



Contract 20150489

### City of Springfield Contract Tracer Document

The purpose of this document is to provide continuous responsibility for the custody of **CONTRACTS** during the processing period.

**INSTRUCTIONS:** Upon receipt, please initial and write in the date of receipt. When your department has approved and signed the contract, please initial and date in the forwarding section and deliver to the next department.

DEPARTMENT	DATE RECEIVED		DATE FORWARDED TO NEXT DEPT.	
	Initials	Date	Initials	Date
Community Development	JD	10/21/14	JD	10/21/14
City Comptroller	HLF	10/21/14	HLF	10/22/14
Law	HLF	10/24/14	HLF	10/24/14
Mayor	HLF	10/24	HLF	10/24/14
City Comptroller	ab	10/29/14	ab	10/29/14
Community Development				

Vendor No.: 13160    Contract No.: 20150489    Contract Date: 07/01/2014

Contract Amt.: \$500,000.00    Issue Date:    Renewal Date:

Appropriation Code1: 26401817-530105-64014  
 Appropriation Code2:  
 Appropriation Code3:  
 Appropriation Code4:

Description of Funding Source: CDBG-DR

Bid No.:    Requisition No.: 15005559    PO No.:

Vendor Name: Common Capital

Contract Type: CDBG

Contract Purpose: Administer CDBG-DR Business Recovery Revolving Loan Program

Originating Dept.: Community Development / Disaster Recovery

Expiration Date: 03/31/2016    Amendment Date:    Extension Date: 

TYPE OF DOCUMENT (Please select at least one):  
 New     Renewal     Amendment     Extension

Contract # 20150489

## **PUBLIC SERVICE SUBRECIPIENT AGREEMENT**

By and Between the

**CITY OF SPRINGFIELD, MA**

*And*

Common Capital

**COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY  
PROGRAM**

**Office of Community Development  
Springfield, Massachusetts**

**PROJECT AMOUNT: \$500,000.00**

**PROJECT NAME:** Business Recovery Revolving Loan Program ("Program")

Domenic J. Sarno  
MAYOR

## **PART I: Project Terms and Conditions**

This Agreement, entered into as of the \_\_\_<sup>t</sup> day of \_\_\_\_\_, 2014 BY AND BETWEEN: Common Capital a not-for-profit corporation with its principal office and place of business at 4 Open Square Way, Holyoke, MA; hereinafter referred to as the SUBRECIPIENT, and the **CITY OF SPRINGFIELD**, a municipal corporation, duly organized and in existence under the laws of the Commonwealth of Massachusetts, with its principal office and place of business in City Hall, 36 Court Street, in the City of Springfield, and Commonwealth of Massachusetts, acting by and through its Director of Community Development, with the approval of its Mayor referred to as the CITY.

**WHEREAS**, the CITY has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383 as amended; and

**WHEREAS**, the Catalog of Federal Domestic Assistance number (CFDA) for the Community Development Block Grant is 14.218; and

**WHEREAS**, the CITY wishes to engage the SUBRECIPIENT to render certain services or work hereinafter described in connection with CITY's Community Development activities;

**NOW THEREFORE**, the CITY and SUBRECIPIENT agree as follows:

### **I. SCOPE OF SERVICE**

#### **A. Activities**

THE SUBRECIPIENT shall be responsible for administering a CDBG program entitled---- Business Recovery Revolving Loan Program during the fiscal year 2014 in a manner satisfactory to the CITY and consistent with any standards required as a condition of providing these funds. Such program shall include the activities eligible under the Community Development Block Grant Disaster Recovery ("CDBG-DR") program as described in the scope of services attached hereto and made a part hereof in Appendix A, "Scope of Services".

All activities identified in this section and further described in APPENDIX A, "Scope of Services", attached hereto and made a part hereof, shall support the CITY's Community Development activities and shall be performed and carried out by the SUBRECIPIENT under the highest professional standards to the satisfaction of the CITY.

#### **B. Levels of Accomplishment**

In addition to the normal administrative services required as part of this Agreement, the SUBRECIPIENT shall provide services as outlined in Appendix A.

**C. Staffing**

[1] **Subrecipient Staffing** SUBRECIPIENT hereby commits to provide staffing sufficient to carry out the entire scope of work at the level of effort described in the program budget attached herein and hereto as Appendix B. .

[2] **City Staffing** The CITY hereby designates the Director of Community Development as the Project Officer. On the Mayor's authority, the Project Officer shall be the person signing this agreement on behalf of the Office of Community Development and shall be the authorized representative of CITY responsible for the administration and enforcement of this Agreement acting within the limits of authority as defined by CITY'S Mayor.

The CITY further designates a Senior Program Manager from its Disaster Recovery Division for the purposes of administering and monitoring this Agreement.

**D. Performance Monitoring**

The CITY shall monitor the performance of the SUBRECIPIENT against goals and performance standards required herein. Substandard performance as determined by the CITY shall constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the SUBRECIPIENT within thirty (30) days of being notified by the CITY, Agreement suspension or termination procedures shall be initiated as detailed in Section VII Subsections A and B below.

[1] **Time of Performance** - Services of, and loans made by, the SUBRECIPIENT that are funded directly by the CITY shall commence as described in this Agreement June 1, 2014 and shall end on March 31, 2016 ("Initial Period of Performance"). The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the SUBRECIPIENT remains in control of CDBG funds or other assets, including retained program income and the delivery of services and loans with such program income, until the City and HUD unconditionally close out the CDBG-DR grant. Upon such close-out, the terms of Section II(A)(5)(c) shall survive this agreement while the SUBRECIPIENT continues to receive and use program income for the purposes of the intended revolving loan program. The SUBRECIPIENT agrees to continue to lend revolving loan funds under standard CDBG guidelines after the City and HUD unconditionally close out the CDBG-DR grant. The CITY shall have the right and full authority at anytime to cancel, modify, or alter the program, term of performance, and funding amounts for any reason without notice.

[2] **Budget** – It is expressly agreed and understood that the total amount to be paid by the CITY under this Agreement shall not exceed \$500,000.00.

SUBRECIPIENT shall abide by the budget attached hereto and made a part hereof as Appendix B, diligently reporting and documenting all expenditures for which reimbursement is sought in accordance with this Agreement.

The SUBRECIPIENT shall submit requests for any amendments to this budget in writing to the CITY; the CITY shall have the authority to approve or deny such budget amendments and shall do so within thirty (30) days.

Line item budget amendments shall be reviewed and approved by the Program Manager responsible for this Agreement.

- [3] **Reports** - The SUBRECIPIENT shall submit monthly reports as detailed in Appendix C Policies and Procedures to the City no later than the 10<sup>th</sup> of each month reporting on accomplishments from the previous month, until the close-out (described in D(1) above) of the CITY's CDBG-DR grant which funds this activity. The SUBRECIPIENT is required to submit progress reports to their program manager whether or not they are requesting funds. If there has been no activity during the month, this also must be reported. Reports will include the following: (a) program-to-date data on individual loans in process, made and being collected, including applicant/borrower name, date of application, amount of funds requested, eligible expense(s) funded (per the Program Term Sheet), date of loan closing, total amounts of fund advanced to date, (b) a brief description of technical assistance provided since the previous reporting period, if any, (c) the total amount of CDBG-DR funds advanced and the total amount of payments received from borrowers as program income, and (d) brief descriptions of each borrower and how the activities funded contribute to neighborhood revitalization.
- [4] **Monitoring Site Visits** - In addition to its reporting requirements, SUBRECIPIENT may be subject to one or more site visits to be made by the CITY during the period of this Agreement at which time all documentation, files, and other material related to this Agreement and the operation of the activities described herein shall be made available for review and inspection by the CITY.

## II. PAYMENT

### **A. Reimbursement**

- [1] The CITY shall pay to the SUBRECIPIENT funds available under this Agreement based upon information submitted by the SUBRECIPIENT and consistent with the approved budget attached hereto and made a part hereof in Appendix B and CITY policy concerning payments. SUBRECIPIENT reimbursements may only be submitted following the procedures and forms approved by the CITY and in compliance with federal regulations.
- [2] Payments shall be made for eligible expenses actually incurred by the SUBRECIPIENT. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the project as determined by the CITY. All costs shall be reflected in the budget as described herein and attached hereto as Appendix B. Drawdowns for the payment of eligible expenses shall be made in accordance with performance against the line item budget specified in Appendix B described herein and attached hereto.
- [3] Payments shall be made on a reimbursement basis only for administrative expenses. Payments for funding business loans will also be made on a reimbursement basis

unless otherwise agreed to in writing by the CITY. In order to be considered for advance payment the SUBRECIPIENT shall submit a written request to the program manager that details the reason for the request and the amount of funding requested. The CITY will approve in its sole discretion may determine whether to grant said advance payment.

[4] Disbursements pursuant to this agreement made in advance rather than on the SUBRECIPIENT's behalf may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with the standards specified in OMB Circular A-110. Per OMB Circular A-110, an accounting system using either the cash or the accrual basis of generally accepted accounting principles that accurately reflects all costs chargeable (paid & unpaid) to the project should the project terminate the next day is mandatory. Paid invoices revealing check number, date paid and evidence of goods or services received are to be filed according to the expense account as they were charged. The CITY reserves the right to review and approve SUBRECIPIENT'S accounting system and internal controls prior to the release of funds. **All accounting records and requests for reimbursement must be supported by source documentation per 24 CFR 85.20(b)(6) and 84.21(b)(7).** Supporting documentation is necessary to show that the costs charged against CDBG funds were incurred during the effective period of the SUBRECIPIENT'S agreement with the CITY, were actually paid out (or properly accrued), were expended on allowable items, and had been approved by the responsible official(s) of the SUBRECIPIENT.

[5] **Program Income –**

- [a] Program Income in General - The SUBRECIPIENT understands that funds paid under this Agreement are for the services and business loans specified in the Scope of Services and such services and loans are intended to result in the generation of Program Income as defined in 24 CFR 570.500(a) and therefore the SUBRECIPIENT shall comply with all requirements set forth at 24 CFR 570.504, and in addition the following specific requirements of the CITY. The CITY and SUBRECIPIENT agree that program income will be utilized for revolving loan fund purposes after closeout of the CDBG-DR program, utilizing standard CBDG regulations.
- [b] Use of Program Income Before the Close-Out of CITY's CDBG-DR Grant - All program income derived from this Project as a result of funds paid under this Agreement and any program income generated after the expiration of this Agreement shall be retained by SUBRECIPIENT in a restricted asset account (not co-mingled with other funds) and will be expended on the activities and restrictions described in Appendix A. Such expenditures of program income on budgeted costs other than making loans (i.e. services) may not exceed, on a cumulative basis, 10% of the program income spent on making loans. SUBRECIPIENT must expend all program income prior to drawing additional CDBG-DR funds.
- [c] Use of Program Income After the Close-Out of the CITY's CDBG-DR Grant – All program income generated after the close-out may be retained by SUBRECIPIENT in

a restricted asset account (not co-mingled with other funds) and expended on any activity eligible for CDBG funding, subject to the requirements set forth in 24 CRF 570, Subpart C and subject to the CITY's requirement that program income be expended only for eligible activities within the boundaries of the City of Springfield. The CITY and SUBRECIPIENT agree that program income will be utilized for revolving loan fund purposes after closeout of the CDBG-DR program, utilizing standard CBDG regulations.

- [d] Program Income shall include any property of borrowers used to secure loans made in the Program and subsequently transferred to SUBRECIPIENT as a result of a loan default. Any cash resulting from the liquidation of such property will be considered Program Income.
- [6] The SUBRECIPIENT shall refund to the CITY any payment or portions of payments which the CITY determines were not properly due to the SUBRECIPIENT under the terms of this Agreement.
- [7] The CITY reserves the right to liquidate funds available under this Agreement for costs incurred by the CITY on behalf of the SUBRECIPIENT. The City also reserves the right to liquidate unexpended funds should the expenditures not be made in a timely fashion so as to expend all funds during the Initial Period of Performance.

**B. Reimbursement Form**

SUBRECIPIENT shall provide all documentation substantiating reimbursement in a form specified by the CITY and shall seek reimbursements in a manner set forth in Appendix C, "Policies and Procedures." Payment to SUBRECIPIENT shall be subject to the prior receipt by CITY of a completed "Subrecipient Reimbursement Request Form" for payment from SUBRECIPIENT certifying under the pains and penalties of perjury that the SUBRECIPIENT has actually performed the work and expended the time claimed for services under the Agreement in conformity with its terms and conditions, and that SUBRECIPIENT is actually entitled to receive the amount of compensation requisitioned by SUBRECIPIENT under the terms of the Agreement.

