the name of the municipality.

In witness whereof I hereunto set my hand and official seal, stamped name and expiration  
date)

By: Barbara J. Weir



APPROVAL BY NEW HAMPSHIRE ATTORNEY GENERAL AS TO FORM, SUBSTANCE AND  
EXECUTION:

By: Michael K. Brun, Assistant Attorney General, on Oct 22, 2012  
~~Rosemary Wiant~~  
Michael K. Brun

APPROVAL BY THE NEW HAMPSHIRE GOVERNOR AND COUNCIL:

By: Scott Brundage, on NOV 14 2012

**DEPUTY SECRETARY OF STATE**

MUNICIPAL RE-CERTIFICATION FOR CONTRACT AMENDMENT

I, Elizabeth Blanchard, County Clerk of Merrimack County, New Hampshire do hereby certify that: (1) at the Public Hearings and meeting held on July 15, 2011, the Board of Commissioners voted to accept Community Development Block Grant funds and enter into a contract with the Community Development Finance Authority, (2) The Board of Commissioners further authorized the County Administrator to execute any documents which may be necessary to effectuate this contract or any amendments thereto; (3) I further certify that this authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and (4) the following person has been appointed to and now occupies the office indicated under item (2) above:

Kathleen Bateson, County Administrator  
Name and Title of Officer Authorized to Sign

IN WITNESS WHEREOF, I have hereunto set my hand as the Clerk of Merrimack County, New Hampshire this 15 day of October, 20 12

Elizabeth Blanchard  
Elizabeth Blanchard, County Clerk



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

|   |                              |  |
|---|------------------------------|--|
| <b>Participating Member:</b><br>Merrimack County<br>333 Daniel Webster Highway<br>Suite 2<br>Boscawen, NH 03303 | <b>Member Number:</b><br>604 | <b>Company Affording Coverage:</b><br>NH Public Risk Management Exchange - Primex <sup>3</sup><br>Bow Brook Place<br>46 Donovan Street<br>Concord, NH 03301-2624 |
|---|------------------------------|--|

|                                     | Type of Coverage   | Effective Date<br>(mm/dd/yyyy) | Expiration Date<br>(mm/dd/yyyy) | Limits: NH Statutory Limits May Apply                     |              |
|-------------------------------------|--|--------------------------------|---------------------------------|---|--------------|
| <input checked="" type="checkbox"/> | <b>General Liability (Occurrence Form)</b><br><b>Professional Liability (describe)</b><br><input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence | 1/1/2012                       | 1/1/2013                        | Each Occurrence   | \$ 2,000,000 |
|                                     |  |                                |                                 | General Aggregate   | \$ 2,000,000 |
|                                     |  |                                |                                 | Fire Damage (Any one fire)                                |              |
|                                     |  |                                |                                 | Med Exp (Any one person)                                  |              |
| <input type="checkbox"/>            | <b>Automobile Liability</b><br>Deductible    Comp and Coll:<br><input type="checkbox"/> Any auto   |                                |                                 | Combined Single Limit<br>(Each Accident)                  |              |
|                                     |  |                                |                                 | Aggregate   |              |
| <input type="checkbox"/>            | <b>Workers' Compensation &amp; Employers' Liability</b>  |                                |                                 | Statutory   |              |
|                                     |  |                                |                                 | Each Accident   | \$           |
|                                     |  |                                |                                 | Disease - Each Employee                                   | \$           |
|                                     |  |                                |                                 | Disease - Policy Limit                                    | \$           |
| <input type="checkbox"/>            | <b>Property (Special Risk Includes Fire and Theft)</b>   |                                |                                 | Blanket Limit, Replacement Cost (unless otherwise stated) |              |

**Description:** McKenna House Transitional Housing Improvement Grant, #10-407-CDPF. The certificate holder is named as Additional Covered Party, but only to the extent liability is based on the negligence or wrongful acts of the member, its employees, agents, officials or volunteers. This coverage does not extend to others. Any liability resulting from the negligence or wrongful acts of the Additional Covered Party, or their employees, agents, contractors, members, officers, directors or affiliates is not covered. The Participating Member will advise of cancellation no less than 10 days notice prior to cancellation.

|  |                                     |                          |                          |            |  |
|--|-------------------------------------|--------------------------|--------------------------|------------|--|
| <b>CERTIFICATE HOLDER:</b>   | <input checked="" type="checkbox"/> | Additional Covered Party | <input type="checkbox"/> | Loss Payee | Primex <sup>3</sup> - NH Public Risk Management Exchange<br><br>By: <i>Tammy Denver</i><br><br>Date: 10/17/2012    tdenver@nhprimex.org<br><br>Please direct inquires to:<br>Primex <sup>3</sup> Claims and Coverage<br>603-225-2841 phone<br>603-228-3833 fax |
| Community Development Finance Authority<br>Attn: Christine Conlogue<br>14 Dixon Ave<br>Concord, NH 03301 |                                     |                          |                          |            |  |



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

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The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

|  |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
|--|------------------------------|--|------------------------------|--------------------------|---|---|---------------------------------------|-------------|--------------------------|-------------|------------------------|----|
| <b>Participating Member:</b><br>Merrimack County<br>333 Daniel Webster Highway<br>Suite 2<br>Boscawen, NH 03303  | <b>Member Number:</b><br>604 | <b>Company Affording Coverage:</b><br>NH Public Risk Management Exchange - Primex <sup>3</sup><br>Bow Brook Place<br>46 Donovan Street<br>Concord, NH 03301-2624   |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <small> <input type="checkbox"/> General Liability (Occurrence Form)      <input type="checkbox"/> Professional Liability (describe)<br/> <input type="checkbox"/> Claims Made      <input type="checkbox"/> Occurrence         </small> |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
|  |                              | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Each Occurrence</td><td style="text-align: right;">\$</td></tr> <tr><td>General Aggregate</td><td style="text-align: right;">\$</td></tr> <tr><td>Fire Damage (Any one fire)</td><td style="text-align: right;">\$</td></tr> <tr><td>Med Exp (Any one person)</td><td style="text-align: right;">\$</td></tr> </table>  | Each Occurrence              | \$                       | General Aggregate                             | \$  | Fire Damage (Any one fire)            | \$          | Med Exp (Any one person) | \$          |                        |    |
| Each Occurrence  | \$                           |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| General Aggregate  | \$                           |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Fire Damage (Any one fire)   | \$                           |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Med Exp (Any one person)   | \$                           |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td><b>Automobile Liability</b></td><td>Deductible    Comp and Coll:</td></tr> <tr><td><input type="checkbox"/></td><td>Any auto</td></tr> </table>               |                              | <b>Automobile Liability</b>  | Deductible    Comp and Coll: | <input type="checkbox"/> | Any auto                                      | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>Combined Single Limit (Each Accident)</td><td></td></tr> <tr><td>Aggregate</td><td></td></tr> </table> | Combined Single Limit (Each Accident) |             | Aggregate                |             |                        |    |
| <b>Automobile Liability</b>  | Deductible    Comp and Coll: |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <input type="checkbox"/>   | Any auto                     |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Combined Single Limit (Each Accident)  |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Aggregate  |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <input checked="" type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>  |                              | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td>1/1/2012</td><td>1/1/2013</td></tr> <tr><td colspan="2"><input checked="" type="checkbox"/> Statutory</td></tr> <tr><td>Each Accident</td><td style="text-align: right;">\$2,000,000</td></tr> <tr><td>Disease - Each Employee</td><td style="text-align: right;">\$2,000,000</td></tr> <tr><td>Disease - Policy Limit</td><td style="text-align: right;">\$</td></tr> </table> | 1/1/2012                     | 1/1/2013                 | <input checked="" type="checkbox"/> Statutory |   | Each Accident                         | \$2,000,000 | Disease - Each Employee  | \$2,000,000 | Disease - Policy Limit | \$ |
| 1/1/2012   | 1/1/2013                     |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <input checked="" type="checkbox"/> Statutory  |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Each Accident  | \$2,000,000                  |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Disease - Each Employee  | \$2,000,000                  |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Disease - Policy Limit   | \$                           |  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| <input type="checkbox"/> <b>Property (Special Risk includes Fire and Theft)</b>  |                              | Blanket Limit, Replacement Cost (unless otherwise stated)  |                              |                          |   |   |                                       |             |                          |             |                        |    |
| Description: Proof of Primex Member coverage only.   |                              |  |                              |                          |   |   |                                       |             |                          |             |                        |    |

|  |                                 |                   |   |
|--|---------------------------------|-------------------|---|
| <b>CERTIFICATE HOLDER:</b>   | <b>Additional Covered Party</b> | <b>Loss Payee</b> | <b>Primex<sup>3</sup> - NH Public Risk Management Exchange</b>  |
| New Hampshire Community Development Finance Authority<br>Attn: Christine Conlogue<br>14 Dixon Ave<br>Concord, NH 03301 |                                 |                   | By: <i>Tanny Drown</i>  |
|  |                                 |                   | Date: 10/3/2012 <a href="mailto:tdrown@nhprimex.org">tdrown@nhprimex.org</a><br>Please direct inquires to:<br>Primex <sup>3</sup> Claims and Coverage<br>603-225-2841 phone<br>603-228-3033 fax |

Approval by the Governor  
and Council on 3/7/12  
Agenda Item # 5

His Excellency, Governor John H. Lynch  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

*Amendment #1*

**Requested Action**

Authorize the Community Development Finance Authority (CDFA), under the Community Development Block Grant (CDBG) program, to amend a grant agreement with the County of Merrimack, 333 Daniel Webster Highway, Ste. 2, Boscaawen, New Hampshire, in the amount of \$275,000 by extending the completion date to December 31, 2012 from the original grant completion date of June 30, 2012, to allow for finalization of road improvement work to be completed. No additional funding is involved in this time extension request. The original grant was approved by Governor and Council on March 30, 2011, agenda item #3. 100% federal funds.

**Explanation**

CDFA is requesting a time extension on behalf of the County and Belknap-Merrimack Community Action Program's Newbury Elderly Housing project, due to delays in the Town of Newbury's planning board approvals. The final approval was expected in September, but was not received until December, which was past construction season and put the project slightly behind schedule. Completion of the road work for the elderly housing project is expected for late summer of 2012.

This Agreement allocates a portion of the Community Development Block Grant (CDBG) funds provided to New Hampshire by the U. S. Department of Housing and Urban Development (HUD). CDFA is administering this program as provided by RSA 162-L. The funds for this contract are from the Community Development Block Grant Fund, which is intended to help municipalities solve development problems.

