

CONTRACT BY AND BETWEEN:

UNITED STATES OF AMERICA

STATE OF LOUISIANA  
DIVISION OF ADMINISTRATION

STATE OF LOUISIANA

FEDERAL EMPLOYER I.D.#

TOWN OF \_\_\_\_\_

AMOUNT OF CONTRACT:

AND

THIS AGREEMENT, is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, by and between the State of Louisiana, Division of Administration or its Successor, hereinafter called "STATE", represented by \_\_\_\_\_ and the CITY OF \_\_\_\_\_, LOUISIANA hereinafter called "CONTRACTOR", represented by \_\_\_\_\_, duly authorized to act in accordance with resolution attached hereto and made a part hereof and \_\_\_\_\_, hereinafter called "DEVELOPER," a corporation created and existing under and by virtue of the laws of the State of Louisiana, represented by \_\_\_\_\_, President, duly authorized to act in accordance with resolution attached hereto and made a part hereof.

1. All parties acknowledge that the CONTRACTOR has applied for a FY \_\_\_\_\_ Economic Development Grant from the STATE for \_\_\_\_\_ for Infrastructure Improvements and a loan. In accordance with Attachment A of the contract, hereinafter referred to as the "Grant Agreement" entered into by and between the STATE and CONTRACTOR, said Grant Agreement is adopted and made a part of this contract hereof by reference just as if same had been copied in full.
2. a. DEVELOPER agrees to carry out all activities set forth in Exhibit C and Exhibit D, of the Grant Agreement at a total minimum cost of \_\_\_\_\_ and agrees to adhere to the time performance schedule in the application or as amended. DEVELOPER assures the CONTRACTOR and STATE that funds will be invested at and above the funds generated through operations in a ratio of \$\_\_\_\_\_ private funds to \$1.00 LCDBG funds, according to the program schedule as referenced above.  
  
Any reduction in private expenditures shall require a corresponding reduction in the LCDBG funds, according to the ratio.
- b. DEVELOPER further agrees to the following:

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

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

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

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

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

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

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

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

Household Size by Number of Persons

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

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

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

10. TERMINATION OR SUSPENSION:

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

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

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

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

13. SPECIAL CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSES:

**DIVISION OF ADMINISTRATION**

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

\_\_\_\_\_  
\_\_\_\_\_ **NOTARY PUBLIC**  
\_\_\_\_\_ **My Commission expires:** \_\_\_\_\_

WITNESSES:

**MANUFACTURING, INC.**

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

\_\_\_\_\_  
\_\_\_\_\_ **NOTARY PUBLIC**  
\_\_\_\_\_ **My Commission expires:** \_\_\_\_\_

WITNESSES:

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

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

\_\_\_\_\_  
\_\_\_\_\_ **NOTARY PUBLIC**  
\_\_\_\_\_ **My Commission expires:** \_\_\_\_\_

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

Attachment B is the Employee Survey Form

Attachment C is the Employee Characteristics Record

**LCDBG ECONOMIC DEVELOPMENT PROGRAM**

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

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

Employee: LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_  
 Employee: SSN \_\_\_\_\_ DATE HIRED \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 Employee: JOB TITLE OR POSITION \_\_\_\_\_  
 \_\_\_\_\_

HUD Income Limits for FY \_\_\_\_\_ PARISH \_\_\_\_\_  
 Employee: FAMILY INCOME \_\_\_\_\_

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

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

Employee: Racial and Ethnicity Category

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

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

Employee: Check one of applicable

- Female Head of Household                       Handicapped Person                       Elderly

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

Signature \_\_\_\_\_



SAMPLE EVIDENCE OF DEVELOPER'S COMMITMENT  
(On letterhead)

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

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

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

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

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

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

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

## SAMPLE

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

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

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

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

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

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

FURTHER RESOLVED, that the Corporation is not in Default in

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

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

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

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

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

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SAMPLE

RESOLUTION OF AUTHORITY

CERTIFIED RESOLUTION OF BOARD OF DIRECTORS  
OF  
VENTURES, INC.

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

It is resolved that:

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

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

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

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Elsie Govang  
Secretary

(TO BE ON ATTORNEY'S LETTERHEAD)

August 3, 20\_\_

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

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

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

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

Very truly yours,

City Attorney

CERTIFICATION OF LEGALLY BINDING AGREEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

Name of City/Parish Attorney

## RELEASE OF FUNDS QUESTIONS AND ANSWERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## DAVIS-BACON EQUIPMENT POLICY

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

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

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

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

Activities which traditionally trigger Davis-Bacon:

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

## EQUIPMENT ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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