**III. SPECIAL CONDITIONS**

**A. Personnel**

The SUBRECIPIENT shall hire its own personnel, but, in accordance with Section VIII of this Agreement, SUBRECIPIENT shall, give full consideration to employment of residents of the city of Springfield and persons who are unemployed or underemployed in compliance with Federal Equal Opportunity provisions.

**B. Policies and Procedures**

SUBRECIPIENT shall follow the policies and procedures and utilize the forms provided attached hereto and made a part hereof as Appendix C. The CITY reserves the right to unilaterally make changes to or update these policies and procedures to the extent that such changes are necessary to ensure compliance with City, state and federal laws and regulations. Other changes may be proposed by the CITY or SUBRECIPIENT for the purpose of improving the effectiveness of the Program and

ensuring timely expenditures; such changes will become effective only if agreed to by both parties in writing referencing a newly-dated version of the Policies and Procedures.

#### **IV. GENERAL CONDITIONS**

##### **A. General Compliance**

The SUBRECIPIENT shall comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (Housing and Urban Development regulations concerning Community Development Block Grants-CDBG). The SUBRECIPIENT also shall comply with all other applicable Federal, state and local laws, regulations and policies governing the funds available under this Agreement. The SUBRECIPIENT shall utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

##### **B. Independent Contractor**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall at all times remain as "independent contractor" with respect to the services performed under this Agreement. Unless otherwise noted in the contract scope and budget as described herein and attached hereto as Appendices A and B, the CITY shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the SUBRECIPIENT is an independent contractor.

##### **C. Hold Harmless**

The SUBRECIPIENT shall hold harmless, defend and indemnify the CITY from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the SUBRECIPIENT's performance or non-performance of the services or subject matter called for in this Agreement.

##### **D. Workers' Compensation**

The SUBRECIPIENT shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

##### **E. Insurance and Bonding**

The SUBRECIPIENT shall carry sufficient insurance coverage in an amount satisfactory to CITY and as required to protect Agreement assets from loss due to theft, fraud, and/or undue personal injury or property. Comprehensive General Liability insurance shall be obtained (Limits: \$1,000,000/\$2,000,000 (per occurrence/annual aggregate)). Where applicable Comprehensive Automobile Liability coverage shall be obtained, including all owned Automobiles; Non-Owned Automobiles; Hired Car Coverage (limits: \$500,000/\$1,000,000 (per occurrence/annual aggregate)). On all policies, the City of Springfield shall be listed as Additional Insured there shall be a stipulations that insurance provided shall not terminate, lapse or otherwise expire, prior to thirty (30) days written notice to that effect, given by the insurance carrier to the City, and that the insurance carrier will not

invoke the defense of performance of governmental function of the provider in performing their contract with the City.

A certification acknowledging said insurance shall be attached to this agreement hereto as Appendix F.

**F. Acknowledgement of Funding Sources**

SUBRECIPIENT shall credit the CITY, (acting by and through, the Office of Community Development) and the Community Development Block Grant Program on all printed material that SUBRECIPIENT produces that discussed, describes, educates or otherwise informs the public about the program for which funding under this Sub-Recipient Agreement has been provided. All reports, maps, brochures, web publications, and other documents and marketing materials completed as a part of this Agreement, other than documents exclusively for internal use within the City, shall carry a notation on the front cover or a title page containing the following:

**City of Springfield Office of Community Development**

The preparation of this (report, brochure, map, etc.) was aided through Federal financial assistance from the Department of Housing & Urban Development under the provisions of Title I of the Housing & Community Development Act of 1974 as amended.

Likewise, SUBRECIPIENT shall assign credit to the CITY and the Community Development Block Grant Program in any representation to the media and/or the press when addressing information as to the program for which funding under this Subrecipient Agreement has been provided.

**G. Amendments**

The CITY or SUBRECIPIENT may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing and signed by all parties to this agreement in accordance with Article I(D)(2). Such amendments shall not invalidate this Agreement nor relieve or release the CITY or SUBRECIPIENT from it obligations under this Agreement.

The CITY reserves the right to propose amendments to this Agreement to conform with Federal, state or local government guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services or schedule of the activities to be undertaken as part of this Agreement, such modifications shall be incorporated only by written amendment signed by all parties to this agreement.

Where an authorized amendment includes a change to the SUBRECIPIENT's compensation, the revised compensation figures shall be incorporated in any written amendments to Appendix A (Scope of Services) and Appendix B (Budget). In the event such change orders or work amendments increase the total amount of compensation to be paid SUBRECIPIENT, the amendment shall only be valid when signed by all parties to this agreement.

**V. Suspension or Termination**

A. **Suspension or Termination for Cause.** In accordance with 24 CFR 85.43, the CITY may suspend or terminate this Agreement if the SUBRECIPIENT materially fails to comply with any terms of this Agreement, which includes, but are not limited to, the following:

1. Failure to comply with any of the rules, regulations, or provisions referred to herein, or such statutes, regulations, executive orders and HUD guidelines, policies or directives as may become available at any time;
2. Failure for any reason of the SUBRECIPIENT to fulfill in a timely and proper manner its obligations under this Agreement.
3. Ineffective or improper use of funds provided under this Agreement
4. Submission by the SUBRECIPIENT to the CITY reports that are incorrect or incomplete in any material respect.

The CITY shall have the immediate right to suspend or terminate this Agreement, in whole or in part, for failure to comply with any of its terms by giving written notice to the SUBRECIPIENT at its address, which the parties agree is as state in Part I, Page 1. Such notice of suspension or termination shall be forwarded to the SUBRECIPIENT and shall specify the cause, period of suspension or effective date of termination that in no case shall be sooner than the date of receipt of said notice.

B. **Suspension or Termination for Convenience.** In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the CITY or the SUBRECIPIENT, in whole or in part, by setting forth the reasons for such termination, the effective date provided the effective date is at least thirty (30) days before the effective date of such termination, and in the case of a partial termination, the portion to be terminated. However, if in the case of a partial termination, the CITY determines the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety pursuant to 24 CFR 85.43 or 24CFR 85.44.

C. **Disposition of Program Funds Upon Termination.** If the CITY terminates this Agreement for cause, SUBRECIPIENT shall, at the CITY's sole discretion, immediately transfer to the CITY all unexpended funds and, on the 15<sup>th</sup> of the month following each calendar quarter, all program income received during the previous calendar quarter; additionally, the CITY may require that promissory notes and security interests for all loans made through the program be assigned to the CITY, along with any property used as security for the loan if such property was obtained by SUBRECIPIENT as a result of a loan default. If the CITY or the SUBRECIPIENT terminates this agreement for convenience, the SUBRECIPIENT may retain and use program income as provided in Section II(A)(5) herein, subject to all relevant terms of this Agreement, which shall survive the termination..

## **VI. Reversion of Assets**

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

1. The SURECIPIENT shall transfer to the CITY any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of termination, in accordance with the provisions of Section except as provided in Section V(C) above.
2. Real Property under the SUBRECIPIENT's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until 5 years after expiration of this Agreement. If the subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the CITY an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the CITY. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
3. In all cases in which equipment is acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needs by the SUBRECIPIENT for activities under this Agreement shall be (a) transferred to the CITY for the CDBG program or (b) retained after compensating the CITY an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

## **VII. ADMINISTRATIVE REQUIREMENTS**

### **A. Uniform Administrative Requirements and Cost Principles**

**[1]** The SUBRECIPIENT shall comply with the following additional requirements and standards:

For governmental subrecipients, including public agencies:

- OMB Circular A-87, "Cost Principles for State and Local Governments."
- 24 CFR Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," as modified by 24 CFR 570.502(a).
- OMB Circular A-133, "Audits of State, Local Governments and Non-Profit Organizations."

**[2]** For non-governmental subrecipients, including nonprofit and for-profit CBDOS, if so determined by the CITY:

- OMB Circular A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular A-21 "Cost Principles for Educational Institutions," as applicable.
- 24 CFR Part 84 "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," as modified by 24 CFR 570.502(B)

- OMB Circular A-133, "Audits of States, Local government and Non-Profit Organizations."

## B. Financial Management

- [1] **Accounting Standards** - The SUBRECIPIENT shall comply with OMB Circular A-110 and shall adhere to the accounting principles and procedures required therein, utilize adequate internal controls and maintain necessary source documentation for all costs incurred.
- [2] **Cost Principles** - The SUBRECIPIENT shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions" as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

SUBRECIPIENTS who are governmental and quasi-governmental agencies shall comply with the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87.

## C. Documentation and Record-Keeping

- [1] **Records to be Maintained** - The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR Part 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include, but not be limited to:
- [a] Records providing a full description of each activity undertaken;
  - [b] Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
  - [c] Records required to determine the eligibility of activities;
  - [d] Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance.
  - [e] Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
  - [f] Financial records as required by 25 CFR Part 570.502 and OMB Circular A-110; and,
  - [g] Other records necessary to document compliance with Subsection K of 24 CFR 570.
- [2] **Retention** - The SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of seven (7) years after SUBRECIPIENT received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the seven (7) year period, then such records shall be retained until completion of the actions and resolution of all issues, or the expiration of the seven (7) year period, whichever occurs later.

[3] **Disclosure** - The SUBRECIPIENT understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the CITY's or SUBRECIPIENT's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

[4] **Audits and Inspections**

[a] The SUBRECIPIENT shall, as applicable, have its financial records audited and financial reports prepared and attested to by a Certified Public Accountant in accordance with current CITY policy concerning SUBRECIPIENT audits and OMB Circular A-133, which requires that all nonprofit organizations that expend in excess of \$500,000 in Federal funds during their fiscal year, shall submit an audited financial statement. Furthermore, SUBRECIPIENT shall comply with all applicable sections of OMB Circular A-133, including the requirement that the SUBRECIPIENT provide the CITY with all financial and management audit letters with attached concerns and findings within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a longer period is agreed to in advance by the Federal agency that provided the funding or a different period is specified in a program-specific audit guide. The CITY reserves the right to request a single or program-specified audit regardless of the Federal funding amount at the cost of the SUBRECIPIENT.

[b] The CITY, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any records, agreements, invoices, materials, payrolls, personnel records, books, documents, papers, financial records or computer data maintained, kept, or used by SUBRECIPIENT which are related to this Agreement, for the purpose of making copies, audits, examinations, excerpts, and transcriptions. Such inspections may be made during normal business hours, and as often as the aforementioned governmental agencies deem necessary.

[c] Failure of the SUBRECIPIENT to comply with the audit and/or inspection requirements herein shall constitute a violation of this Agreement and may result in the withholding of future payments.

**D. Procurement**

[1] **Compliance.** For all procurement conducted by SUBRECIPIENT under this Agreement, the SUBRECIPIENT shall comply with all current state, federal and local laws governing procurement, including but not limited to goods and services, architectural services and construction. SUBRECIPIENT shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets procured with funds provided herein (unexpended program income, property, equipment, etc.) shall revert to the CITY upon termination of this agreement.

- [2] **OMB Standards.** The SUBRECIPIENT shall procure all materials, property, or services in accordance with the requirements of OMB Circular A-110 (revised 11/19/93, and as further amended 9/30/99).
- [3] **Travel.** Only mileage associated with travel within the City of Springfield shall be reimbursed pursuant to this contract as detailed hereto and herein as part of Appendix C.
- [4] **Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms**
  - [a] It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps shall be taken to assure that small minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
    - [i] Including qualified small and minority businesses on solicitation lists.
    - [ii] Assuring that small and minority businesses are solicited whenever they are potential sources.
    - [iii] When economically feasible, dividing total requirements into smaller tasks or quantities as to permit maximum small and minority business participation.
    - [iv] Where the requirement permits, establishing delivery schedules which shall encourage participation by small and minority businesses.
    - [v] Using the services and assistance of the Small Business Administration, the Office of Minority Enterprise of the Department of Commerce and the Community Services Administration as required.
    - [vi] If any subcontractor are to be let, requiring the prime contractor to take the affirmative steps [i] through [v] above.
  - [b] SUBRECIPIENTS shall take affirmative action steps as detailed in part [a] above in support of women's business enterprises.
- [5] **Procurement Procedures**
  - [a] **Small Purchase.** The SUBRECIPIENT shall not procure any single provider of services for an amount exceeding \$10,000.00 during the Initial Period of Performance; therefore, all procurement will be considered "small purchases" in terms of federal procurement requirements. In procuring services (such as for legal work or technical assistance), for each instance of a small purchase, price or rate quotations shall be obtained from at least three (3) qualified sources. The SUBRECIPIENT shall retain documentation of the quotations.
  - [b] **Noncompetitive negotiation.** Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined in-adequate. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- [i] The item is available only from a single source;
- [ii] Public exigency or emergency when the urgency for the requirement will not permit a delay incident to noncompetitive negotiation; or
- [iii] The City authorizes noncompetitive negotiation; or
- [iv] After solicitation of a number of sources, competition is determined inadequate.