Sincerely,

*Katharine Bogle Shields*

Katharine Bogle Shields  
Executive Director

KBS/CB:acc

g&c: 3/7/12

Attachments

*"Investing In A Better New Hampshire"*

14 Dixon Avenue, Suite 102 • Concord, New Hampshire 03301

Tel: (603) 226-2170 • Fax: (603) 226-2816 • TDY/TDD Access Relay NH: (800) 735-2964 • www.nhcdfa.org

## AMENDMENT

This Agreement (hereinafter called the "Amendment") dated this 1st day of February, 2012 by and between the State of New Hampshire acting by and through the Community Development Finance Authority (CDFA), (hereinafter referred to as "Grantor") and County of Merrimack, (hereinafter referred to as the "Contractor").

WHEREAS, pursuant to an initial agreement (hereinafter called the "Agreement") which was first entered into upon Governor and Council approval on March 30, 2011, agenda item #3, the Contractor agreed to perform certain services upon the terms and conditions specified in the Agreement and in consideration of payments by Grantor of certain sums specified therein, and;

WHEREAS, pursuant to paragraph 18 of the General Provisions of the Agreement, the contract may be amended, waived or discharged by written instrument executed by the parties hereto and approved by the Governor and Council, and;

WHEREAS, CDFA has received a written request from the Contractor to amend the Agreement;

NOW THEREFORE, in consideration of the foregoing and the covenants and conditions contained in the Agreement as set forth herein, the Contractor and CDFA hereby agree to amend the Agreement as follows:

### 1. Amendment of Agreement

A. To amend Section 1.7 of the General Provisions by extending the completion date from June 30, 2012 to December 31, 2012.

### 2. Effective Date of Amendment

This Amendment shall be effective upon its approval by the Governor and Council of the State of New Hampshire. If such approval is withheld, this document shall become null and void, with no further obligation or recourse to either party.

### 3. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Amendment, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions as set forth therein.

IN WITNESS WHEREOF, the parties have hereunto set their hands:

CONTRACTOR:

County of Merrimack

By: Kathleen Bateson  
Kathleen Bateson, County Administrator

GRANTOR:

State of New Hampshire acting through the  
Community Development Finance Authority

By: Katharine Bogle Shields  
Katharine Bogle Shields, Executive Director

NOTARY STATEMENT:

On this the 10<sup>th</sup> day of February, 2012 there appeared before me  
Melinda A. Harrison (Notary Name) the undersigned officer personally  
appeared Kathleen Bateson (Designated Officer Name) who acknowledged him/herself to  
be County Administrator (Designated Officer Title) and that such officer, they are authorized to  
do so, executed the foregoing instrument for the purposes herein contained, by signing him/herself in  
the name of the municipality.

In witness whereof I hereunto set my hand and official seal (provide seal, stamped name and expiration  
date)

By: Melinda A. Harrison  
1-27-2015



APPROVAL BY NEW HAMPSHIRE ATTORNEY GENERAL AS TO FORM, SUBSTANCE AND  
EXECUTION:

By: Rosemary Want, Assistant Attorney General, on 2-13-12

APPROVAL BY THE NEW HAMPSHIRE GOVERNOR AND COUNCIL:

By: [Signature], on MAR 07 2012

**DEPUTY SECRETARY OF STATE**



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

| <b>Participating Member:</b><br>Merrimack County<br>333 Daniel Webster Highway, Suite 2<br>Boscawen, NH 03303  |                                     | <b>Member Number:</b><br>604         |   | <b>Company Affording Coverage:</b><br>NH Public Risk Management Exchange - Primex <sup>3</sup><br>Bow Brook Place<br>46 Donovan Street<br>Concord, NH 03301-2624 |  |
|--|-------------------------------------|--------------------------------------|---|--|--|
| Type of Coverage   | Effective Date (initially/annually) | Expiration Date (initially/annually) | Limits - NH, SE, MA, or FL (initially/annually)           | Limits - NY or Apply (initially/annually)  |  |
| <input checked="" type="checkbox"/> <b>General Liability (Occurrence Form)</b><br><b>Professional Liability (describe)</b><br><input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence | 1/1/2012                            | 1/1/2013                             | Each Occurrence   | \$ 5,000,000   |  |
|  |                                     |                                      | General Aggregate   | \$ 5,000,000   |  |
|  |                                     |                                      | Fire Damage (Any one fire)                                | \$   |  |
|  |                                     |                                      | Med Exp (Any one person)                                  |  |  |
| <input type="checkbox"/> <b>Automobile Liability</b><br>Deductible    Comp and Coll: \$1,000<br><input type="checkbox"/> Any auto  |                                     |                                      | Combined Single Limit (Each Accident)                     |  |  |
|  |                                     |                                      | Aggregate   |  |  |
| <input checked="" type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>  | 1/1/2012                            | 1/1/2013                             | <input checked="" type="checkbox"/> Statutory             |  |  |
|  |                                     |                                      | Each Accident   | \$2,000,000  |  |
|  |                                     |                                      | Disease - Each Employee                                   | \$2,000,000  |  |
|  |                                     |                                      | Disease - Policy Limit                                    | \$   |  |
| <input type="checkbox"/> <b>Property (Special Risk includes Fire and Theft)</b>  |                                     |                                      | Blanket Limit, Replacement Cost (unless otherwise stated) |  |  |
| <b>Description:</b> Proof of Primex Member coverage only for NH Community Development Finance Authority, Grant # 10-407-CDPF1-Belknap-Merrimack County CAP/Newbury Elderly Housing Project.            |                                     |                                      |   |  |  |

|   |                                 |                   |   |
|---|---------------------------------|-------------------|---|
| <b>CERTIFICATE HOLDER:</b>  | <b>Additional Covered Party</b> | <b>Loss Payee</b> | Primex <sup>3</sup> - NH Public Risk Management Exchange  |
| NH Community Development Finance Authority<br>Attn: Chris Conlogue<br>14 Dixon Avenue, Suite 102<br>Concord, NH 03301 |                                 |                   | By: <i>Tammy Denver</i>   |
|   |                                 |                   | Date: 2/1/2012    tdenver@nhprimex.org  |
|   |                                 |                   | Please direct inquiries to:<br><b>Primex<sup>3</sup> Claims/Coverage Services</b><br>603-225-2841 phone<br>603-226-3833 fax |

Approved by the Governor  
and Council on 3/30/11  
Agenda Item #3

His Excellency, Governor John H. Lynch  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

**Requested Action – Award a Grant**

Authorize the Community Development Finance Authority (CDFA), under the Community Development Block Grant (CDBG) program, to award a grant to the County of Merrimack, 333 Daniel Webster Highway, Ste 2, Boscawen, NH 03303, in the amount of \$275,000 for infrastructure upgrades in support of 34 units of affordable elderly housing in Newbury, beginning from the date of the Governor and Council approval until June 30, 2012. **100% federal funds.**

**Explanation**

This Agreement allocates a portion of the Community Development Block Grant (CDBG) funds provided to New Hampshire by the U. S. Department of Housing and Urban Development (HUD). CDFA is administering this program as provided by RSA 162-L. The funds for this contract are from the Community Development Block Grant Fund, which is intended to help municipalities solve development problems.

The County of Merrimack is requesting CDBG funds to assist with upgrades to Newbury Heights Road to provide greater access for emergency vehicles and improve the drainage system to support construction of the 34 units of elderly housing, of which 100% of the residents will be of low to moderate income. Total project cost is \$5,559,400 and match funds of \$5,284,400 will come from HUD Section 202 Supportive Housing for the Elderly Program.

Sincerely,



Katharine Bogle Shields  
Executive Director

KBS/BCP :acc

G&C: 3/30/11

Attachments

Subject: County of Merrimack - Newbury Elderly Housing, Inc. - Grant #10-407-CDPF1

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

|  |                           |  |                                      |
|--|---------------------------|--|--------------------------------------|
| 1.1 State Agency Name<br>New Hampshire Community Development Finance Authority   |                           | 1.2 State Agency Address<br>14 Dixon Ave., Suite 102<br>Concord, NH 03301                    |                                      |
| 1.3 Contractor Name<br>County of Merrimack   |                           | 1.4 Contractor Address<br>333 Daniel Webster Highway, Ste. 2<br>Boscawen, NH 03303           |                                      |
| 1.5 Contractor Phone Number<br>603-796-6800  | 1.6 Account Number<br>N/A | 1.7 Completion Date<br>June 30, 2012   | 1.8 Price Limitation<br>\$275,000.00 |
| 1.9 Contracting Officer for State Agency<br>David Wood, Chairman, Board of Directors   |                           | 1.10 State Agency Telephone Number<br>603-226-2170   |                                      |
| 1.11 Contractor Signature<br><i>Kathleen Bateson</i>   |                           | 1.12 Name and Title of Contractor Signatory<br>Kathleen Bateson, County Administrator        |                                      |
| 1.13 Acknowledgement: State of <i>NH</i> , County of <i>Merrimack</i> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily indicated in block 1.12, to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity |                           |  |                                      |
| 1.13 Signature of Notary Public or Justice of the Peace<br><i>Melinda A. Harrison</i>  |                           |  |                                      |
| 1.13 Title and Title of Notary or Justice of the Peace<br><i>Melinda A. Harrison, Admin. Assistant</i>   |                           |  |                                      |
| 1.14 State Agency Signature<br><i>Katharine Bogle Shields</i>  |                           | 1.15 Name and Title of State Agency Signatory<br>Katharine Bogle Shields, Executive Director |                                      |
| 1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)<br>By: _____ Director, On: _____   |                           |  |                                      |
| 1.17 Approval by the Attorney General (Form, Substance and Execution)<br>By: <i>[Signature]</i> On: <i>3/15/11</i>   |                           |  |                                      |
| 1.18 Approval by the Governor and Executive Council<br>By: <i>[Signature]</i> <b>DEPUTY SECRETARY OF STATE</b> <b>MAR 30 2011</b>  |                           |  |                                      |



**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State") or ("CDFA"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the CDFa or State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the CDFa or State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the CDFa or State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the CDFa or State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The CDFa or State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the CDFa or State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The CDFa or State shall have no liability to the Contractor other than the contract price.

5.3 The CDFa or State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by

N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the CDFa, the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, CDFA or the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the CDFA or the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the CDFA or State may owe to the Contractor any damages the CDFA or State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data which has been received from the CDFA or purchased with funds provided for that purpose under this Agreement, shall be the property of the CDFA, and shall be returned to the CDFA upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the CDFA or the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject

matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the CDFA or the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.**

The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the CDFA. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State and CDFA.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the CDFA and the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the CDFA or the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the CDFA and the State, which immunity is hereby reserved to the CDFA and the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 100% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of

insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The CDFA or State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the CDFA or State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the CDFA or State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and

inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**EXHIBIT A  
GRANT ACTIVITIES**

**1. PROJECT DESCRIPTION AND PURPOSE.**

- 1.1. The project shall consist of the awarding of \$275,000 in CDBG funds to the County of Merrimack (the "Grantee") of which \$250,000 will be sub-granted to Newbury Elderly Housing Inc., (the "Subrecipient") to upgrade Newbury Heights Road to provide greater access for emergency vehicles and improve the drainage system to support construction of 34 affordable elderly housing units (the "Project") to be developed on land located in Newbury, New Hampshire (the "Project Property").

The Improvements will be constructed on the Property depicted on the map attached to this Agreement as Attachment I. The Project shall be more completely defined in the architectural specifications and plans ("Plans") to be developed in accordance with this agreement.

- 1.2. Consistent with the National Objectives of the Community Development Block Grant Program under Title I of the Housing and Community Development Act of 1992, as amended, the Parties agree that the purpose of this Project is acquire property and complete site preparation in support of the construction of 34 affordable apartments for the elderly. 100% of the households will be low to moderate income
- 1.3. Improvements to be undertaken in connection with the project shall comply with all applicable federal, state and local design standards, regulations and construction codes.

**2. GRANT ADMINISTRATION.**

- 2.1. Grantee shall perform all activities as necessary to administer the CDBG funds in accordance with the provisions of this Agreement.
- 2.2. Grantee shall be permitted to use up to \$25,000 of CDBG funds as reimbursement for Administrative Project Costs, as that term is defined by applicable state and federal guidelines and as provided in Exhibit B. In no event shall administrative costs reimbursable with grant funds exceed fifteen (15) percent of the total Grant Funds.
- 2.3. Grantee shall enforce the terms and conditions of its subrecipient agreement to be entered into with the Salem Housing Authority, as provided in this Exhibit A.
- 2.4. Grantee shall be required to send, at a minimum, its grant administrator, or a designated representative who is a full-time permanent employee involved in the administration of this Grant, to the next CDBG Grant Administration Workshop to be offered by CDFA.
- 2.5. Grantee shall submit to CDFA all required reports as specified in the Grant Agreement and shall monitor and enforce the reporting requirements of The Subrecipient as provided in the Agreement or any Exhibits or Attachments thereto.
- 2.6. Grantee shall provide such training as is necessary to the Subrecipient to secure satisfactory performance of duties and responsibilities under the Subrecipient Agreement.
- 2.7. Grantee shall enter into a Closeout Agreement with CDFA and Subrecipient as provided in the General Provisions of this Agreement.
- 2.8. Within thirty (30) days of executing this Agreement, the Grantee shall submit to CDFA for approval an Implementation Schedule for completion of the Project. The Grantee shall obtain prior approval of CDFA for any changes in the Schedule.

3. FEDERAL COMPLIANCE

3.1. Grantee shall comply, and shall require any Subrecipient, contractor and subcontractor to comply, with the following federal and state laws and all applicable standards, rules, orders, or regulations issued pursuant thereto:

3.1.1. The Copeland "Anti-Kickback" Act, as amended (118 USC 874) as supplemented in Department of Labor regulations (41 CFR Chapter 60).

3.1.2. Nondiscrimination, Title VI of the Civil Rights Act of 1974 (PL 88- 352), as amended, (42 USC 2000d) the Fair Housing Act of 1968 (PL 90-284), Executive Orders 11063 and 12269, and the requirements imposed by the Regulations of the Department of Housing and Urban Development (24 CFR 107 and 24 CFR 570.496) issued pursuant to that Title.

3.1.3. Labor Standards. Davis-Bacon Act, as amended (40 USC 276a-276a-7), the Contract Work Hours and Safety Standards Act (40 USC 327-333).

3.1.4. The Flood Disaster Protection Act of 1973 (PL 93-234), as amended, regulations issued pursuant to that act, and Executive Order 11985.

3.1.5. Architectural Barriers Act (PL 90-480), 42 USC 4151, as amended, and the regulations issued or to be issued thereunder, including uniform accessibility standards (24 CFR 40) for public buildings with 15 or more residential units. RSA 275-C:10 and the New Hampshire Architectural Barrier Free Design Code (Han 100, et. seq.) also applies.

3.1.6. Rehabilitation Act of 1973, 29 USC 794, Sections 503 and 504, Executive Order 11914 and U.S. Department of Labor regulations issued pursuant thereto.

3.1.7. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), as amended, 15 CFR Part 916 including amendments thereto and regulations thereunder.

3.1.8. The National Environmental Policy Act of 1969 (PL 90-190); the National Historic Preservation Act of 1966 (80 Stat 915, 116 USC 470); and Executive Order No. 11593 of May 31, 1971, as specified in 24 CFR 58.

3.1.9. The Clean Air Act, as Amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

3.1.10. RSA 354 and rules of the New Hampshire Human Rights Commission (HUM 100, et. seq.) on discrimination in employment, membership, accommodations, and housing.

3.1.11. The Age Discrimination Act of 1975 as amended (42 USC 6101, et. seq.) and implementing regulations.

3.1.12. The lead paint requirements (24 CFR 35) of The Lead-Based Paint Poisoning Prevention Act (42 USC 4821, et. seq.).

3.1.13. The NH State Energy Code (RSA 155-D).

3.1.14. The NH State Life Safety Code (RSA 155:1) and rules of the NH State Fire Marshall.

3.1.15. Citizen Participation Requirements. The 1987 amendments to the Housing and Community Development Act of 1974, stated in Section 508.

**3.1.16. Affirmative Action Requirements.** In furtherance of its covenant Grantee shall:

- (1) take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, age, sex, or national origin; such action shall be taken in conjunction with any of the Grantee's acts in the capacity of an employer including, but not limited to: employment of individuals, upgrading, demotions or transfers, recruitment or recruitment advertising; layoffs or terminations; changes in rates of pay or other forms of compensation; selection for training, including apprenticeship, and participation in recreational and educational activities;
- (2) post in conspicuous places available to employees and applicants, employment notices, to be provided by CDFA, setting forth the provisions of this non-discrimination clause; the Grantee will, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex or national origin;
- (3) keep all such information, records and reports as may be required by the rules, regulations or orders of the Secretary of Labor and furnish or submit the same at such times as may be required; the Grantee shall also permit CDFA, or the Secretary of Labor or any of their designated representatives to have access to any of the Grantee's books, records and accounts for the purpose of investigation to ascertain compliance with the aforesaid rules, regulations and orders and covenants and conditions herein contained;
- (4) during the term of this agreement, shall not discriminate among participants under this agreement on the basis of race, color, religion, sex, handicap or national origin. For the purpose of this agreement, distinctions on the grounds of the following: denying a participant any service or benefit or availability of a facility; providing any service or benefit to a participant which is different, or is provided in a different manner or at a different time from that provided to other participants under this agreement; subjecting a participant to segregation or separate treatment in any matter related to his receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether he satisfies any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; the assignment of times or places for the provision of services on the basis of race, color, religion, sex, or national origin of the participants to be served.

3.1.17 Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u) as amended by the Housing and Community Development Act of 1974 (42 USC 5301).

**4. SUBRECIPIENT AGREEMENT**

- 4.1. Grantee shall enter into a Subrecipient Agreement with the Subrecipient in a form satisfactory to CDFA and meeting the requirements of Attachment II, "Subrecipient Agreement Minimum Terms and Conditions" attached hereto and incorporated herein by reference.
- 4.2. The Subrecipient Agreement shall provide for the granting of CDBG funds to the Subrecipient, consistent with the terms and conditions of this Agreement, in the amount of \$250,000 contingent upon satisfactory performance by the Subrecipient.
- 4.3. Grantee shall provide to CDFA for its review and approval the proposed Subrecipient Agreement prior to execution. Prior to the disbursement of Grant funds but not more than thirty (30) days following the Effective Date of the Grant Agreement, Grantee shall provide to CDFA a fully executed copy of the Subrecipient Agreement.

- 4.4. The Subrecipient Agreement shall require the Subrecipient to enter into a Mortgage Lien with Grantee meeting the requirements as provided herein.
  - 4.5. Grantee shall cause all applicable provisions of this Exhibit A to be inserted in all Subrecipient agreements, contracts and subcontracts for any work or Project Activities covered by this Agreement so that the provisions will be binding on each Subrecipient, contractor and subcontractor; provided, however, that the foregoing provisions shall not apply to contracts for standard commercial supplies or raw materials. Grantee shall take such action with respect to any Subrecipient agreement, contract or subcontract as the State, or, where applicable, the United States, may direct as a means of enforcing such provisions, including sanctions for noncompliance.
5. PROJECT MATCHING FUNDS; ADDITIONAL FINANCING.
- 5.1. The Parties agree that the CDBG funds to be awarded pursuant to this Agreement shall be matched with non-CDBG funds in an amount not less than \$5,284,400 to provide additional financing for the Project as follows: A capital advance of \$5,284,400 from The Department of Housing and Urban Development Section 202 Supportive Housing for the Elderly Program.
  - 5.2. Grant funds shall not be released or disbursed to Grantee unless and until the additional financing and matching requirements described above have been secured and documented to CDFA's satisfaction.
5. MORTGAGE LIEN.
- 5.1. Within sixty (60) days of execution of the Subrecipient Agreement and prior to approval by CDFA of any construction contract for the Project, Grantee shall execute and record with the applicable County Registry of Deeds a mortgage lien (the "Mortgage") on the Property (land and improvements) acceptable to CDFA and identifying CDFA as an additional mortgagee. Grantee shall submit to CDFA satisfactory evidence of such recording.
  - 5.2. The Mortgage shall be coterminous with the term of the loan of Grant funds to Subrecipient and shall be security for repayment of the loan.
  - 5.3. Any CDBG funds returned to Grantee pursuant to enforcement of the Mortgage shall be returned to CDFA.
6. COVENANT OF LONG TERM BENEFIT FOR LOW AND MODERATE INCOME HOUSEHOLDS
- 6.1. Grantee and CDFA agree that with respect to the Project Property, one hundred percent (100%) of the households which will reside at the Project Property upon completion of the Project and for the duration of the Benefit Period as defined herein shall be Low and Moderate Income Households or Persons as those terms are defined in Administrative Rule Cdfa 302.31 and Cdfa 302.36
  - 6.2. Grantee shall enter into a deed conveying the Project Property to Subrecipient which shall contain a covenant running with the land whereby Subrecipient shall certify and warrant that the Property shall be and remain in use as residential units for Low and Moderate Income Households and Persons as provided in Subsection 6.1 above for the useful life of the Project, which period shall be a minimum of twenty (20) years from the date of Project Completion ("the Benefit Period"). In the event Subrecipient grants, conveys or otherwise transfers its interests in the Property prior to the conclusion of the Benefit Period, Subrecipient shall include a clause in such deed, grant, conveyance or other document whereby the successor in interest covenants and agrees, as a covenant running with the land, that the Property shall continue to be used as residential units and a facility center for Low and Moderate Income Persons and Households as provided herein for any remainder of the Benefit Period.
  - 6.3. Grantee shall require Subrecipient, at a minimum, to maintain thirty-four (34) housing units for which the rent shall not exceed that established by the Department of Housing and Urban Development for this project as defined by HUD in Section 3(a)(2)(B)(ii) of the United States Housing Act of 1937 as amended for the State of New Hampshire, for a period of no less than twenty (20) years from the date of

Project Completion. Successful completion of this requirement does not exclude Subrecipient from rent requirements imposed by other Project funders that are in effect beyond this 20 year period.