[6] **Procurement Records.** The SUBRECIPIENT shall maintain records sufficient to detail the significant history of procurement. These records shall include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

[7] **Debarred or Ineligible Contractors.** Described herein and attached hereto as Attachment IV is a certification from the SUBRECIPIENT stating that neither the SUBRECIPIENT nor any subcontractor secured by the SUBRECIPIENT has been debarred, suspended or determined ineligible to engage in the activity necessary to perform the services of this contract.

#### VIII. Other Program Requirements

- A. The Operating Agency shall carry out the activities funded through this Agreement in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the subrecipient does not assume the Department's environmental responsibilities or the responsibility for initiative the environmental review process under 24 CFR Part 52.
- B. The SUBRECIPIENT shall comply with applicable state statutes, CITY ordinances, resolutions and policies concerning the displacement of persons from their residences.
- C. SUBRECIPIENT shall insert the provisions of this Paragraph in any subcontract arising from this Agreement.

#### IX. PERSONNEL AND PARTICIPANT CONDITIONS

##### A. **Civil Rights**

[1] **Compliance** - The SUBRECIPIENT shall comply with all CITY and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 108 9of Title I of the Housing & Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities At of 1990, the Age Discrimination Act of 1975, Executive Orders 11063, 11628, 12432, 12892 and with Executive Order 11246 as amended by Executive Orders 11375, 11478, 12086 and 12107.

[2] **Non-Discrimination** - The SUBRECIPIENT shall comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

[3] **Land Covenants** - This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 602. In regard to the sale lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the SUBRECIPIENT shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the CITY and the United States are beneficiaries of and entitled to enforce such covenants. The SUBRECIPIENT, in undertaking its obligation to carry out the program assisted hereunder, shall take such measures as are necessary to enforce such covenants, and will not itself so discriminate.

[4] **Section 504** - The SUBRECIPIENT shall comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) that prohibits discrimination against individuals with handicaps in any Federally assisted program.

**B. Affirmative Action**

[1] The SUBRECIPIENT shall be committed to carry out pursuant to the CITY's specifications and Affirmative Action program in keeping with the President's Executive Order 11246 of September 24, 1966.

[2] **Women- and Minority-Owned Businesses (W/MBE)** - The SUBRECIPIENT shall use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian Americans and American Indians.

The SUBRECIPIENT may submit a Massachusetts State Office of Minority and Women Owned Business Assistance (SOMWBA) certification regarding their status as minority and female business enterprises in lieu of an independent investigation.

Should a subcontract be entered into pursuant to this agreement, the SUBRECIPIENT shall provide a written report documenting the W/MBE status of said subcontractors.

[3] **Access to Records** - The SUBRECIPIENT shall furnish and cause each of its subrecipients or subcontractors to furnish all information and reports required hereunder and shall permit access to its books, records and accounts by the CITY, the United States Department of Housing & Urban Development or its agents, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

- [4] **Notifications** – The SUBRECIPIENT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- [5] **EEO/AA Statement** - The SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer. Pursuant to the requirements of 24 CFR 107.21, the SUBRECIPIENT shall take affirmative action to prevent discriminatory practices and shall take all action necessary and proper to prevent discrimination on the basis of age, race, color, religion, sex, physical handicap or national origin.
- [6] **Sub-Agreement Provisions** - The SUBRECIPIENT shall include the provisions of Section VIII (A) Civil Rights, and (B) Affirmative Action, in every subcontract or purchase order, specifically or by reference so that such provisions shall be binding upon each of its own subrecipients or subcontractors.

**C. Employment Conditions & Restrictions**

- [1] **Prohibited Activities** - The SUBRECIPIENT is prohibited, as is personnel employed by the SUBRECIPIENT in the administration of the program, from using funds provided herein for political activities, sectarian or religious activities, lobbying, political patronage and nepotism activities.
- [2] **Labor Standards**
  - [a] The SUBRECIPIENT shall comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Agreement Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 327 and 40 U.S.C. 276c) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The SUBRECIPIENT shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the CITY for review upon request.
  - [b] The SUBRECIPIENT shall except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under Agreements in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the CITY pertaining to such Agreements and with the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 1,3,5 and 7 governing the payment of wages and ratio of apprentices and trainees to journeyman workers; provided, that it wage rates higher than those required under the regulations are imposed by state or local law, nothing here under is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT shall cause or require to be inserted in full in

all such Agreements subject to such regulations, provisions meeting the requirements of this paragraph.

- [c] The SUBRECIPIENT represents and assures the CITY that it has or shall secure at its own expense all personnel required for the performance of all services under this Agreement. Such personnel or any persons receiving compensation from SUBRECIPIENT as a result of this Agreement shall not be employees nor former employees of the CITY who have resigned or terminated their employment within one year, nor shall such employees have any relationship contractual or otherwise with the CITY except for non-confidential secretarial employees, unless specified waivers are granted by the CITY's Mayor in writing. SUBRECIPIENT's personnel shall not be considered as employees of the CITY, and that it shall indemnify and save harmless the CITY from any claims, demands or actions brought by any of said employees against the CITY, and pay any judgments resulting from any such claims, demands or suits against CITY if related to the performance of this Agreement, or by reason of sickness, accident or illness, or for any other cause.

[3] **"Section 3" Clause**

- [a] **Compliance** - Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department issued there under prior to the execution of the Agreement, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or Agreement through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135. The SUBRECIPIENT certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

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

"The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area [City of Springfield, MA] and Agreements for work in connection with the project be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area [City of Springfield, MA] in which the project is located."

The SUBRECIPIENT shall ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low and very low income persons residing within the metropolitan

area [City of Springfield, MA] in which the project is located, and to low and very low income participants in other HUD programs; and award Agreements for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low and very low income persons residing within the metropolitan area [City of Springfield, MA] in which the CDBG funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low and very low income residents within the service area or the neighborhood in which the project is located, and to low and very low income participants in other HUD programs.

The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with this requirements.

**[b] Notification** - The SUBRECIPIENT shall to send to each labor organization or representative of workers with which its has a collective bargaining agreement or other Agreement or under-standing, if any, a notice advising said labor organization or worker's representative of its commitment under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

**[c] SubAgreements** - The SUBRECIPIENT shall include this Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that that the subcontractor is in violation of regulations issued by the CITY. The SUBRECIPIENT shall not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and shall not let any subcontractor unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### **D. Conduct**

**[1] Assignability** - The SUBRECIPIENT shall not assign or transfer any interest in this Agreement without the prior written consent of the CITY thereto; provided, however, that claims for money due or to become due to the SUBRECIPIENT from the CITY under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the CITY.

#### **[2] SubAgreements**

**[a] Approvals** - The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in performance of this Agreement without the written consent of the CITY prior to the execution of such agreement.

**[b] SubAgreement Monitoring** - The SUBRECIPIENT shall monitor all subcontracted services on a regular basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in written, quarterly reports the form for which shall be

provided by the CITY, and supported with documented evidence of follow-up actions taken to correct areas of non-compliance.

- [c] **Content** - The SUBRECIPIENT shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.
- [d] **Selection Process** – In accordance with Section VI(D) “Procurement”, the SUBRECIPIENT shall ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the CITY along with documentation concerning the selection process.
- [3] **Hatch Act** - No funds provided, nor personnel employed under this Agreement shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.
- [4] **Conflict of Interest** –
  - [a] The SUBRECIPIENT shall maintain a standard of conduct that complies with MGLc268A, as amended. Said standard of conduct shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the SUBRECIPIENT shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
    1. The employee, officer or agency;
    2. Any of his/her immediate family;
    3. His or her partner; or
    4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
  - [b] The SUBRECIPIENT's officers, employees, or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, or parties to subagreements.
  - [c] To the extent permitted by State and local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the SUBRECIPIENT's officers, employees, or agents, or by contractors of their agents.
  - [d] The SUBRECIPIENT and its individual board members agree to abide by the provisions of 24 CFR 84.42 and 570.611 with respect to conflict of interest and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The SUBRECIPIENT further covenants that in the performance of this Agreement no persons having such a

financial interest shall be employed or retained by the SUBRECIPIENT hereunder. Furthermore, no officer, member or employee of the CITY and no members of its governing body, and no other public official of the governing body of the locality or localities in which the project is situated or being carried out who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project during their tenure in office and for one year thereafter, shall participate in any decision relating to this Agreement which affects their personal interest or the interest of any corporation, partnership, or association in which they may be, directly or indirectly interested, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof nor shall any members of Congress of the United States of America or members of any board, agency, commission, legislative assembly, or other officers of any political subdivision of the United States of America or of the Commonwealth of Massachusetts, during their tenure in office and for one year thereafter, be admitted to any share or part heretofore to any benefit to arise here from.

- [e] The SUBRECIPIENT and its individual board members shall not negotiate, seek or request or in any way solicit or accept any quid pro quo contribution, including in kind contributions, grants, gifts, aid, donations, assistance, or any kind of compensation in exchange for their endorsement, sanctioning or silence about issues presently pending before a Neighborhood Council, the City Council, any board, commission or other office of the City, state or federal government.
- [f] The SUBRECIPIENT and its individual board members shall disclose in writing to the Director of Community Development any interest in any project for which they are offering comment as part of a deliberative process of a Neighborhood Council, the City Council, any board, commission or other office of the City, state or federal government—no matter the basis of the interest—prior to offering official comment on the same.
- [g] The SUBRECIPIENT shall distribute copies of this conflict of interest subsection to all board members.
- [h] Nothing contained herein shall be deemed to prevent residents of the neighborhoods served by Community Development Block Grant activities, who are otherwise eligible to receive any benefits which may arise as the result of said activities, or of work created as a result of this Agreement by reason of such resident being either an elected or appointed member of a community board or a member of any other nonprofit organization that may have some responsibilities under this Agreement; provided, however, that the provisions of Chapter 268A, the Conflict of Interest Law of the Commonwealth of Massachusetts, is preserved.
- [5] **Lobbying** - The SUBRECIPIENT hereby certifies that:
  - [a] No Federal appropriate funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, an employee or officer of the CITY nor member of the CITY's governing body, 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 Agreement, the making of any Federal grant, of any Federal loan, the entering into of any cooperative agreement, nor any extension, renewal, amendment, or modification of any Federal Agreement, grant, loan or cooperative agreement;

- [b] 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, an employee or officer of the CITY nor member of the CITY's governing body, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan or cooperative agreement, it will complete and submit Standard Form LLL "Disclosure Form to Report Lobbying," in accordance with its instructions;
- [c] It shall require that the language of paragraph [d] of this certification be included in the award documents for all sub-awards at all tiers (including subcontractors, subgrants, and Agreements under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- [d] Lobbying Certification. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1326, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- [e] Any attempt by any officer, employee or agent of the CITY in soliciting or accepting gratuities, favors or anything of monetary value from SUBRECIPIENT shall be reported in writing immediately to responsible officials of the CITY. Such reports to CITY shall contain the name of the CITY officer, agent or employee and the detailed circumstances of the incident.

[6] **Copyright** - If this Agreement results in any copyrightable or patentable material or inventions, the CITY reserves the right to royalty-free non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work materials for government purposes.

[7] **Religious Organization** - Funds provided under this Agreement shall not be utilized by the SUBRECIPIENT for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).

#### X. ENVIRONMENTAL CONDITIONS

SUBRECIPIENT shall comply with environmental conditions described in this section, Acts, and all applicable standards, orders or regulations issued thereunder. Furthermore,

SUBRECIPIENT agrees to insert the provisions of this section in any subcontract arising from this Agreement.

**A. Air and Water**

The SUBRECIPIENT shall comply with the following requirements insofar as they apply to the performance of this Agreement: Clean Air Act of 1970 (42 U.S.C. 1857 at seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq. as amended, 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder), and Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the SUBRECIPIENT shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

Any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 507.608 and 24 CFR Part 35. Such regulations pertain to all HUD-assisted housing and require that owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

**D. Historic Preservation**

The SUBRECIPIENT shall comply with the Historic Preservation requirements set forth in the National Preservation Act of 1966, as amended (16 U.S.C. 470), P.L.89-665, the Archaeological and Historic Preservation Act of 1974, P.L. 93-291, Executive Order 11593 and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement, thereby eliminating or minimizing any adverse effect on any district, site, building, structure or object listed on or nominated for, listing on the National Register of Historic Places, maintained by the National Park Service.