- 6.4. Grantee shall require Subrecipient to maintain adequate administrative mechanisms in place to assure compliance with the requirements of this Section. Grantee shall enforce the provisions of this Section, which shall survive the termination or expiration of this Agreement.

**7. CONSTRUCTION CONTRACTING, INSPECTION AND OVERSIGHT OF SUBRECIPIENT PROJECT ACTIVITIES.**

- 7.1. Prior to award by Subrecipient, Grantee shall approve the architectural and construction contracts for the Project Improvements. Prior to such approval, Grantee shall provide CDFA with a copy of each proposed contract for its review to determine compliance with all applicable federal and state requirements and approval. CDFA approval shall not abrogate its rights to enforce any part of this Agreement or constitute a waiver of any provision of this Agreement or the Subrecipient Agreement.
- 7.2. Grantee shall provide and maintain competent technical supervision of the Project site throughout Project construction to assure that the work conforms with the Plans, specifications and schedules approved by CDFA for the Project.
- 7.3. Grantee shall require all contractors and subcontractors to comply with all applicable requirements of federal, state, and local laws and regulations.
- 7.4. Grantee shall provide CDFA reasonable notice of all preconstruction conferences to be scheduled in connection with the Grant Activities and afford CDFA the option of participating in such conferences.
- 7.5. Bid Guarantees: Units of local government shall follow their own normal requirements relating to bid guarantees or bonds or performance bonds.
- 7.6. Bonds Required: Grantee covenants that each of its officials or employees having custody of the Grant funds during acquisition, construction, development, and operation of Grant Activities shall be bonded at all times in accordance with RSA 41:6 and rules adopted thereunder by the Department of Revenue Administration.
- 7.7. Subcontracts, Bonds Required: When Grantee or any Subrecipient awards a contract or subcontract exceeding \$100,000 in amount for the construction, alteration or repair of any public building or other public improvement or public work, including highways, the Grantee shall, or where applicable Subrecipient shall, as a minimum, require each contractor and subcontractor to carry payment and performance bonds for 100% of the value of the contract.
- 7.8. Upon completion in full of the Improvements by the Subrecipient, Grantee shall promptly deliver to CDFA: (a) a written certificate of a licensed professional architect that the construction of the Improvements has been fully completed in a good and workmanlike manner and in accordance with the Plans, and (b) a copy of the permanent certificate of occupancy and all other applicable certificates, licenses, consents and approvals issued by government authorities with respect to the Project Property.
- 7.9. All work under this Project shall be completed prior to Completion Date, as specified in Section 1.7 of the General Provisions.

**8. HOUSING REHABILITATION STANDARDS**

- 8.1. The following standards shall apply to all housing units rehabilitated with Grant funds:

- 8.1.1. HUD Section 8 Existing Housing Quality Standards as listed in 24 CFR 882.109, paragraphs (a) through (l) (see Appendix 3 of the New Hampshire CDBG Administrative Rules) or municipal housing and/or building, electrical and plumbing codes where such codes exceed the HUD standards;

8.1.2. The state's life safety and energy codes; and

8.1.3. Where applicable, the state's architectural barrier free design code.

**9. GRANTEE FINANCIAL MANAGEMENT SYSTEM.**

9.1. Except where inconsistent with federal requirements, state procedures and practices will apply to funds disbursed by CDFA, and local procedures and practices will apply to funds disbursed by units of local government.

9.2. Cash Advances: Cash advances to Grantee shall be approved only to the extent necessary to satisfy the actual, immediate cash requirements of Grantee in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by Grantee for direct program costs and the proportionate share of any allowable indirect costs. Cash advances made by Grantee to subrecipients shall conform to the same standards of timing and amount as apply to advances to Grantee including the furnishing of reports of cash disbursements and balances.

9.3. Fiscal Control: Grantee must establish fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, grant funds and any required non-federal expenditures. This responsibility applies to funds disbursed by subrecipients and contractors as well as to funds disbursed in direct operations of Grantee. Grantee shall be required to maintain a financial management system which complies with 24 CFR 85.20 or such equivalent system as CDFA may require. Requests for payment shall be made according to CDFA's CDBG Implementation Guide.

10. **PROCUREMENT.** Grantee and any Subrecipient procurement procedures shall be in accordance with state and local procurement practices and regulations, provided that procurements made with Grant Funds adhere, as a minimum, to the standards set forth in 24 CFR 85.36. Grantee shall not use debarred, suspended or ineligible contractors or subrecipients as provided in 24 CFR 570.489 (l).

**11. REPORTS AND CLOSE OUT**

11.1. Semi-Annual progress reports which identify the status of Grant Activities performed, the outlook for completion of the remaining Grant Activities prior to the Completion Date and the changes, if any which need to be made in the Project or Grant Activities, shall be submitted by the 15th of the month in one (1) copy following the end of every other quarter.

11.2. Two (2) copies of Financial reports, including a statement detailing all Grant or Project Costs (as hereinafter defined) which have been incurred since the prior request for reimbursement, shall be submitted with each request for reimbursement and with the Closeout Report. Financial Reports shall be submitted on forms provided by CDFA.

11.3. Within thirty (30) days after the Completion Date, two (2) copies of Closeout Report shall be submitted which summarizes the results of the Grant Activities, showing in particular how the Grant Activities have been performed. The Closeout Report shall be in the form required or specified by CDFA.

11.4. The Audited Financial Reports shall be prepared in accordance with the regulations (24 CFR Part 44) which implement OMB Circular A-133. Two (2) copies of the audited financial report shall be submitted within thirty (30) days of the completion of said report to CDFA.

11.5. Where the Grantee is not subject to the requirements of OMB Circular A-133, one of the following options will be chosen by CDFA:

11.5.1 Within ninety (90) days after the Completion or Termination Date two (2) copies of an audited financial report shall be submitted to CDFA. Said audit shall be conducted utilizing the guidelines set forth in "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" by the Comptroller General of the United States.

11.5.2 CDFA will conduct a financial Review-In-Lieu of Audit within ninety (90) days after the Completion Date of the Project.

11.6. Where the length of the grant period exceeds twenty-four (24) months, there shall be an Interim audit performed and submitted.

## 12. RECORDS AND ACCOUNTS: ACCESS

12.1 During the performance of the Project Activities and for a period of three (3) years after the Completion Date or the date of the final audit approval by CDFA, whichever is later, the Grantee shall keep, and shall require any Subrecipient to keep, the following records and accounts:

12.1.1 Records of Direct Work: Detailed records of all direct work performed by its personnel under this Agreement.

12.1.2 Fiscal Records: Books, records, documents and other statistical data evidencing, and permitting a determination to be made by CDFA of all Project Costs and other expenses incurred by the Grantee and all income received or collected by the Grantee, during the performance of the Project Activities. The said records shall be maintained in accordance with accounting procedures and practices acceptable to CDFA, and which sufficiently and properly reflect all such costs and expenses, and shall include, without limitation, all ledgers, books, audits, records and original evidence of costs such as purchase requisitions and orders, invoices, vouchers, bills, requisitions for materials, inventories, valuations of in-kind contributions, labor time cards, payrolls and other records requested or required by CDFA.

12.1.3 Contractor and Subcontractor Records: The Grantee shall, and where applicable, Subrecipient shall, establish, maintain and preserve, and require each of its contractors and subcontractors to establish, maintain and preserve property management, project performance, financial management and reporting documents and systems, and such other books, records, and other data pertinent to the project as the CDFA may require. Such records shall be retained for a period of three (3) years following completion of the project and receipt of final payment by the Grantee, or until an audit is completed and all questions arising therefrom are resolved, whichever is later.

## 13. TERMINATION: REMEDIES

13.1. Inability to Perform; Termination by Grantee. As a result of causes beyond its control, and notwithstanding the exercise of good faith and diligence in the performance of its obligations hereunder, if it shall become necessary for Grantee to terminate this Agreement, Grantee shall give CDFA fifteen (15) days advance written notice of such termination, in which event the Agreement shall terminate at the expiration of said fifteen (15) days.

13.2. Termination Without Default. In the event of termination without default and upon receipt, acceptance and approval by CDFA of the Termination Report, as referenced in the General Provisions, Grantee shall receive payment for all Project Costs incurred in the performance of Grant Activities completed up to and including the date of termination and for which payment had not previously been made including, but not limited to, all reasonable expenses incurred in the preparation of the Termination Report; provided, however, that in the event that any payments have been made hereunder in excess of Project Costs incurred up to and including the date of termination of the Agreement, CDFA shall offset any payments to be made hereunder against such payments, and if applicable, Grantee shall refund to CDFA the amount of any excess funds it retains after such offset.

13.3. Termination for Default. In the event of termination for default or other violation of Program requirements, CDFA shall, upon receipt, acceptance and approval of the Termination Report submitted by Grantee, pay Grantee for Project Costs incurred up to and including the date of termination (subject to off-set against funds paid to Grantee hereunder and to the refund of any excess funds); provided, however, that in such event the amount of such payment shall be determined solely by CDFA; and

provided, further, that in no event shall the making of any such payments relieve Grantee of any liability for damages sustained or incurred by CDFA as a result of Grantee's breach of its obligations hereunder, or relieve Grantee of responsibility to seek return of Grant Funds from any Subrecipient or Beneficiary where applicable.

- 13.4. Limitation on Grantee Liability for Subgranted Funds. Notwithstanding anything in this Agreement to the contrary and absent the presence of fraud or negligence on the part of Grantee in enforcing its rights and obligations under the terms of any subrecipient agreement, the sole obligation of Grantee with respect to the return of Grant Funds, in the event of default on a grant condition or other termination of the Project or event requiring return of Grant Funds, shall be to make a good faith effort to return to the State of New Hampshire all grant funds paid to Subrecipient through Grantee. Grantee shall make good faith efforts to enforce the legal obligations entered into with the Subrecipient as provided herein, to call upon the collateral held by itself or others, and exercise due diligence in its efforts in bringing about the satisfaction of the grant obligations and, having done so, it shall not be required to look to any other funds or its tax base to recoup grant funds not recovered from the Subrecipient.
- 13.5. Assignment to CDFA and Payment of Expenses and Costs. Grantee hereby agrees that, in the event it fails to enforce the provisions of any Subrecipient Agreement or fails to cure an Event of Default resulting in termination of this Agreement or the Project, Grantee shall, upon demand by CDFA, assign and convey to CDFA all or any of its rights, title and interest, or delegate to CDFA all or any of its obligations under the Subrecipient Agreement and any Mortgage, Promissory Note, Security Agreement or other agreement as applicable. Such delegation or assignment shall be effective only in the event of a default by Subrecipient or Beneficiary in its or their obligations under the Subrecipient Agreement or other agreement. In the event that CDFA assumes any of the obligations of Grantee as provided herein, Grantee shall pay all costs and expenses incurred by CDFA in the enforcement of the Subrecipient Agreement, collection upon any loan, mortgage or other security, or in curing any Event of Default.

#### 14. ADDITIONAL GRANT REQUIREMENTS

- 14.1. Grantee shall prepare and adopt a written Code of Ethics governing the performance of its employees engaged in the procurement of supplies, equipment, construction, and services consistent with the requirements of 24 CFR 85.36(b)(3). The Code of Ethics shall be prepared in the form shown in the CDBG Implementation Guide, and shall be formally adopted prior to requesting Grant Funds. The Grantee shall also comply with the conflict of interest requirements of 24 CFR 570.489(h).
- 14.2. Grantee shall prepare and adopt a financial management plan, approved by CDFA, which describes Grantee's system for receiving and expending Grant Funds including internal controls which shall ensure compliance with applicable provisions of the Grant Agreement General Provisions. The plan shall be formally adopted prior to requesting Grant Funds.
- 14.3. Grantee shall submit to CDFA all required documentation of Low and Moderate Income individuals in accordance with the reporting requirements of the Subrecipient Agreement. The information shall be provided on the Beneficiary Characteristics Report, a copy of which can be found in the Community Development Block Grant Program (CDBG) Implementation Guide.
- 14.4. In the event Grantee fails to enforce the provisions of the Subrecipient Agreement or fails to cure an Event of a Default under the Subrecipient Agreement, Grantee shall, upon demand by CDFA, assign and convey all or any part of its rights, title and interest or delegate all or any of its obligations under the Subrecipient Agreement or the Mortgage to CDFA, such assignment or delegation to be effective only in the event of a default in Subrecipient's obligation to Grantee under the terms of the Subrecipient Agreement or Mortgage. In such event, Grantee agrees to pay and shall pay all reasonable costs and expenses incurred by CDFA in the enforcement of the Subrecipient or Mortgage obligations or in curing any Event of Default thereunder..
- 14.5. CDFA shall have the right to terminate all or any part of its obligations under this Agreement in the event

that any official, employee, architect, engineer, attorney, or inspector, of or for the Grantee or any governmental official or representative becomes directly or indirectly interested financially in the acquisition of any materials or equipment, or in any construction of the Project, or in the furnishing of any service to or in connection with the Project, or any benefit arising therefrom.

- 14.6. Where the Grant Agreement or Subrecipient Agreement is terminated or the Project is otherwise terminated due to a default, inability to perform, or reason other than project completion and Grant Funds are required to be returned by Grantee, the disposition of Grant Funds to be returned shall be determined solely by CDFA.
- 14.7. **Excessive Force by Law Enforcement Agencies.** Grantee certifies that it has adopted and enforces 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.
- 14.8. **Lobbying.** Grantee certifies 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) and that all subrecipients shall certify and disclose accordingly.
- 14.9. **Certification of Nonsegregated Facilities** as required by the May 9, 1967, Order (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor. Prior to the award of any construction contract or subcontract exceeding \$10,000, Grantee shall require the prospective prime contractor and each prime contractor shall require each subcontractor to submit the following certification:
  - 14.9.1 By the submission of this bid, the bidder, offer or, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control where segregated facilities are maintained.
  - 14.9.2 He/she certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The bidder, offer or, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities

provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color or national origin, because of habit, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause: that he/she will retain such certifications in his/her files: and that he/she will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES**

Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, shall be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The Certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**NOTE:** The penalty for making false statements in offers is prescribed in 18 USC 1001.

- 14.10. In the event Grantee fails to enforce the provisions of the Subrecipient Agreement or fails to cure an Event of a Default under the Subrecipient Agreement, Grantee shall, upon demand by CDFA, assign and convey all or any part of its rights, title and interest or delegate all or any of its obligations under the Subrecipient Agreement or the Mortgage to CDFA, such assignment or delegation to be effective only in the event of a default in Subrecipient's obligation to Grantee under the terms of the Subrecipient Agreement or Mortgage. In such event, Grantee agrees to pay and shall pay all reasonable costs and expenses incurred by CDFA in the enforcement of the Subrecipient or Mortgage obligations or in curing any Event of Default thereunder.

## EXHIBIT B

### PROJECT COSTS; METHOD AND TERMS OF PAYMENT

#### 1. PROJECT COSTS; PAYMENT SCHEDULE; REVIEW BY CDFA

- 1.1. **Project Costs:** As used in this Agreement, the term "Project Costs" shall mean all reimbursable costs incurred in performance of the Grant activities. "Administrative Project Costs" shall mean all expenses directly or indirectly incurred by Grantee in the performance of the Project Activities, as determined by CDFA to be eligible and allowable for payment in accordance with allowable administrative project cost standards set forth in OMB Circular A-87 as revised from time to time, and with the rules, regulations, and guidelines established by CDFA. Administrative project costs include but are not limited to: preparation of environmental review, record keeping, reporting, audits, and oversight of Project construction and compliance with all federal, state, and local laws, rules, and regulations and this contract. In no event shall Administrative Project Costs exceed fifteen (15) percent of the total Grant funds allowed. With respect to a nonprofit subrecipient, such subrecipient shall meet the requirements of OMB Circular A-122.
- 1.2. **Delivery Costs:** As used in this Agreement, the term "Delivery Costs" shall mean all reimbursable costs incurred by a Subrecipient in connection with a regional revolving loan fund that are directly related to the preparation and execution of loan documents and to the monitoring and administration of the loan provisions, and which are allowable by the New Hampshire Community Development Block Grant program rules.
- 1.3. **Payment of Project Costs:** Subject to the terms and conditions of this agreement, CDFA agrees to pay Grantee all Project Costs, provided, however, that in no event shall the total of all payments made by CDFA pursuant to this Agreement exceed the Grant Amount as set out in Paragraph 1.8 of the General Provisions, and provided further that all Project Costs shall have been incurred prior to the Completion Date, except for reasonable approved Project Costs incurred within 90 days after the Completion Date and in connection with closeout requirements as provided in State Administrative Rule Cdfa 311.01(c)(4).
- 1.4. **Review by CDFA: Disallowance of Costs:** At any time during the performance of the Project Activities, and upon receipt of the Progress Reports, Closeout Report, or Audited Financial Report, CDFA may review all Project Costs incurred by Grantee or any Subrecipient and all payments made to date. Upon such review, CDFA shall disallow any items of expense which are not determined to be allowable or are determined to be in excess of actual expenditures, and shall, by written notice specifying the disallowed expenditures, inform Grantee of any such disallowance. If CDFA 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, CDFA may deduct the amount of disallowed costs from any future payments under this Agreement or require that Grantee refund to CDFA the amount of the disallowed costs.

#### 2. METHOD AND TERMS OF REIMBURSEMENT FOR PROJECT COSTS

- 2.1. **When Project Funds May Be Released.** CDFA shall not disburse any funds for the purposes of this Project until such time as all agreements specified in Exhibit A and any other agreements or documents specified pursuant to this Agreement are fully executed and received, and where applicable are reviewed and approved in writing by CDFA. Agreements and documents may include:
  - 2.1.1. A Subrecipient Agreement;
  - 2.1.2. Documentation of all required matching funds;
  - 2.1.3. A copy of any required deed, survey, map, or other document pertaining to the Project Property or Premises;

- 2.1.4. Copies of required certificates of insurance;
  - 2.1.5. Engineering, construction, consultant, or other contracts;
  - 2.1.6. Certification/verification of employment documentation or household income documentation;
  - 2.1.7. Any loan documents, lease documents, mortgages, liens, security instruments, and similar agreements used in connection with the enforcement of beneficiary requirements.
  - 2.2. Timing of Payments. Upon thirty (30) days of the receipt, review, and approval by CDFA of financial reports and requests for reimbursement from Grantee specifying all Project Costs Incurred, CDFA agrees to reimburse Grantee for Project Costs, except that reimbursement may be withheld until CDFA determines that a particular project activity or portion of the project activity hereunder has been satisfactorily completed.
  - 2.3. Disbursement of funds by CDFA does not constitute acceptance of any item as an eligible Project Cost until all Project Costs have been audited and determined to be allowable costs.
3. REQUIRED DOCUMENTATION FOR DISBURSEMENT OF GRANT FUNDS
- 3.1. Reimbursement requests for all Project Costs, including Administrative Project Costs, Delivery Costs, and Subrecipient costs, shall be accompanied by proper supporting documentation in the amount of each requested disbursement along with a payment request form as supplied by CDFA, which shall be completed and signed by Grantee. Documentation may include invoices for supplies, equipment, services, contractual services, and, where applicable, a report of salaries paid or to be paid.
  - 3.2. Where Project Costs include the purchase of equipment, Grantee or Subrecipient as appropriate shall also submit written verification that it has inspected the Project Property and the equipment to be purchased with Grant funds has been installed and is ready for operation.
4. LIMITATIONS ON USE OF FUNDS
- 4.1. Grant funds are to be used in a manner consistent with the State of New Hampshire Community Development Block Grant Program as approved by the U.S. Department of Housing and Urban Development.
  - 4.2. Grant funds are to be used only in accordance with procedures, requirements and principles specified in 24 CFR 85.
  - 4.3. Grant funds may not, without advance written approval by CDFA, be obligated prior to the Effective Date or subsequent to the Completion Date of the grant period. Obligations outstanding as of the Completion Date shall be liquidated within ninety (90) days. Such obligations must be related to goods or services provided during the grant period, except that reasonable costs associated solely with grant closeout, (e.g., audits, final reports) may be incurred within ninety (90) days after the Completion Date. The funding assistance authorized hereunder shall not be obligated or utilized for any activities requiring a release of funds under the Environmental Review Procedure for the Community Development Block Grant Program at 24 CFR Part 58, until such release is issued in writing by CDFA.
  - 4.4. Changes In Funding Project Activities: Grantee may submit a written request for the authority to transfer up to ten (10) percent of the full value of the grant from one approved activity to another listed in Exhibit A herein or from an approved activity within the approved project area to an approved activity located outside the project area and the Director of CDFA may approve the requested transfer.
  - 4.5. Transfers over ten percent of the full value of the grant from one approved activity to other approved activities or outside the target area, or the addition of one or more new activities requires an amendment to this grant agreement. Grantee shall hold a public hearing in accordance with RSA 4: C: 14 II(b) submitting a request for an amendment involving twenty-five (25) percent or more of the full value of the

grant.