**XI. SEVERABILITY**

If any provision of this Agreement is held invalid, remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

**XII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

**XIII. WAIVER**

The CITY's failure to act with respect to a breach by the SUBRECIPIENT does not waive its right to act with respect to subsequent or similar breached. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**XIII. VENUE AND EXCLUSIVE FORUM**

The parties hereto expressly agree that the sole and exclusive place, status and forum of this Agreement shall be the City of Springfield, Hampden County, Massachusetts. It is the express intention of the parties to this Agreement that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this Agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within the City of Springfield, Hampden County, Massachusetts, in either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court sitting in Springfield, Massachusetts.

**XIV. OTHER TERMS AND REQUIRMENTS IN APPENDICES**

The following appendices to this agreement are incorporated herein by reference.

- A. Scope of Services
- B. Budget
- C. Policies and Procedures
- D. Corporate Certification
- E. Board Authorization to Execute Contract
- F. Insurance Certificate
- G. Internal Control Questionnaire
- H. Debarment Certificate on Letterhead
- I. Conflict of Interest Statement on Letterhead
- J. Notarized Tax Certification Form

**XV. ENTIRE AGREEMENT**

The parties hereto agree that the entire Agreement of the Parties is contained herein and that this agreement supersedes all oral agreements and negotiation between the parties relating to the subject matter thereto.

**XVI. SIGNATURES**

SUBRECIPIENT shall, by virtue of an executed vote of corporate authorization placed on file with the CITY's Project Officer prior to the execution of this Agreement, designate its authorized representative. The execution of this Agreement by SUBRECIPIENT shall be deemed as evidence that the authorized representative has full power to bind the SUBRECIPIENT for any act performed having a relationship to this Agreement, and that such act or acts of the authorized representative are not limited by SUBRECIPIENT's charter and are authorized by SUBRECIPIENT's principals or charter.

IN WITNESS WHEREOF, the CITY and the SUBRECIPIENT have signed and sealed this Agreement as of the date first above written, the City of Springfield, Commonwealth of Massachusetts.

**SUBRECIPIENT**

By: Christopher Sikes  
Christopher Sikes

Its: ~~8/14/14~~ CEO

**CITY OF SPRINGFIELD**

By: Kevin E. Kennedy  
Kevin E. Kennedy  
Director of Community Development

WU #26401817-530105-64014 \$500,000.00  
Approved as to Appropriation:

James D. Pura 10/22/14  
Comptroller

Approved as to Form:

Paul F. Ferrel  
Law Department

APPROVED:

Domenic J. Sarno  
Domenic J. Sarno  
Mayor  
Date  
Signed: 10/24/14

## **Part II: Appendices**

- A. Scope of Services
- B. Budget
- C. Policies and Procedures
- D. Corporate Certification
- E. Board Authorization to Execute Contract
- F. Insurance Certificate
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- I. Conflict of Interest Statement on Letterhead
- J. Notarized Tax Certification Form

## **APPENDIX A – SCOPE OF SERVICES**

### **1. Services to be provided by SUBRECIPIENT**

In accordance with the terms of this agreement, the Term Sheet for Loans (Exhibit 1), the Program Budget (Appendix B), and the Program's Policies and Procedures (Appendix C), SUBRECIPIENT shall:

- A. Actively market the Loan Program to potentially qualified businesses.
- B. Take applications for loans, underwrite the loan applications, and determine eligibility of applicants for receiving loans of certain amounts, while making full disclosures of all City and federal government requirements arising from the Agreement.
- C. Close the loans with promissory notes and applicable security instruments that include all requirements for borrowers that arise from this Agreement; such loans will be the property of SUBRECIPIENT, subject to the terms of this Agreement. The goal is to close a minimum of 10 loans.
- D. Collect loan payments and conduct all other loan servicing functions.
- E. Manage and account for all financial transactions within the program, draws of CDBG-DR funds, and receipt/use of Program Income as described in the Agreement.
- F. Perform all usual and customary asset management functions related to the program, including but not limited to portfolio monitoring, management of loan delinquencies/defaults, and management of assets received as a result of loan defaults.

To the extent that the SUBRECIPIENT's standard Policies and Procedures for business lending (Appendix C) conflict with this Agreement or the Term Sheet for Loans (this Appendix, Exhibit 1), the provisions of this Agreement and the Term Sheet shall prevail.

### **2. Meeting CDBG National Objectives**

The Program will meet the following CDBG national objective: area benefit to low- and moderate income persons in the Disaster Recovery Area, as a result of the economic development activity resulting from the loans made and any resulting redevelopment of areas where properties were destroyed and demolished.

OR

The Program will meet the following CDBG national objective: meeting urgent community development needs for redevelopment as a result of the economic

development activity resulting from the loans made and any resulting redevelopment of areas adversely affected physically and economically by the disaster.

### 3. Program Delivery Schedule

SUBRECIPIENT shall deliver the services in accordance with the following estimate of the timeframes of delivery. All loan funds described in the Project Budget (Appendix B) shall be expended by \_\_\_DATE\_\_\_.

Month	Phase	Goals for numbers of applications	Goals for numbers of loans closed
June 2014	Start-up, marketing materials created in first 2 weeks; marketing begins	0	0
July 2014	Outreach, marketing, technical assistance, lending	2	0
Aug. 2014	Outreach, marketing, technical assistance, lending	2	0
Sept. 2014	Outreach, marketing, technical assistance, lending	2	1
Oct. 2014	Outreach, marketing, technical assistance, lending	2	1
Nov. 2014	Outreach, marketing, technical assistance, lending	2	1
Dec. 2014	Outreach, marketing, technical assistance, lending	2	1
Jan. 2015	Outreach, marketing, technical assistance, lending	2	1
Feb. 2015	Technical assistance, lending	2	1
Mar. 2015	Technical assistance, lending	0	2
April 2015	Technical assistance, lending	0	2
May 2015	Technical assistance, lending	0	0

**Appendix A, Exhibit 1 Common Capital/City of Springfield  
Term Sheet for Loans Made  
Through the Business Recovery Revolving Loan Program**

<b>Purpose of Funds</b>	<p>Subject to limitations on the source of funding, loan funds can be used for:</p> <ul style="list-style-type: none"> <li>• Working capital</li> <li>• Accounts receivable and inventory financing</li> <li>• New or used equipment purchase or improvements to existing equipment</li> <li>• Purchase of real estate if related to the business activity or related to a specific development project<sup>1</sup></li> <li>• Building renovation or expansion to benefit operating business, leasehold improvements<sup>2</sup></li> <li>• Purchase of an existing business<sup>3</sup> and/or</li> <li>• Start-up costs of a new business<sup>4</sup></li> </ul> <p>Activities funded must meet one of more of the Community Development Block Grant (CDBG) “national objectives” for jobs or services benefiting low-moderate income people or urgent need in accordance with CDBG regulations.</p>
<b>Geographic Area</b>	Loans can be made only to businesses located within the Disaster Recovery Districts of Springfield that were disaster impacted (see map attached)
<b>Eligible Applicants</b>	Small businesses, nonprofits
<b>Loan Type</b>	Term Loans up to 10 years (120 months) and Lines of Credit are available
<b>Loan Amount</b>	Term Loans up to \$200K, Lines of Credit up to \$50K
<b>Term / Repayment</b>	Term Loan can offer an initial interest only period up to 6 months. Balloon Payments at maturity if appropriate. Lines of Credit can have a multi-year term with an annual renewal option.
<b>Interest Rate / Fees</b>	Interest rate will be fixed at 2% for the term of the loan 1% fee at loan closing (can be waived)
<b>Prepayment Penalty</b>	No pre-payment penalty
<b>Collateral</b>	UCC filing on all business assets and/or specific equipment purchased. Personal assets may need to be pledged depending upon collateral value.
<b>Guarantors</b>	Personal Guarantee for all 20% or more corporate owners.
<b>Underwriting Criteria</b>	Existing business or start-up with sufficient cash flow to service debt

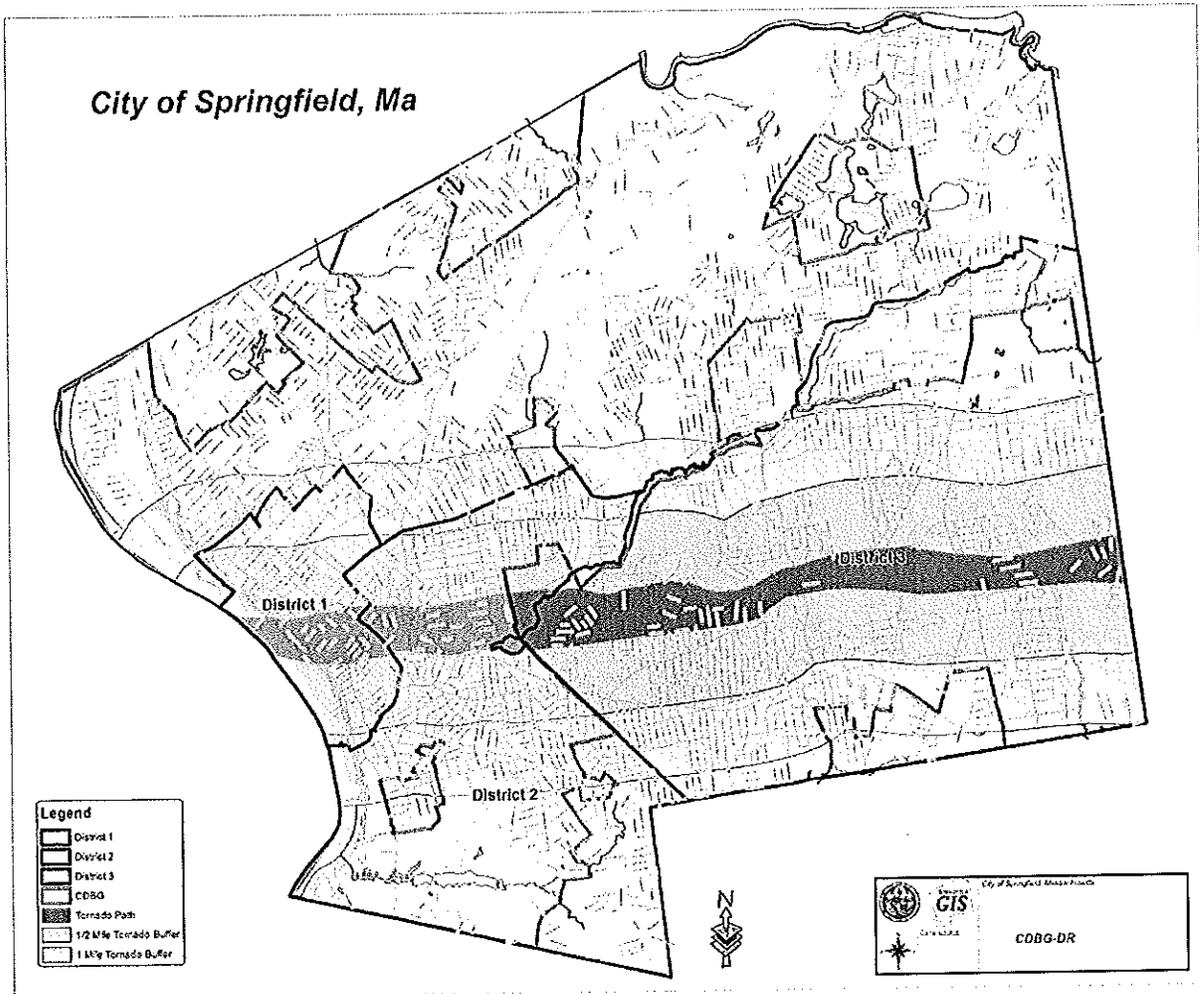
<sup>1</sup> Purchases of real estate are subject to a federally-compliant Environmental Review

<sup>2</sup> Construction work in excess of \$2000 is subject to paying federal wage rates and related reporting

<sup>3</sup> See footnote #1

<sup>4</sup> See footnote #1

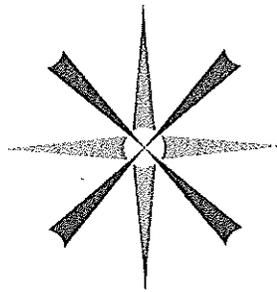
# Map of Federally-Designed Disaster Recovery Districts 1, 2 and 3 In Springfield, Massachusetts



**APPENDIX B: BUDGET**

<b>Budget Item</b>	<b>Amount</b>
<i>Salaries of Common Capital personnel</i>	<b>\$31,600</b>
<i>Fringe benefits at 22%</i>	<b>\$6,900</b>
<b>PERSONNEL TOTAL</b>	<b>\$38,500</b>
<b>SUBCONTRACTOR – TECHNICAL ASSISTANCE</b>	<b>\$10,000</b>
<b>PROFESSIONAL FEES/RECORDING COSTS</b>	<b>\$10,000</b>
<b>LOANS</b>	<b>\$441,500</b>
<b>TOTAL BUDGET</b>	<b>\$500,000</b>

# APPENDIX C: POLICIES AND PROCEDURES



## **Common Capital**

LOCAL INVESTMENT ■ SHARED FUTURE

### Loan Policy Manual

Version 2.1  
Revised January, 2014

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## INTRODUCTION

This Loan Policy Manual is an internal Common Capital document and is intended to provide guidance to the staff, Committee members and Board members of Common Capital relative to Common Capital's lending parameters. It is subject to change and revision as lending needs and requirements may change, as economic and industry factors may dictate, and as the organization itself may change over time. Relevant sections may be distributed, as appropriate, to other persons and organizations, including prospective customers, funders, lenders and business partners. Except as determined by authorized personnel, the information contained in this Common Capital document is deemed confidential and proprietary.