- 4.6. Up to \$250,000 of Grant funds may be applied by Grantee for costs related to Public Facilities and Infrastructure Improvements (Matrix Code 03K: Street Improvements)
- 4.7. Up to \$25,000 of Grant Funds may be applied by Grantee for costs related to Administration and Planning (Matrix Code 21A – General Program Administration).

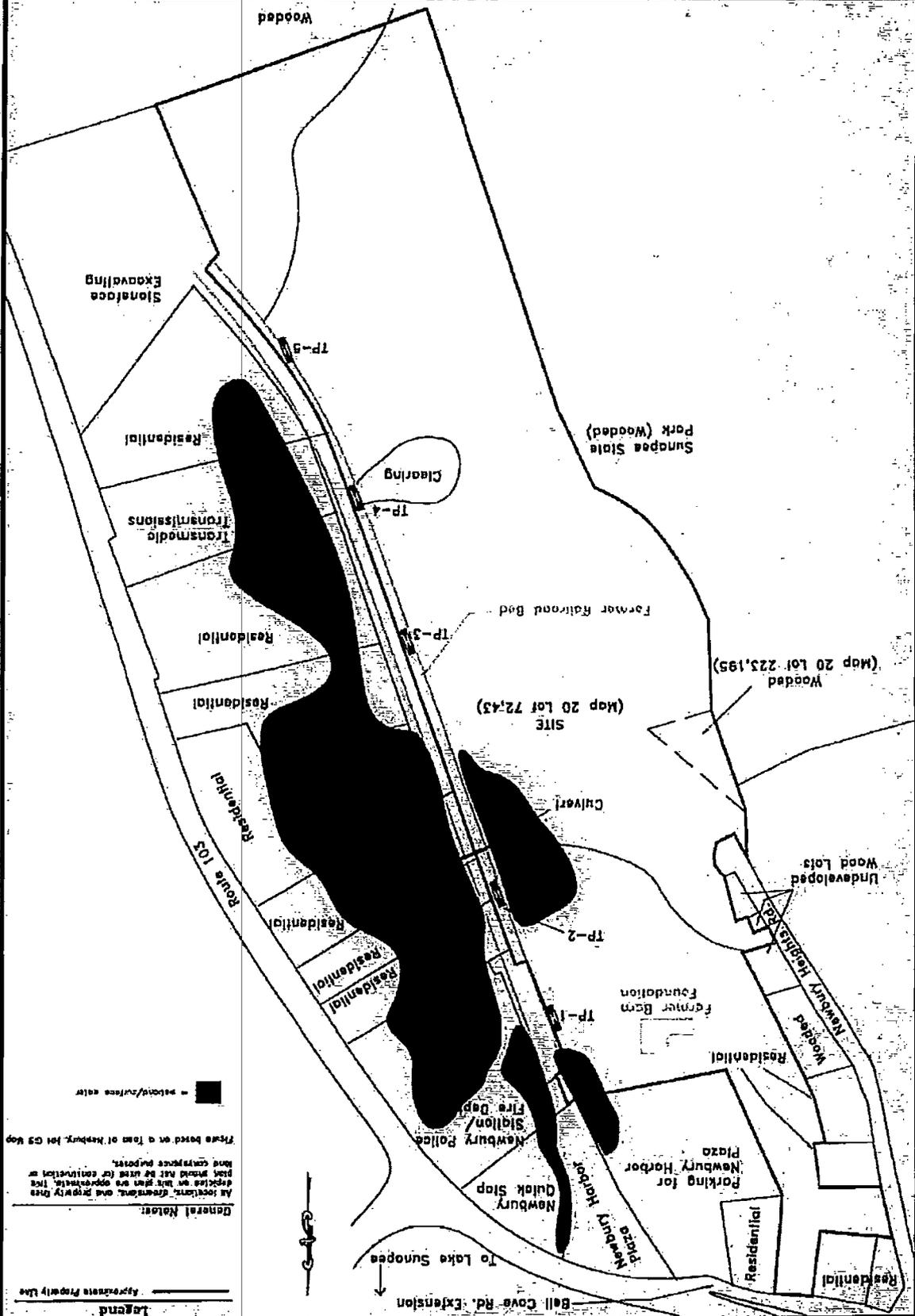
4 PERFORMANCE OF SERVICES BY GRANTEE PRIOR TO EFFECTIVE DATE; PAYMENT BY CDFA. Any Grant Activities performed by Grantee with non-CDBG funds prior to the Effective Date shall be performed at the sole risk of Grantee, and in the event that this Agreement shall not become effective, CDFA shall be under no obligation to pay Grantee for any costs incurred in connection with any Grant Activities, or to otherwise pay for any Activities performed during such period.

5 PROGRAM INCOME:

- 5.1 Program Income: All program income earned during the term of this Agreement shall be retained by Grantee or, in projects involving the administration of a revolving loan fund by the Subrecipient.
- 5.2 When Used For Project Activities: When program income becomes available, Grantee and, where applicable, Subrecipient shall use it for Grant Activities contained in the Project Description before drawing down additional funds unless the program income is deposited in a revolving loan account with prior approval by CDFA.
- 5.3 When Used For Eligible Activities: After completion of the Grant Activities specified in this Agreement, Grantee and, where applicable, Subrecipient shall use program income only for eligible activities which benefit primarily people from low and moderate income families, with prior approval by CDFA as specified in the Closeout Agreement between CDFA and Grantee and, where applicable, Subrecipient.



|                                     |                                      |                                     |                                      |
|-------------------------------------|--------------------------------------|-------------------------------------|--------------------------------------|
| Clark Davis Trust Property          |                                      | SMB PLAN                            |                                      |
| DATE: 11/11/2009                    | BY: JLD                              | DATE: 11/11/2009                    | BY: JLD                              |
| PROJECT: Clark Davis Trust Property | SCALE: AS SHOWN                      | PROJECT: Clark Davis Trust Property | SCALE: AS SHOWN                      |
| CLIENT: Clark Davis Trust           | LOCATION: Clark Davis Trust Property | CLIENT: Clark Davis Trust           | LOCATION: Clark Davis Trust Property |



**Legend**

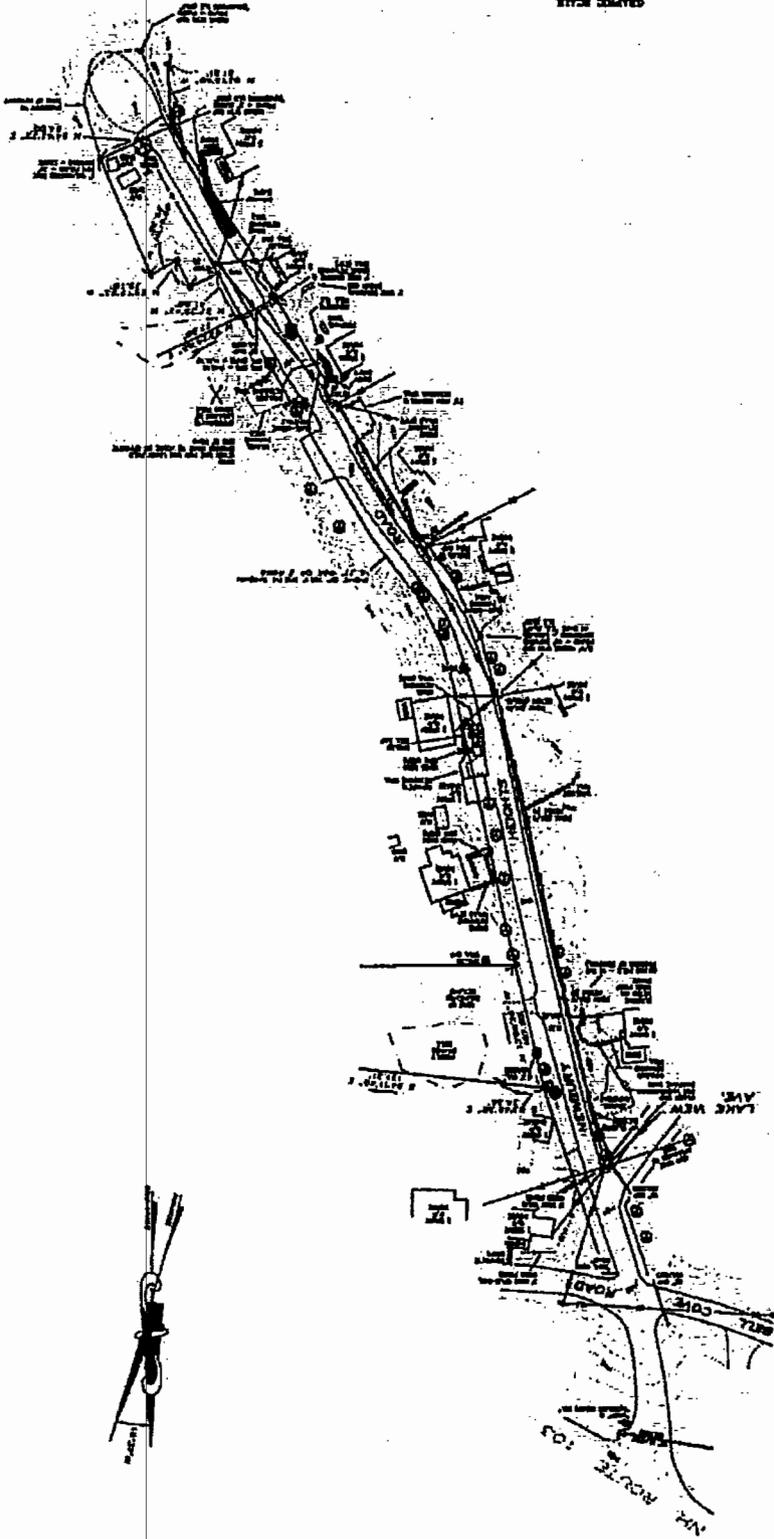
Approximate Property Line

General Notes:

All locations, dimensions, and property lines depicted on this plan are approximate. The plan should not be used for construction or land acquisition purposes.

Figure based on a Town of Newbury, NH CS Map.