Common Capital may consider loan requests or programs that are outside the Policy guidelines described in this manual in response to identified needs in the community, opportunities presented to Common Capital which enhance its financial viability and are in concert with its mission, and specific financing requests which have a very high mission component but may have an unconventional structure. Such a loan request or program will be presented to the Common Capital Loan Committee and may then be submitted for approval or ratification by the Common Capital Board, as appropriate given the magnitude of the request and the divergence from established Common Capital loan parameters.

# CHAPTER I

## MISSION AND ACTIVITY DESCRIPTION

### SECTION 1: STATEMENT OF MISSION AND VALUES

#### **Statement of Mission**

Common Capital, Inc. is a private nonprofit Community Development Financial Institution working to strengthen communities by creating economic opportunities for low- and moderate-income people in western Massachusetts.

#### **Statement of Values**

Common Capital supports for-profit, cooperative and nonprofit businesses in western Massachusetts that are unable to obtain necessary financing from conventional lenders. Common Capital identifies several values, which define and are reflected in its work.

### SECTION 2: ECONOMIC IMPACT

Common Capital makes loans to businesses that have an impact on the community. Loans are intended to have a direct positive impact, which may include any or all of the following:

- **Employment:**
  - Create or sustain employment, including self-employment
  - Provide jobs for low skill workers, provide career development opportunities, increase income potential, and/or improve access to benefits
  - Jobs may be skilled and higher paying but may be part of an industry cluster or specialization which can generate additional economic value locally
  - May increase self sufficiency and income level for owner(s)
  - Effective use of debt will enhance personal credit score, improving borrower's access to capital and potentially lowering other personal and business costs (e.g. insurance)
- **Local Economy:**
  - Business provides and/or utilizes local goods and services
  - Business is locally owned
  - Business can be a catalyst for other businesses to move into the area or may be an anchor business within a community
  - Business reinvests into the community and is active civic participant
- **Community Services:**
  - Business provides a needed good or service directly or provides access to needed goods or services in an underserved area
  - Business provides development and/or project management services (e.g. low income housing projects)
  - Business product or service is part of a larger network which creates a stronger localized economy (e.g., sustainable agriculture)
- **Environment:**
  - Business will increase local economic vitality by occupying a vacant storefront or building, or otherwise reducing blight
  - Business provides an environmentally beneficial good or service
  - Business is making improvements which improve its energy efficiency
  - Business will improve an environmentally challenged property such as a brownfield

### **SECTION 3: FINANCING ACTIVITY**

Common Capital provides a variety of loan products and structures to create direct business financial support to the following types of legal entities:

- Sole proprietors
- For-profit businesses
- Cooperatives
- Nonprofit organizations

### **SECTION 4: TECHNICAL ASSISTANCE**

Common Capital recognizes that business success is dependent on access to financial and business resources as well as adequate capital. Therefore, Common Capital actively works with its applicants and borrowers to provide access to qualified technical assistance (TA). Common Capital may provide TA directly with its staff, through individual business consultants who have specialized knowledge, and through other organizations which provide direct support and/or classroom training.

Common Capital also recognizes that having stronger business partnerships can increase the availability of quality TA. Common Capital works closely with other organizations to help them identify TA needs for their target members or niche, and to help them create or improve the TA services provided. A wide range of services may be needed to provide adequate support to individuals, to members of a specialized industry or to a neighborhood or community. Enabling organizations in developing and providing quality services strengthens the entire TA provider network and strengthens the community resources.

Common Capital will always make an effort to provide the business with several TA options and will make every effort to tailor the TA to the business' needs and circumstances. Common Capital may subsidize the cost of TA in whole or in part, at its discretion.

## **CHAPTER II**

### **TECHNICAL ASSISTANCE**

Common Capital believes that technical assistance (TA) is a key element in the financial and business success of its borrowers. Common Capital staff work closely with borrowers to provide direct TA, and will refer borrowers to other resources which may provide more specialized support.

#### **Loan Applications:**

Common Capital staff will assist applicants, as needed, in the completion of the application form and in understanding the requirements for supporting documentation.

#### **Business Plans & Financial Projections:**

Common Capital staff can provide one on one support in the preparation of a business plan and financial spreadsheets. This involves working with the borrower and/or other support individuals in developing realistic financial projections and ongoing business reporting tools.

#### **TA Referrals:**

Common Capital staff work with many other economic development, training, and support organizations as well as with a wide range of business consultants. In cases where an applicant requires more time and support than Common Capital can provide directly in an appropriate timeframe, Common Capital staff will provide the applicant or borrower with several names of individuals or organizations which may be able to provide the support or expertise needed. Common Capital does not receive compensation from such referrals and does not contract on behalf of applicants or borrowers.

In certain cases, the services will be at no cost to the applicant or borrower.

In cases where the services require payment of funds, Common Capital may agree to pay a portion (limited to a fixed number of hours and a maximum cost) of the consulting cost. The applicant or borrower will engage such services directly, and not through Common Capital, and will elect a service provider at their own discretion.

#### **Partnering Organizations:**

Certain organizations provide ongoing services including classroom training, specific skill training, and the like. Common Capital will refer applicants or borrowers to such services upon the applicant or borrower's request, or in cases where Common Capital staff perceive a need for additional training.

In some cases, partnering organizations have a specific expertise and will work with applicants to develop the applicant's skills and resources before referring the applicant to Common Capital for financing.

#### **Translation Services:**

Common Capital may, from time to time, utilize the services of translators in cases where there is a language barrier.

# CHAPTER III

## LOAN PROGRAMS

### **SECTION 1: LOAN PRODUCTS**

Common Capital offers a variety of loan products in addition to TA in order to facilitate its economic development mission. Common Capital makes direct loans as well as partnering with other direct lenders and providing access to specialized lending resources from other institutions and organizations. Common Capital's role is to facilitate access to capital to local businesses and therefore Common Capital acts as a direct link between businesses and financial resources.

#### **Loan Products**

- **Micro Loans:** Loans made to microenterprise owners in amounts generally up to \$50,000, who typically also require extensive TA support. Micro loans may also be utilized as part of a Common Capital program which may have a broader training or specialty industry focus.
- **Small Business Loans:** Loans to small businesses and cooperatives that are typically above \$50,000 and within Common Capital's overall loan size parameters. These loans may leverage financing by other lenders and may be part of a larger financing package. Borrowers may be relatively small, unsophisticated borrowers, larger and complex organizations, specialized development projects, or cooperatives with a range of membership sizes. Specific financing and TA are tailored to the needs and requirements of the individual borrower.
- **Loans to Nonprofit organizations:** Loans may be made to nonprofit groups within Common Capital's overall loan size parameters. These loans may leverage financing by other lenders and may be part of a larger financing package. These loans may also be specific to a development project. Specific financing and TA are tailored to the needs and requirements of the individual borrower and project.

### **SECTION 2: ELIGIBLE USE OF LOAN PROCEEDS**

Loan proceeds can be for a variety of purposes which will clearly assist the borrower in sustaining, growing or otherwise increasing the viability of the business, or completing a project which supports Common Capital's mission. The financing purpose will be determined through information provided by the applicant and any other financing sources or involved parties. Typical purposes include the following:

- Working capital
- Accounts receivable and inventory financing
- Agricultural working capital or infrastructure
- New or used equipment purchase or improvements to existing equipment
- Real estate if related to the business activity or related to a specific development project
- Building renovation or expansion to benefit operating business
- Leasehold improvements
- Debt refinancing that improves cash flow and as part of defined plan which increases business viability
- Purchase of an existing business
- Start-up costs of a new business

Common Capital does not make loans:

- To businesses engaged in an illegal activity
- For personal use
- For payment of delinquent taxes
- For liens placed by third parties

- To businesses that are delinquent on government obligations or taxes and are not in a repayment plan

### **SECTION 3: ELIGIBLE BORROWERS**

Borrowers are eligible to apply for a loan from Common Capital if:

- The entity is located in Hampshire, Hampden, Franklin or Berkshire Counties in Massachusetts
- The borrower can demonstrate business or project viability with the proposed funds
- The borrower is unable to obtain sufficient financing elsewhere at reasonable terms. This may be determined through actual decline letters from other lending organizations, from the applicant's representation that he/she has been declined, or from Common Capital lending staff's general knowledge of lending practices.
- The business or project creates or sustains a community benefit
- The borrower will provide available collateral to support the loan
- The borrower can demonstrate adequate future cash flow or financing sources to repay business or project debt
- The owner has a substantial commitment to the business or project. This may mean existing business equity, commitment of personal resources, or sweat equity. In some cases where the borrower does not have personal funds or assets but the financing appears viable, will fulfill Common Capital's mission, and create financial independence for the owner, financing may be provided without financial equity.
- The business is owned by individuals whose character and skills indicate strong commitment to successfully utilize the funds and/or complete the project in order to fully repay the loan.
- Nonprofit organizations are eligible to apply if the financing supports a defined business activity, has committed funding to support full repayment, or will generate income through the project or program being funded which can support full repayment. Funding will not be provided against potential (i.e., uncommitted or contingent) revenue sources or where committed revenue sources do not extend through the term of the financing.
- At least 51% of the business is owned by individuals who are U.S. citizens and/or who have lawful permanent residency status from the United States Citizenship and Immigration Services, USCIS.

Common Capital may reject any loan application, in its sole discretion, if the nature of the business or project does not support Common Capital's mission and values.

### **SECTION 4: LOAN TERMS & CONDITIONS**

#### **A. Loan Size**

Common Capital maintains an in-house limit on its maximum loan exposure to a single borrower or project. This amount is subject to change, with approval by the Board of Directors, based on Common Capital's capital available, portfolio mix and exposure, asset quality, and other business and economic factors. Common Capital makes direct loans on both a senior and subordinate basis; may be the lead lender or a participant in a larger loan amount while maintaining its exposure within its policy guidelines; or may be a lender in a larger financing arrangement which involves multiple senior and subordinate lenders.

Currently, Common Capital's maximum exposure is \$300,000. In cases where borrower or project exposure exceeds that amount, approval is required by the Loan Committee with ratification by the Board of Directors.

The exposure size for each borrower depends on the needs of the business or project and the borrower's ability to repay the aggregate debt level. This requires that the financing be sufficient to complete the project or fulfill the business plan; that the borrower has the business skills and

resources to effectively utilize the debt; and that overall business or project viability is enhanced by the financing.

Common Capital will also incorporate its existing loan portfolio size, risk and asset composition in determining how much it can lend to a borrower or project.

## **B. Interest Rates**

Common Capital shall set interest rates for individual loans based on specific funding source requirements, Common Capital's interest rate mix parameters, Common Capital's available funding sources, and general business considerations.

For smaller loans (generally up to \$50,000) Common Capital will typically provide a fixed interest rate. The actual rate will be determined at the time based on applicable specific funding sources, such as the SBA or other programs which the applicant may qualify for, and Common Capital will look to establish the lowest cost funding source for a qualified applicant.

For larger loans (generally above \$50,000), Common Capital will typically provide a variable interest rate which will be based on a spread above the Prime rate. Variable rate loans are generally priced at 3 to 5 percentage points above the Prime rate but actual pricing will be established based on the specific application parameters. Variable rate loans will typically be repriced on a quarterly basis.

Common Capital will attempt to provide consistent interest rate parameters to comparable applicants, recognizing that actual interest rates are based on specifics relative to that loan, such as debt service coverage, loan term, collateral, and the like. The interest rates disclosed by Common Capital for illustrative purposes shall be a guideline only, with a specific rate determined as part of the loan approval process. Common Capital shall adjust its guideline periodically and at its sole discretion based on market and funding conditions at that time.

Common Capital believes itself to be a higher risk lender, providing loans to applicants who do not have access to conventional financing sources, and therefore Common Capital generally charges an interest rate which is higher than the market rate as indicated by area commercial banks. Common Capital also provides additional services, including TA and much closer account management to its borrowers, and utilizes the higher interest rate to support the cost of providing such services. If Common Capital believes that the applicant can obtain lower cost financing through other sources, it will so indicate to the applicant.

## **C. Loan and Program Terms**

Common Capital provides direct financing through lines of credit, time notes, and term loans. Specific loan terms will be based on nature of the financing need, the business circumstance and anticipated cash flow.

Common Capital also partners with other financing organizations which may provide more specialized lending products such as tax credit programs; bond financing including development bonds and SBA 504 bonds; venture capital products; factoring, and the like. In every case, Common Capital will make every effort to provide information to the applicant or borrower in order to assist them in making a constructive financing decision which will meet the financing needs of the project or organization.

Additional financial products may be developed in accordance with local economic needs. Such products may be provided directly by Common Capital or through a business partner.

**Lines of Credit:** Lines of credit are generally for working capital purposes or may finance a specific project. Lines may be established with annual renewal periods if established for ongoing use, or may be for a specific project or time period where the funds are likely to be converted into a fully amortizing term basis at the expiration or maturity date.

Renewal of a line of credit will require approval as if it were new financing. Annual renewal will typically be correlated to five months after the borrower's fiscal year end, with the renewal decision predicated on the prior year's fiscal financial performance as well as anticipated future performance. Renewal decisions will also incorporate prior line usage, with consideration given to terming out any "evergreen" amount.

Common Capital does not have the ready flexibility to support actively used lines of credit, so will typically limit the number of advances during a month, have a minimum advance amount, require a several day lead time in order to process an advance, and may require documentation as to the anticipated use of funds advanced to support the request. Common Capital's lines of credit are typically advanced at its sole discretion and are not committed facilities. Common Capital attempts to refer borrowers to other lending sources for active use working capital lines of credit.

**Time Notes:** Time notes will have a maturity date which correlates with the underlying repayment source (i.e., the contract or project duration). For most business working capital needs, time notes will not generally exceed nine months. For certain development or construction projects, the loan may be maintained on an interest only basis for a longer time period in accordance with the project. In such cases, reliance will typically be placed on permanent financing which will be committed to at the inception of the project. Common Capital will generally not issue time notes without an identified source of repayment.

**Term Loans:** Term loans will typically be fully amortizing and will have a repayment schedule which correlates with the use of funds and/or the underlying project. Term loans are typically for between 3 and 6 years but may be customized to the borrower's need and the underlying use of funds. Loans may have an initial interest only period which may be followed by a stepped-up repayment schedule prior to reaching a fully amortizing payment amount. This is intended to allow a company to utilize the loan funds and generate operating cash flow from such use which then supports the increasing debt service requirement.

For start-up companies or for financing of larger projects, term loans may be issued with a draw down period. In such cases, the loan will be on an interest only basis during the draw period, with interest based only on the funds used. The borrower will be asked to provide justification for each advance to ensure that funds are used appropriately for the project and that sufficient funds are available to complete the project. Common Capital may also require that its fundings are remitted directly to vendors both to manage the use of funds effectively and provide support to the borrower.

Certain loan programs may utilize term funding but may have a duration and repayment schedule specific to the needs and parameters of the program. In most cases, such loan programs will be established in conjunction with a training component through Common Capital or a business partner. Examples of such programs include loans to family child care providers and to beginning or small scale farmers. Additional loan programs are developed as a training component is identified, a defined group which can benefit from the program can be assembled, and financing requirements can be established with clear repayment ability.

**Balloon Payments:** Terms loans will generally not have a balloon payment at maturity, unless there is a compelling need and it appears reasonable that the borrower will either have the capacity to

refinance the debt or retire it through operating cash flow. In some restructuring cases, a balloon payment may be incorporated to keep the monthly payment at an achievable level, but with the clear goal that the borrower's financial performance will improve over time and will allow for payment of the balloon at maturity or refinancing.

**Near Equity Loans:** Common Capital may find that certain financing situations warrant a structure considered near equity. In such a case, financing may involve a term structure but may involve a royalty schedule in addition to the interest rate, have a longer amortization schedule, and may have other terms and conditions which are appropriate to the borrower and financing situation. Near equity financing will occur for higher risk borrowers which need equity type financing with a reduced initial amortization but have higher growth potential to support the ultimate debt service requirement or justify refinancing into a more conventional financing structure. Near equity loans will have a higher yield to Common Capital, based on rates, fees, royalties or other financial terms, and the repayment of such loans will be more heavily predicated on high sales growth and future performance of the business. Common Capital will review near equity financing opportunities with more extensive due diligence in accordance with the higher risk profile, and may establish a separate approval process if warranted, utilized approval committee members with expertise appropriate to the financing risk.

**Pre-Development Agriculture Loans:** Common Capital has determined that despite the increasing interest in locally produced agricultural for local consumption, the limited pre-development and development financing creates an impediment to the development of this sector. Pre-development financing may be used to support the establishment of a legal entity and appropriate regulatory approvals which are necessary to obtain in order to have a financeable project. Common Capital believes that providing early stage funding where a skilled management and ownership team can be identified and a clear needs for the additional agricultural production or infrastructure can be supported is an appropriate representation of its mission of creating a stronger local economy. Common Capital believes that capital to this niche is very limited, and the economic benefits are very high. Therefore, Common Capital may provide funding within defined parameters to meet this pre-development need.

**Other Programs:** Common Capital is regularly working with new and emerging businesses and industries within its coverage area, and therefore will develop appropriate financing programs as a need is identified.

Common Capital determines appropriate loan terms for specific borrowers based on the requirements of the business, the specific use of funds, the underlying project, and the limits of its own capital. Common Capital may develop loan repayment schedules which differ from the above, but determined to have a reasonably high likelihood of timely repayment and which match the underlying use of funds.

#### **D. Prepayment Penalty**

Common Capital provides significant support and underwriting effort to its applicants and borrowers in order to have as high an approval rate as possible while ensuring reasonably high repayment ability for its borrowers. Common Capital will assess a prepayment penalty where funding sources do not preclude it. The prepayment penalty may be waived, at Common Capital's discretion, if repayment is derived from operating cash flow. In general, the prepayment penalty will be 5% in year 1, 4% in year 2, 3% in year 3, and none thereafter. However, the actual prepayment penalty will be determined based on the specific financing request, any other lending arrangements, and Common Capital's funding source(s) for that financing.

#### **E. Collateral**

Common Capital will consider available collateral in its underwriting, and will take an appropriate security interest in available business or personal assets to support financing. While Common Capital will always look to obtain sufficient available collateral, the organization also recognizes that higher risk transactions may be due to limited or insufficient collateral. Therefore, Common Capital may make lending decisions which weight its mission and the business viability more heavily than collateral, and may approve loans which are either completely unsecured or are functionally unsecured based on the likely limited collateral value in a liquidation scenario. Common Capital also recognizes that as a subordinate lender in many cases it will be at a financial disadvantage in a liquidation scenario. A collateral chart is included in the credit memo which outlines the estimated value of the assets taken as collateral in order to provide an approximate loan to value assessment.

#### **F. Guarantors**

Common Capital considers the personal commitment of the business owner(s) to be a fundamental component to the success of the businesses it typically lends to. Common Capital will obtain guarantees, whenever possible, of all individuals having a 20% or greater ownership in the subject business, and may secure those guarantees with personal or other business assets as well to provide greater collateral support to the financing transaction.

In the event of several business entities, Common Capital will seek business guarantees by those companies which have a direct financial impact on the borrower, or which control the borrower's business assets (as in the case of a real estate holding company). Such business guarantees may also be secured by business assets as appropriate, to provide greater collateral support to the financing transaction.

#### **G. Other Loan Conditions**

Common Capital borrowers may also be required to comply with certain reporting or performance requirements, which may include the following:

- Evidence that corporate borrowers are in good standing with the Secretary of State and that a business license if required, has been obtained for other business entities.
- Financial Reporting:
  - Interim financial statements or other financial reports (such as deposit account statements) as determined during the underwriting process
  - Annual business or personal tax returns (with appropriate business schedules) for borrower
  - Annual personal financial statement and tax returns for individual guarantors
  - Annual business tax return for business guarantors
  - Financial covenant compliance as determined during the underwriting process
- Agreement to participate in Common Capital's marketing and other promotional efforts. The borrower agrees to reference Common Capital whenever possible and appropriate to represent Common Capital's support of the borrower or project; and Common Capital shall be authorized to use the business name (and logo) in signs, press releases and other printed materials prepared by Common Capital to promote the importance and success of its efforts.

## CHAPTER IV

### LOAN UNDERWRITING PROCESS

#### **SECTION 1: APPLICATION INFORMATION**

The underwriting process will typically begin with receipt of a completed application with supporting financial and business plan information. The application is intended to simplify the process for potential borrowers by helping them clarify the financing request and by providing a checklist of necessary supporting information. Common Capital lending staff will review application information but will request additional information as appropriate in order to fully understand the financing request and the business need. Common Capital lending staff will also review an applicant's preliminary information in order to provide direction and guidance as to what information might be necessary to support that request in order to assist the applicant in completing the application in a constructive manner. Common Capital lending staff may suggest that the applicant work directly with other organizations which can provide support in completing the more technical portions of the application.

In some cases where an applicant is referred to Common Capital by a business partner or another organization, or in cases where the financing requirement is unclear, the underwriting analysis may begin without an application. In such cases, the lender will work with the applicant and/or the referral source to obtain necessary financial and business plan information in order to fully understand the financing request and the business need. An application will be completed as the financing requirement is clarified.

Because Common Capital views its role as not just a direct lender but also as a broader economic resource, lending staff will take every situation on a case by case basis in order to determine the most effective and timely path to a financing decision. Lending staff may refer an applicant to another financing source or organization if that lender or organization has better financing options or can provide more specialized support to the applicant. Common Capital will make every effort to provide constructive support, both from consultative perspective as well as direct financing, to support the applicants needs as effectively as possible.

A complete Common Capital application package will generally include:

- Completed and signed Common Capital loan application form
- Appropriate Common Capital application fee
- Business plan which outlines the business concept, marketing, management, ownership, and business development plans
- Historic business financial information consisting of income statements and balance sheets for the preceding two years. Information may be company or accountant prepared and may consist of Federal income tax returns with supporting schedules.
- Personal financial information including a current personal financial statement and personal Federal income tax returns for all persons owning 20% or more of the company and any prospective guarantors for the preceding two years. Common Capital will obtain personal credit reports, as appropriate.
- Financial projections for the next 12 months or applicable project or financing period. In most cases, projections will be provided for three years but may be for a lesser time period based on the financing request and nature of the business.
- Additional financial, project, or collateral information will be requested as appropriate to the transaction. This may include information from other existing or potential funding sources, viability or needs assessment, mission and impact information, qualification under certain programs such as tax credit programs, and the like.

**Additional criteria:**

- Loans will be made in compliance with the underwriting and documentation requirements specific to a loan's funding source or sources.
- Common Capital will consider all financing requests where the applicant and Common Capital believe that comparable financing terms are not reasonably available from conventional lending sources; or that insufficient funds to support the business or project are available from other conventional lending sources without the financing support of Common Capital. Common Capital will use its experience and judgment in determining if other financing sources are available, and will make every effort to direct the applicant to the lowest cost, and most appropriate, financing available.
- Business debt refinancing, including debt consolidation and refinance or restructure of Common Capital debt, will be considered in cases where the refinancing improves or sustains the financial condition of the borrower and therefore increases its viability.
- Common Capital may provide real estate financing as long as the real estate is primarily used for the business activity, or for project financing which converts, upgrades or rehabilitates a building or area and has a defined permanent financing or repayment source. However, Common Capital does not consider itself a real estate lender, and will not look to provide conventional mortgage terms with extended maturity dates (i.e., ten years or more) and/or extended amortization schedules which result in balloon payments.