■ = person/surface water



## ATTACHMENT II

### SUBRECIPIENT AGREEMENT MINIMUM TERMS AND CONDITIONS

Grantee hereby warrants and agrees that the Subrecipient Agreement to be executed in conformance with the requirements of Exhibit A of the Grant Agreement shall be subject to approval by CDFA and shall contain at a minimum the following terms and conditions:

1. **REPRESENTATIONS AND WARRANTIES.** Subrecipient, Newbury Elderly Housing, Inc., shall represent and warrant:
  - 1.1. It has obtained or will obtain all necessary approvals of the Plans and all necessary permits for the construction of the Project from all governmental authorities having jurisdiction over the Project;
  - 1.2. Construction of the Project will not violate any zoning, environmental, subdivision, or land use ordinance, regulation or law; the Property conforms and complies in all material respects with all covenants, conditions, restrictions, reservations and zoning, environmental land use, and other applicable ordinances, laws, rules and regulations, federal, state or local, affecting the Property;
  - 1.3. No litigation, claims, suits, orders, investigations or proceedings are pending or threatened against Subrecipient or affecting the Property or the Project at law or in equity or before or by any federal, state, municipal, or other governmental instrumentality; there are no arbitration proceedings pending under collective bargaining agreements or otherwise; and to the knowledge of Subrecipient there is no basis for any of the foregoing;
  - 1.4. Subrecipient has filed all federal, state, and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state, and local taxes, charges, and assessments;
  - 1.5. Subrecipient is a duly organized and validly existing New Hampshire corporation in good standing under the laws of this state. Subrecipient has the power and authority to own its properties and to carry on the business as now being conducted and has the power to execute and deliver, and perform its obligations under this Agreement or the Mortgage;
  - 1.6. The execution and delivery and performance by Subrecipient of its obligations under this Agreement and the Mortgage have been duly authorized by all requisite corporate action and will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Subrecipient is a party, or by which it is bound, or be in conflict with, result in a breach of, or constitute a default under, or, except as may be provided in this Agreement, result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of Subrecipient pursuant to any such indenture, agreement, or instrument. Subrecipient is not required to obtain any consent, approval, or authorization from, or to file any declaration or statement with, any governmental instrumentality or other agency in connection with or as a condition to the execution, delivery or performance of this Agreement or the Mortgage.
  - 1.7. Subrecipient is not contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of its property, and Subrecipient has no knowledge of any person contemplating the filing of any such petition against it.
  - 1.8. No statement of fact made by or on behalf of Subrecipient in this Agreement or in any certificate, exhibit or schedule furnished to Grantee pursuant thereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading. There is no fact or circumstance presently known to Subrecipient that has not been disclosed to Grantee that materially affects adversely, nor as far as Subrecipient can foresee, will materially affect adversely the Property, business, operations, or considerations (financial or otherwise) of Subrecipient;
  - 1.9. Subrecipient has complied in all material respects with all applicable statutes, regulations and rules of

federal, state, and local governments in respect to the conduct of its business and operations, including without limitation all applicable environmental statutes, regulations, and rules.

- 1.10. No Event of Default has occurred and is continuing under this Agreement and no event or condition which would, upon notice of expiration of any applicable cure, constitute an Event of Default has occurred and is continuing; Subrecipient is not in default under any note or other evidence of indebtedness or other obligation for borrowed money or any mortgage, deed to trust, indenture, loan agreement, or other agreement relating thereto.

Each of the foregoing representations and warranties is true and correct as of the date of this Agreement and Subrecipient shall indemnify and hold harmless Grantee and CDFA from and against any loss, damage, or liability attributable to the breach thereof, including any and all fees and expenses incurred in the defense or settlement of any claim arising therefrom against Grantee or CDFA.

2. **PURPOSE OF PROJECT: PROJECT ACTIVITIES** The purpose of the project which is the subject of this Subrecipient Agreement is to upgrade Newbury Heights Road to provide greater access for emergency vehicles and improve the drainage system in support of the construction of 34 affordable apartments for the elderly in Newbury, New Hampshire. 100% of the households will be low to moderate income as that term is defined in Administrative Rule Cdfa 302.31 and Cdfa 302.36.
3. **COVENANT OF LONG TERM AVAILABILITY FOR LOW AND MODERATE INCOME HOUSEHOLDS.**
  - 3.1. Subrecipient shall certify that 100% of the individuals residing or to reside in the Project Properties upon the Project Completion Date shall be Low and Moderate Income Households and Persons as those terms are defined in Administrative Rule Cdfa 302.31 and Cdfa 302.36.
  - 3.2. At time of Grantee's submission of the Closeout Report to CDFA as provided in Exhibit A of the Grant Agreement, Subrecipient shall gather information on those groups deemed as "Protected" by HUD and required by the "Beneficiary Characteristics Report" as provided in the most current edition of the "CDBG Implementation Guide."
  - 3.3. Subrecipient shall covenant and warrant that the Property acquired and developed in whole or in part with Grant funds shall remain in use as residential housing and shall be made available to Low and Moderate Income Households and Persons for a period of twenty (20) years following completion of the Project and that Subrecipient has and will continue in its Bylaws or other administrative provisions an adequate administrative capacity to ensure that this benefit is maintained for said period. This covenant shall survive the expiration or termination of this Agreement.
  - 3.4. In the event that Subrecipient grants, conveys, leases (other than the leasing or renting of the residential units), or otherwise transfers its interests in the Property, Subrecipient shall include a clause in such deed, lease, or similar transfer instrument whereby the other party, for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration therefore, covenants and agrees, as a covenant running with the land, that the property shall continue to be used as residential property and/or a public facility and shall continue to be made available to Low and Moderate Income Households for the remainder of the Benefit Period.
  - 3.5. Subrecipient shall not sell, lease (other than the leasing or renting of residential units), encumber, or otherwise transfer or dispose of any part of its title or other interests in the Property, for the duration of the terms, conditions and assurances in this Agreement, without the approval of Grantee.
4. **CONTRACTING REQUIREMENTS.**
  - 4.1. Within thirty (30) days of execution of the CDBG Grant Agreement, Subrecipient shall submit to Grantee for approval an Implementation Schedule specifying the design, engineering and construction goals to be met. The approved Implementation Schedule shall be incorporated into the Subrecipient Agreement and shall serve as a basis for enforcement of the Agreement.
  - 4.2. Within sixty (60) days of execution of the CDBG Grant Agreement, Subrecipient shall procure and enter

into a contract with a duly licensed architect to prepare the design and construction plans for the Project as described herein (the Plans). Prior to execution of the contracts, Subrecipient shall submit proposed contracts to Grantee for its review and approval and the review and approval of CDFA.

- 4.3. Upon approval of the Plans, Subrecipient shall procure and enter into a contract for construction of the Project Improvements. Prior to execution of the contracts, Subrecipient shall submit such contracts to Grantee for its review and approval and the review and approval of CDFA.
- 4.4. All work shall be completed prior to the Grant Agreement Completion Date.
- 4.5. In its contracts for this Project, Subrecipient shall require all contractors to comply with all applicable requirements of federal, state, and local laws and regulations.
- 4.6. The following standards shall apply to the housing units rehabilitated by Subrecipient with Grant funds if applicable:
  - 4.6.1. HUD Section 8 Existing Housing Quality Standards as listed in 24 CFR 882.109, paragraphs (a) through (l) (see Appendix 3 of the CDBG Administrative Rules) or municipal housing and/or building, electrical and plumbing codes where such codes exceed the HUD standards;
  - 4.6.2. The state's life safety and energy codes; and
  - 4.6.3. Where applicable, the state's architectural barrier free design code.

5. MAINTENANCE OF CORPORATE EXISTENCE; BYLAWS.

- 5.1. Subrecipient shall preserve and maintain its legal existence and good standing and its registration in New Hampshire as required to do business.
- 5.2. Subrecipient and Grantee agree that Subrecipient's Articles of Incorporation and Corporate Bylaws, ("Bylaws") attached to this Agreement and incorporated herein by reference provide an adequate administrative mechanism for assuring maintenance of long term affordability for Low and Moderate Income Households as required pursuant to this Agreement. Any proposed amendment to the Articles of Incorporation or Bylaws of Subrecipient shall be submitted by Subrecipient to Grantee for its review and approval prior to adoption. This paragraph shall survive the termination of this agreement for a period not to exceed twenty (20) years.

6. EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an Event of Default under the Subrecipient Agreement:

- 6.1. Failure of Subrecipient to complete the Project satisfactorily in accordance with the approved Plans or on schedule or failure to submit any report, documentation, or other instrument required under this Agreement;
- 6.2. The Property shall cease to be operated as affordable housing for the elderly or Subrecipient shall fail to comply with the requirement of long term affordability for Low and Moderate Income Households as provided herein;
- 6.3. Subrecipient attempts to assign its rights under this Agreement or any advance made or to be made hereunder or any interest therein, or if the Property is conveyed or encumbered in any way without the prior written consent of Grantee;
- 6.4. Any survey, report or examination discloses that the Project or Property or any portion thereof encroaches upon or projects over a street or upon or over adjoining property or violates any setback or other restriction, however created, or any zoning regulations or any building restriction of any governmental authority having jurisdiction with respect to the Property;
- 6.5. The Project or Property is materially damaged or destroyed by fire or other casualty or cause and the

Insurance proceeds therefrom are inadequate to rebuild or restore the Project or Property to their condition immediately prior to such casualty;

- 6.6. Any representation or warranty made herein or in any report, certification, or other instrument furnished in connection with this Agreement or any advances of Grant funds made hereunder, by or in behalf of Subrecipient, shall prove to be false or misleading in any material respect;
- 6.7. Any mechanics', laborers', materialmen's or similar statutory liens, or any notice thereof, shall be filed against the Property and/or the Project and shall not be discharged within thirty (30) days of such filing;
- 6.8. Subrecipient shall default in the due observance or performance of any covenant, condition, assurance or agreement to be observed or performed by Subrecipient under this Agreement;
- 6.9. Any cessation occurs at any time in construction of the Project for more than one (1) week except for causes beyond the control of Subrecipient, or if any substantial change is made in the schedule for the construction or in the approved Plans without the prior approval of Grantee;
- 6.10. Subrecipient shall (i) apply for or consent to the appointment of a receiver, trustee, or liquidator of it or any of its property, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated as bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law;
- 6.11. A petition, order, judgment or decree shall be entered, without the application, approval or consent of Subrecipient by any court of competent jurisdiction, approving a petition seeking reorganization or approving the appointment of a receiver, trustee or liquidator of Subrecipient of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of thirty (30) days;
- 6.12. The dissolution, termination of existence, merger or consolidation of Subrecipient or a sale of assets of Subrecipient out of the ordinary course of business without the prior written consent of Grantee; and
- 6.13. Failure to remedy an ineligible expenditure of grant funds or to reimburse Grantee for any ineligible costs which are paid from grant funds.