**Partner Support**

Common Capital values its partnerships with area Community Development Corporations (CDCs) and Common Capital affiliates and business partners. These organizations know the economic needs of their local areas and can provide local business support and training services. Common Capital considers its business partnerships to be an important component to its own programmatic and lending activity, and will make every effort to identify and effectively utilize other organizations' expertise and business resources.

**SECTION 2: APPLICATION AND OTHER FEES**

**Application Fee**

Common Capital typically charges an application fee for lending products. The fee may be collected at any time up to and including at loan closing. The fee may, in some cases, be netted from loan proceeds. Fees will reflect Common Capital's standard fee policy based on loan type and funding sources, but may be customized to individual loan programs as well as individual applicant requirements. The purpose of Common Capital's application fee is to cover the direct costs of loan processing and some of the administrative expenses of reviewing the loan request. However, Common Capital also recognizes that certain target niches or populations may warrant financing support for strong mission factors which may mitigate the requirement for an application fee.

**Closing Fee**

Common Capital may assess loan points at origination as a loan closing fee, subject to the restrictions of funding sources. Such fees are intended to support the cost of providing TA to Common Capital's broad pool of applicants as well as to the existing borrowers. Common Capital typically charges 2 points (1 point equals 1% of the loan amount) when allowed under funding source restrictions, but may assess fees on a case by case basis, based on the financial risk and financing terms of the subject transaction. The closing fee is typically paid at closing and may, in some cases, be netted from loan proceeds.

**Other Fees**

Common Capital makes every effort to minimize closing costs and will perform services in house at no cost to the extent possible without jeopardizing its legal and collateral position. All closing costs are assessed to the borrower at the time of closing. Closing costs typically include costs to record or register

legal documents, and attorney's fees as applicable to the transaction. At this time, Common Capital does not charge a documentation fee for its in-house services.

Common Capital may assess a modification fee in the event of a restructuring during the loan term. Restructuring may include modifying a payment amount, interest rate, or other changes.

For loans which have higher account maintenance, as identified during the underwriting process, an account management or like fee may be assessed on a periodic basis. Common Capital may alternatively assess fees for lines of credit based on usage.

For financing arrangements where Common Capital provides monitoring or servicing support, Common Capital may assess a management or servicing fee, as appropriate.

#### **Technical Assistance Fees**

If the applicant needs technical assistance in the preparation of the business plan or financial spreadsheets, Common Capital may provide this service on a consulting basis. In such a case, the applicant will agree to the consulting terms and conditions before any financial obligation occurs. This fee may be included in the loan amount if the application is approved. Such consulting fees will also be limited by applicable funding source restrictions for that loan.

Common Capital may also require an applicant to work with a consultant to complete an effective business plan which outlines both the financing request and affirms the viability of the project and underlying business. Common Capital may agree to pay a portion of such cost, and to require that the applicant pay an equal portion. In such cases, Common Capital will provide the applicant with the names of several consultants and will allow the applicant to choose the consultant at its own discretion, within the financial parameters outlined by Common Capital as to minimum amount of consultant time and maximum cost. The applicant always has the option to utilize its own consultant at its own expense.

### **SECTION 3: LOAN REVIEW AND APPROVAL**

#### **A. Preliminary Eligibility Review**

Lending staff will verify that the applicant meets Common Capital's eligibility criteria through a review of the information provided on the application. The application may be rejected if it does not qualify.

#### **B. Lender's Business Evaluation**

The assigned lender will review the application materials or other business information provided to determine the nature of the financing request; historic and projected financial strength of the applicant including utilization of the requested funds; compliance with Common Capital mission and goals; strength and capability of management; and overall business and project viability. The lender will work directly with the applicant and will conduct a site visit, as appropriate. The lender will also work with any consultants or other business support services provided to the applicant in order to gather all relevant information and to ensure that the application is given full consideration.

The lender may refer the applicant to consultant or other business support services in order to expand the information in the application and ensure that a comprehensive business plan is in place, both for underwriting purposes and for the benefit of the applicant. The review process will take as long as is necessary to ensure that the applicant has support in developing a comprehensive and well thought out business plan.

If the lender believes the application has merit, the lender will prepare a credit memo which details pertinent information from his or her analysis in a standardized presentation for approval purposes.

If the lender determines that the application should not proceed, which may be due to ineligibility, a belief that the requested will be insufficient to complete the project or business plan, a belief that the business model is not viable, or that the applicant is unable or unwilling to provide sufficient information to justify a lending recommendation, the lender can decline the application or, in the case of incomplete information, consider it withdrawn.

If the application proceeds, the lender will submit a credit memo for approval under the Loan Approval Limits in place at the time for that type of loan.

### **C. Loan Approval Limits**

Approval limits are based on aggregate committed and outstanding debt to a borrower, inclusive of any new financing requests. Unfunded commitments such as lines of credit or undrawn term facilities will be included in determining aggregate debt.

Loans up to \$50,000 may be approved by the CEO, with the recommendation by the Commercial Lender. Approval will be evidenced by signatures on the Credit Memo.

Loans of \$50,000 and up to \$100,000 may be approved by the Chair of the Loan Committee (or designee) and the CEO, with the recommendation by the Commercial Lender. Approval will be evidenced by approving signatures on the Credit Memo.

Loans of \$100,000 and greater will be presented to the Loan Committee for consideration and approval. These loans shall also have a specific risk rating assigned to them, which will determine the initial loan loss reserve allocation to that transaction. The risk rating shall be detailed in the Credit Memo and will be subject to revision by the Loan Committee as part of the approval process. Approval will be evidenced by the CEO's signature on the credit memo, with notation as to the Committee approval, and supported by Minutes from the subject meeting.

In all cases, the approving individual or body may make further recommendations to the financing request, including revising loan structure, requesting clarification on certain information or requesting additional information in order to make its decision.

Approvals may also be made with conditional approval in order to allow the lender to proceed with the financing request with a clear understanding of what the Approving individual or body will allow. Particularly in the cases of larger, multi-lender, and more complex financing arrangements or transactions, there may be considerable back and forth between the applicant and the lender or lenders prior to reaching a final loan structure acceptable to all parties. Conditional approvals are intended to facilitate this process without excessive delay.

Certain financing arrangements which have risk characteristics which are unique to the lending product or the typical borrower, may have Approving Committees which are utilized for that product or program only and which have specialized expertise within the committee membership to properly assess the financing request and structure.

## **SECTION 4: APPLICATION REVIEW PROCESS**

### **A. Equal Consideration of Applications**

Common Capital lending staff treats every applicant with dignity and respect. Applicants, in many cases, are not financially sophisticated and may have been rejected for financing on multiple occasions or may believe that applying for business credit is futile based on their credit score, limited personal assets, income levels, or experience. Therefore, Common Capital lending staff reviews applications with a goal of determining how a financing arrangement can be put together which increases the business viability, rather than with a view to screening out applicants who don't look

readily financeable. This creates a burden on the lending staff that provides significant levels of TA in order to bring an application to a financeable status, and may extend the analysis and underwriting process as a viable business plan evolves. However, the results are that Common Capital makes a high volume of well structured loans to borrowers who have a much better support system and higher likelihood of business success.

## B. Application Review

Common Capital lending staff reviews applications with consideration of the following characteristics:

- **Eligibility** – is the borrower eligible for financing under any of Common Capital’s loan programs?
- **Alternative Financing** – is there probable access to capital for the borrower which meets the borrower’s requirements in terms of financing structure and interest rate as well as business support and which would be less costly than Common Capital financing? If so, Common Capital lending staff will indicate to the applicant that they should explore the alternative financing options and may refer them directly to other sources which Common Capital believes may be appropriate.
- **Mission** – Common Capital assesses every application to ensure that there is a strong mission component to the financing. A business must also be determined to be viable, but a viable business with no strong mission component will compare less favorably to competing requests for financing. Common Capital’s mission is to strengthen the local economy, which will in turn create many more economic and job opportunities as well as quality of life for low and moderate income individuals. This is a broad scope and therefore the mission benefit may not be as direct as job creation (for example) but may involve the maintenance of a local business in a distressed community, or assisting an existing business in growing which creates a more stable core business community and a stronger appeal to potential new businesses in the area.
- **Viability** – will the financing be sufficient to support the scope of the project or financing event; does management have the ability to execute the plan or to adapt the plan as necessary; is the target market likely to support the necessary sales volume; does management have the technical skills to manage the business including financial reporting, legal compliance, employment requirements, computer needs, and the like?
- **Structure** – can the loan be structured under terms which are acceptable to Common Capital and which support Common Capital’s overall portfolio risk profile? This would include the loan term, any draw periods and fund disbursement requirements, repayment schedule, debt service coverage based on the pro forma debt level, and the like.
- **Fallback** – do the borrower and any co-borrowers and/or guarantors present a fallback position in the event that the business itself performs poorly? This would be assessed through additional sources of business or personal income, collateral available through personal assets or business assets which may be pledged to the subject loan, and the probable options to liquidate or sell the business or a portion of the business in the event of poor performance.

## C. Other Application Considerations

In reviewing the pool of applications, Common Capital lending staff will also consider the following factors in prioritizing financial requests (in no particular order):

- **Business partnerships** – Common Capital values its business partnerships which directly support its lending efforts and as well as working to strengthen the local economy in their own way.
- **Geographic Diversification** – Common Capital makes every effort to provide financing to businesses across its geographic footprint
- **Industry Concentration** – Common Capital understands that having industry expertise can be a significant advantage to it in managing industry specific risk, but that this is offset in part by the

risk of excessive exposure to an industry. Therefore, overall industry concentration is considered when looking at individual applications.

- Impact – an application which may have a more direct and larger scale impact. This is not a closely defined characteristic but may be represented in a variety of ways including job creation or retention, emerging industry which can create a foothold for future entrants, anchor business in a distressed area, infrastructure which can create capacity for related businesses and increase overall demand, economically friendly or beneficial project or business model, environmental benefit, and the like.

## **SECTION 5: LOAN UNDERWRITING CRITERIA**

### **A. Credit Factors**

#### **1. Repayment Ability:**

Common Capital will look at the following factors in evaluating repayment ability.

- a. Historic financial performance, including assessment of how the historic business operation may be changed through the financing, and how the historic cash flow can support the pro forma debt burden.
- b. Projected financial performance, based on the additional cash flow to be created through effective utilization of the requested loan funds.

Greater reliance will generally be placed on the projected financial performance, but Common Capital lending staff will perform a thorough analysis with the applicant of the sources of cash flow and the probability of the cash flow being generated in accordance with the projection. Common Capital believes that business planning is essential, but that execution of the business plan may be more difficult as business situations change rapidly. Therefore, Common Capital looks to work closely with borrowers throughout the life of the loan to assist management in adapting to changing requirements and therefore to maximize cash flow and improve business viability.

Common Capital will typically utilize a benchmark debt service ratio of 1.20x (total cash flow divided by total debt service) but will customize its analysis to the situation. Common Capital will not provide extended loan terms in order to achieve an adequate debt service coverage ratio, but will assess debt service coverage against a reasonable repayment schedule based on the underlying use of funds.

#### **2. Equity:**

Equity may be an indicator of the applicant's financial capacity and fallback position. It is therefore evaluated carefully in the underwriting process.

However, Common Capital believes that there are many individuals who can be successful business owners with a well thought out business plan, good business support services and a properly structured financing package who do not have equity to support the project. Common Capital also believes there are many established businesses that have suffered in the recent economic situation and may have negative net worth but still have a very viable business with proper debt structuring and business support.

Therefore, Common Capital considers equity but weights business viability and impact more heavily in coming to a final underwriting recommendation. Common Capital will make every effort to have its applicants put as much of their own resources into the project or business as possible but also recognizes that for many businesses, the sweat equity and moral commitment is stronger than a financial stake.

Common Capital also recognizes that many businesses cannot obtain traditional financing due to limited equity contribution or negative net worth, and that this may serve to weaken the regional economy as these businesses may be viable but will struggle without sufficient financing resources. Common Capital will review all factors for an application to manage its own risk profile effectively but will attempt to provide financing based more on viability and impact to create a greater overall economic benefit.

3. Working Capital:

Common Capital's analysis will include an assessment of working capital based on the likely cash collection cycle and cash payment requirements. Common Capital will work with applicants to develop a meaningful cash flow projection which details the cash flow cycle as closely as possible. Financing repayment will be structured with direct reference to the underlying cash flow to ensure that funds will be sufficient to support debt service. Specific components are the accounts receivable quality and aging; accounts payable aging; vendor relations and terms; inventory levels and requirements, and the like.