## 7. GRANTEE'S RIGHTS AND REMEDIES UPON DEFAULT.

- 7.1. Upon the occurrence of any Event of Default, Grantee may take any one, or more, or all, of the following actions:
  - 7.1.1. Give Subrecipient a written notice of default specifying the Event of Default and requiring it to be remedied within thirty (30) days from the date of notice, and if the Event of Default is not timely remedied, terminate this Agreement, effective immediately upon giving notice of termination;
  - 7.1.2. Give Recipient a written notice of default specifying the Event of Default and suspending all payment of grant funds to be made pursuant to this Agreement until such time as Grantee determines the Event of Default has been cured;
  - 7.1.3. Set off against any other obligations Grantee may owe to Subrecipient for any damages Grantee may suffer by reason of any Event of Default; or
  - 7.1.4. Treat the Agreement as breached and pursue any of its remedies at law or in equity or both to include return of Grant funds and lien foreclosure.
- 7.2. Subrecipient agrees that Grantee and CDFA have a right to seek judicial enforcement with regard to any matter arising with respect to this Agreement, to include the assurances, covenants, and other

conditions which extend beyond the termination or completion date of this Agreement.

8. **REPORTING REQUIREMENTS: CLOSEOUT AGREEMENT.** The Subrecipient shall certify the number and percentage of Low and Moderate Income Households and Persons benefiting from this project. For reporting purposes, The Subrecipient shall submit to Grantee the information on "Protected" groups as required by the "Beneficiary Characteristics Report" as provided in the most current edition of the CDBG Implementation Guide for CDBG projects.
9. **ACCOUNTING, AUDIT AND RECORDKEEPING REQUIREMENTS.**
  - 9.1. Subrecipient shall keep all project-related accounts and records which fully disclose the amount and disposition by Subrecipient of the grant funds, the total cost of the Project, and the amount and nature of any portion of the Project costs supplied by other sources; and such other financial records pertinent to the Project. Accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984. Records to be maintained include Project fiscal records consisting of all books, documents, ledgers, systems, and expenses incurred, including but not limited to purchase, requisitions, orders, invoices, vouchers, bills and receipts, and all lien documents.
  - 9.2. All of the records, documents, and data described above and all income verification documents shall be kept during the performance of the Project and for three (3) years after its completion or until the satisfactory completion of an audit, whichever is later.
  - 9.3. Subrecipient shall make available to Grantee, CDFA, and HUD or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of Subrecipient pertinent to this Project.
10. **INDEMNIFICATION.** The Subrecipient shall defend, indemnify, and hold harmless Grantee and the State, their officers and employees, from and against any and all losses suffered by Grantee or the State, their officers or employees, and any and all claims, liabilities or penalties asserted against Grantee or the State, their officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of, or claimed to arise out of the acts or omissions of The Subrecipient. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which is hereby reserved to the State. This covenant shall survive the termination or expiration of the Subrecipient Agreement.
11. **INSURANCE.**
  - 11.1. The Subrecipient shall, at its sole expense, obtain and maintain in force insurance in such amounts and covering such risks as are customary for entities engaged in the same or similar business to include landlord insurance and property insurance on the Project Property in commercially reasonable amounts and sufficient to cover replacement costs of the improvements.
  - 11.2. Policies shall name Grantee as an additional insured and loss payee and shall be in the standard form employed in the State of New Hampshire, issued by underwriters acceptable to CDFA, and authorized to do business in this State. Each policy shall contain a clause prohibiting cancellation or modification of the policy earlier than ten (10) days after written notice thereof has been received by Grantee and CDFA.
  - 11.3. The Subrecipient shall provide Grantee with certificates of insurance satisfactory to Grantee which evidences compliance with this Section.
12. **MISCELLANEOUS PROVISIONS.**
  - 12.1. The Subrecipient shall comply with all applicable federal, state, and local laws, statutes, regulations, executive orders, and rules as they relate to the application, acceptance, and use of funds for this Project.

- 12.2. The Subrecipient shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of CDFA, and any attempted assignment or transfer without such consent shall be ineffective, null, void, and of no effect. The Agreement and the terms, covenants, warranties, assurances, and conditions contained therein shall extend to, include and inure to the benefit of and be binding upon the respective successors and assigns of Grantee or Subrecipient.
- 12.3. No amendment or modification of the Subrecipient Agreement shall be effective unless it is in writing and executed by both parties and approved by CDFA.
- 12.4. The Partners shall maintain, keep, and preserve in good working order and condition the Properties improved and managed under this Grant.
- 12.5. Where the Grant Agreement or Subrecipient Agreement is terminated or the Project is otherwise terminated due to a default, inability to perform or reason other than project completion and Grant Funds are required to be returned by Grantee or by Subrecipient, the disposition of Grant Funds to be returned shall be determined solely by CDFA.



## CERTIFICATE OF COVERAGE

The New Hampshire Public Risk Management Exchange (Primex<sup>3</sup>) is organized under the New Hampshire Revised Statutes Annotated, Chapter 5-B, Pooled Risk Management Programs. In accordance with those statutes, its Trust Agreement and bylaws, Primex<sup>3</sup> is authorized to provide pooled risk management programs established for the benefit of political subdivisions in the State of New Hampshire.

Each member of Primex<sup>3</sup> is entitled to the categories of coverage set forth below. In addition, Primex<sup>3</sup> may extend the same coverage to non-members. However, any coverage extended to a non-member is subject to all of the terms, conditions, exclusions, amendments, rules, policies and procedures that are applicable to the members of Primex<sup>3</sup>, including but not limited to the final and binding resolution of all claims and coverage disputes before the Primex<sup>3</sup> Board of Trustees. The Additional Covered Party's per occurrence limit shall be deemed included in the Member's per occurrence limit, and therefore shall reduce the Member's limit of liability as set forth by the Coverage Documents and Declarations. The limit shown may have been reduced by claims paid on behalf of the member. General Liability coverage is limited to Coverage A (Personal Injury Liability) and Coverage B (Property Damage Liability) only. Coverage's C (Public Officials Errors and Omissions), D (Unfair Employment Practices), E (Employee Benefit Liability) and F (Educator's Legal Liability Claims-Made Coverage) are excluded from this provision of coverage.

The below named entity is a member in good standing of the New Hampshire Public Risk Management Exchange. The coverage provided may, however, be revised at any time by the actions of Primex<sup>3</sup>. As of the date this certificate is issued, the information set out below accurately reflects the categories of coverage established for the current coverage year.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the coverage categories listed below.

|   |                              |  |
|---|------------------------------|--|
| <b>Participating Member:</b><br>Merrimack County<br>333 Daniel Webster Highway<br>Suite 2<br>Boscawen, NH 03303 | <b>Member Number:</b><br>604 | <b>Company Affording Coverage:</b><br>NH Public Risk Management Exchange - Primex <sup>3</sup><br>Bow Brook Place<br>48 Donovan Street<br>Concord, NH 03301-2624 |
|---|------------------------------|--|

| Type of Coverage   | Effective Date (mm/dd/yyyy) | Expiration Date (mm/dd/yyyy) | Limits - NH Statutory Limits May Apply, If Not:           |
|--|-----------------------------|------------------------------|---|
| <input checked="" type="checkbox"/> <b>General Liability (Occurrence Form)</b><br><b>Professional Liability (describe)</b><br><input type="checkbox"/> Claims Made <input type="checkbox"/> Occurrence | 1/1/2011                    | 1/1/2012                     | Each Occurrence    \$ 5,000,000                           |
|  |                             |                              | General Aggregate    \$ 5,000,000                         |
|  |                             |                              | Fire Damage (Any one fire)    \$                          |
|  |                             |                              | Med Exp (Any one person)    \$10,000                      |
| <input type="checkbox"/> <b>Automobile Liability</b><br>Deductible    Comp and Coll:<br><input type="checkbox"/> Any auto  |                             |                              | Combined Single Limit (Each Accident)<br>Aggregate        |
| <input checked="" type="checkbox"/> <b>Workers' Compensation &amp; Employers' Liability</b>  | 1/1/2011                    | 1/1/2012                     | <input checked="" type="checkbox"/> Statutory             |
|  |                             |                              | Each Accident    \$2,000,000                              |
|  |                             |                              | Disease - Each Employee    \$2,000,000                    |
|  |                             |                              | Disease - Policy Limit                                    |
| <input type="checkbox"/> <b>Property (Special Risk Includes Fire and Theft)</b>  |                             |                              | Blanket Limit, Replacement Cost (unless otherwise stated) |

**Description:** Proof of Primex Member coverage for NH Community Development Finance Authority, Grant # 10-407- CDPF.

|  |                                 |                   |   |
|--|---------------------------------|-------------------|---|
| <b>CERTIFICATE HOLDER:</b>   | <b>Additional Covered Party</b> | <b>Loss Payee</b> | Primex <sup>3</sup> - NH Public Risk Management Exchange  |
|  |                                 |                   | By: <i>Tammy Deane</i>  |
| NH Community Development Finance Authority<br>Attn: Chris Conlogue<br>14 Dixon Ave, Ste 102<br>Concord, NH 03301 |                                 |                   | Date: 2/16/2011    tdenver@nhprimex.org   |
|  |                                 |                   | Please direct Inquiries to:<br>Primex <sup>3</sup> Claims/Coverage Services<br>603-225-2641 phone<br>603-228-3833 fax |

**CERTIFICATION OF GRANTEE'S ATTORNEY**

I, George A Stewart acting as Attorney for Merrimack County New Hampshire do hereby certify:

That in my opinion the Grantee is empowered to enter into the foregoing Grant Agreement under the laws of the State of New Hampshire. Further, I have examined the foregoing Grant Agreement and the actions taken by said Grantee and have determined that Grantee's official representative has been duly authorized to execute this Grant Agreement and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and applicable federal laws. In addition, for grants involving projects to be carried out on property not owned by Grantee, there are no legal impediments that will prevent full performance by the Grantee. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of Grantee in accordance with the terms thereof.

Dated at Concord this 17 day of February 2001.

George A Stewart  
Signature of Grantee's Attorney

**CERTIFICATE**

I, Elizabeth Blanchard, Clerk of Merrimack County, New Hampshire do hereby certify that 1) at the public hearings and meeting held on May 27, 2010, the County Commissioners voted to accept Community Development Block Grant funds and enter into a contract with the Community Development Finance Authority; 2) the County Commissioners further authorized the Chairman, Board of Commissioners to execute any documents which may be necessary to effectuate this contract; 3) this authorization has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date hereof; and 4) the following person has been appointed to and now occupies the office indicated under item (2) above:

Bronwyn Asplund-Walsh, Chairman Board of Commissioners  
Name and Title of Officer Authorized to Sign

IN WITNESS WHEREOF, I have hereunto set my hand as the Clerk of Merrimack County, New Hampshire this 22 day of February, 20 11.

Elizabeth Blanchard  
Elizabeth Blanchard, County Clerk