4. Break-even Analysis and Viability:

Common Capital's analysis will include a thorough analysis of the financial projections to determine debt service capacity and overall financial performance, including owner compensation. Common Capital does not look to provide financing to "buy time" to come up with a solution, but to provide targeted financing which allows the applicant to execute the business plan, whether it is for business growth, business re-engineering, or start-up. It is expected that a borrower will have sufficient financial performance to support the pro forma debt service within the first year. Loan repayment may be structured to increase over time in accordance with cash flow projections.

Common Capital will assess many factors in reviewing viability including the likelihood of marketing success, management's experience in the industry, barriers to entry for future competitors, alternative products or services, pricing pressures on materials or services required or supplied, overhead costs such as rent, staffing requirements and availability of qualified staffing resources, local and broader industry trends, and general economic factors. Common Capital recognizes that viability requires sufficient cash flow, but that cash flow is determined by many tangible and intangible factors which are not all within management's control. Therefore, Common Capital attempts to have a thorough discussion of the factors which are most relevant to the subject business and to have a clear understanding of management's objectives, what the limiting factors are, what fallback positions are possible, and what resources are most crucial to business success.

5. Credit Scores:

Common Capital obtains personal credit reports on individual borrowers and guarantors. However, Common Capital does not make lending decisions based on the credit score. Common Capital believes that individual credit scores are affected by many factors which may not indicate that the individual will not repay the proposed debt. Common Capital also recognizes that an individual with a very low credit score may pay a premium for other services (such as interest rates on other financial obligations, insurance rates, and the like) and therefore may assist a borrower with financing with a view to also improving the individual's credit score over time and therefore creating a direct economic benefit to the individual. Common Capital does, however, review credit reports for irregularities which could be indications of identity theft.

**B. Market Factors**

1. Market Analysis:

- Industry trends

- Industry stage (i.e., young, emerging, stable, mature, declining, etc.)
  - Size and scope of the market which the applicant will reach
  - Rate of change in industry
  - General economic environment and trends in the local economy.
  - Specific legal, political, technological or regulatory factors
2. Competition:
- Direct competitors to applicant
  - Alternative products or services
  - Barriers to entry
3. Market Strategy:
- Applicant's anticipated role or placement in industry
  - Applicant's ability to attract customers and differentiate itself
  - Applicant's access to good marketing tools to effectively position itself and adapt to changing requirements or conditions
- C. Management and Organization Factors**
- Management's expertise in the subject line of business
  - Depth and breadth of management team
  - Management's willingness and ability to access specialized resources as needed
  - Ownership structure (legal and organizational)
  - Role and area of responsibility of each owner
  - Decision making requirements for larger organizations
- D. Collateral and Valuation**
- Specific collateral being provided to support the transaction
  - Common Capital's lien position in subject assets
  - Ability to perfect a security interest in collateral assets
  - Ability to effectively liquidate collateral, and likely timeframe
  - Likely liquidation values as determined at the time of underwriting

#### **SECTION 6: WITHDRAWN LOANS**

Common Capital lending staff will make every effort to bring each application forward to a final approval or denial decision. In order to complete sufficient underwriting to make an approval or denial decision, the lending staff may request additional information relevant to the business and its viability. In some cases, an applicant may be considering different business or financing options, or may change the business plan during the application review process. There are instances where Common Capital lending staff follow up with applicants but do not receive either a response or requested information.

These applications will be considered open and active for some period of time, and follow up efforts will continue. However, if several attempts at establishing contact have not resulted in progress on the application, Common Capital lending staff will consider the application withdrawn and will not take further action until such time as the applicant re-establishes contact.

#### **SECTION 7: LOAN DENIALS**

Common Capital retains complete discretion in determining the approval and rejection of loan requests. These decisions are based on established underwriting criteria, special requirements of funding or capital sources, and Common Capital's portfolio management policies. As a result of continuously changing circumstances, Common Capital's ability to approve any particular loan request may vary from time to time. In the event that a loan request is denied, Common Capital staff will inform the applicant in writing.

## CHAPTER V LOAN CLOSING PROCEDURES

### SECTION 1: LOAN DOCUMENTATION

Upon approval the lender will issue a commitment letter and notify the applicant of the approval decision and the loan terms.

Upon acceptance (verbal or written) of the loan terms by the applicant, Common Capital lending staff will proceed with loan documentation. Loan documents will be tailored to the specific financing situation but will include the following in all cases:

- Commitment Letter
- Signed Application
- Note
- Loan Disbursement
- Loan Resolution (internal approval verification)
- Borrowing Authorization (appropriate to legal structure of borrower)
- Amortization Schedule
- Marketing/PR Release

In most cases, the following documents will also be obtained:

- ACH authorization
- Loan and Security Agreement (as appropriate for specific assets)
- Guarantees
- ACH Authorization for loan payments
- UCC filing(s)
- Mortgage(s)
- Evidence of appropriate insurance coverage with Common Capital as loss payee, additional insured, and mortgagee as applicable.
- Intercreditor Agreement (if applicable)
- Landlord's Waiver (if applicable)
- SBA Debarment (if SBA funds are utilized)
- Other program or funding source specific documents

Common Capital staff will generally prepare all loan documents. However, where additional lenders are involved or for more complex financing arrangements, Common Capital may utilize outside counsel in which case legal costs will be paid by the borrower. Common Capital will always make an effort to minimize legal and closing costs and will pass all costs directly through to the borrower without surcharge or processing fees.

Sample Common Capital documents are maintained in a Loan Documentation Manual, which is outside the scope of this Policy manual.

Common Capital will utilize legal counsel to review its in-house documents on a periodic basis. Common Capital will urge borrowers to utilize their own counsel on their own behalf, and will have documents available for review ahead of time.

## **SECTION 2: DISBURSEMENT OF LOAN FUNDS**

Loan funds are disbursed when the borrower has satisfied all approval conditions and has signed the note and other necessary loan documents. Funds may not be fully disbursed at closing if there is a draw period or for a line of credit, and funds may be remitted directly to vendors as requested by the borrower and supported by invoices.

Loan proceeds are typically issued through a business check from Common Capital. Such checks will be supported by collected funds in the Common Capital deposit account, but are not certified or cashier's checks, and therefore may be subject to the deposit bank's standard fund clearance requirements.

Upon request, funds may be remitted via wire transfer or a Bank cashier check. In these cases, the associated fee may be assessed to the borrower at Common Capital's discretion.

# CHAPTER VI

## LOAN MANAGEMENT

### **SECTION 1: MONITORING**

#### **A. Borrower Relationship Monitoring**

Common Capital lending staff will make every effort to maintain close, ongoing contact with all of its borrowers. Contact may be through direct meetings, including site visits, telephone contact, and email. Common Capital staff finds it more effective to maintain frequent casual contact rather than scheduled periodic meetings in order to stay current with a borrower's ongoing activities.

Borrowers are expected to notify the lending staff of any material change in management or in business operations. Material events would include the following:

- Change in management or ownership
- Change in carriers or cancellation of insurance
- Additional financing by other parties
- Staff or personnel reductions
- Change in location or occupancy terms
- Financial stress such as vendor terms, delinquent payments, liens and the like
- Change in business including reducing or eliminating primary products, closing down some or all operations, and the like.

#### **B. Financial Reporting**

Borrowers will be required to provide period reporting as appropriate based on the nature of the financing and project. Requirements may include, but are not limited to:

- Deposit account bank statements
- Company prepared financial statements
- Receivable and Payable agings
- Annual Federal business income tax returns
- Accountant prepared financial statements
- Disbursement requests (for construction/rehabilitation projects)
- Personal financial statements
- Personal Federal income tax returns

Common Capital will prepare and mail the following annual reports for borrowers for the preceding calendar year:

- IRS 1099
- Report on loan status (amount paid in fees, interest, principal and outstanding balance)

#### **C. Annual Review**

Lending staff will complete a written review of each borrower which will be maintained in the credit file. The review will typically be in conjunction with review of fiscal financial results. The review may include the following:

- Historic financial performance and financial condition, including cash flow
- Guarantor financial condition
- Projected financial performance, including cash flow
- Project status (on budget and on timeline)
- Anticipated changes in operations or strategy
- Any specific TA needs or recommendations which can assist the borrower
- Covenant compliance

- Site visit/occupancy
- Payment history with Common Capital
- Collateral status
- Mission results and data capture
- Photos, testimonials and PR, as appropriate

## **SECTION 2: LOAN SERVICING AND COLLECTIONS**

### **A. Payment Process:**

- Loans are typically due on the first of the month for Common Capital processing purposes
- Common Capital requests that all borrowers allow ACH payments
- Common Capital allows a grace period which is typically 10 days
- Common Capital may assess, at its option, a late fee which is typically 5% of the payment amount
- Rejected or bounced payments may have a return item fee assessed.

### **B. Default Conditions:**

Default conditions are detailed in the Note as well as in the Loan and Security Agreement, and are considered standard to the lending industry.

### **C. Delinquent Payments:**

- If a payment rejects or bounces, the Loan Servicing area will notify the Commercial Lender.
- The lending staff will attempt to establish contact with the borrower immediately to determine the cause of non payment and to make arrangements for immediate payment.
- The lending staff will notify the Loan Servicing area if immediate action is to be taken (i.e., if the account should be ACH charged again or if a replacement check is being submitted).
- If the lending staff determines that there is a more fundamental issue, they will determine an appropriate course of action which may involve restructuring, TA, additional financing, or collections and liquidation.
- Letters and notices will be sent to borrowers, via regular mail and certified mail, as appropriate to the situation. In all cases, the lending staff will look to engage in direct communications.
- If appropriate, the borrower may be referred to third party collections or Common Capital may engage counsel to handle the situation.

### **D. Delinquency Reporting:**

Delinquency reports will be provided to all lending staff on at least a monthly basis. Loan Servicing will keep lending staff apprised as payments are received on delinquent accounts.

Delinquent accounts will, in most cases, be reported to Credit Reporting agencies and be reflected on the individual(s)' credit report.

### **E. Loan Loss Reserve Overview:**

Loan loss reserves will be established at the outset of a loan, based on funding source requirements, loan size, and other characteristics specific to the transactions. Loan loss reserve methodology is described in Chapter VIII, Section 2.

Loan loss reserve coverage of the portfolio will be reviewed periodically (at a minimum, quarterly) with regard to Common Capital's overall risk profile, the local economy, trends in the financing industry, and specific borrowers or other concentrations within the Common Capital loan portfolio.

Common Capital views the loan loss reserve as a risk management tool which supports its capacity for higher risk lending, and as a resource which provides risk protection but allows the lending staff to spend the necessary time with distressed borrowers to achieve a positive outcome whenever possible.

Loan loss reserves may be adjusted on delinquent accounts to reflect the anticipated loss exposure. This will be, in most cases, an estimated loss and subject to change as liquidation procedures unfold, which may be over an extended time period.

The Commercial Lender will be involved in the assessment of loss and in the assignment of a loan loss reserve, in conjunction with the COO and the CEO. In certain cases, and for larger transactions, the Loan Committee and the Finance Committee may be involved in affirming appropriate loan loss reserve coverage as well.

**F. Charge-Off:**

Loans which appear to have no viable business outcome will be converted to a liquidation mode. Charge-offs will be taken at such time as the collateral value can be affirmed with a degree of certainty, and an outcome and timeline are established. This is to allow the lending staff sufficient time to attempt alternate collection and business improvement strategies, which may include engaging consultants or providing customized TA. In the case of a borrower making a strategic change in order to improve performance, a reasonable amount of time must be allowed to execute the strategy and see the results. A charge-off, where there may be a viable turn-around plan, would be pre-emptive and may dilute economic impact by limiting a borrower's options.

This also recognizes that a liquidation process which involves multiple lending parties and may involve notices and auction procedures and sequential liquidation steps may take months to complete and a realistic loss amount cannot be determined until conclusion of these efforts.

As noted, the loan loss reserve will be adjusted in accordance with Common Capital Management's best estimate of loss potential, and the charge-off amount is then taken against the reserve account.

# CHAPTER VII

## GOVERNANCE

### SECTION 1: ORGANIZATIONAL STRUCTURE

Common Capital is an independent, nonprofit organization with a Board of Directors that represents a variety of expertise from the communities served by Common Capital.

#### **Board of Directors/Governance**

The Common Capital Board of Directors meets quarterly and is responsible for policy, planning and program monitoring. The Board of Directors appoints the members of the Loan Committee and may delegate loan decision making to the Loan Committee.

The Board of Directors oversees Common Capital's loan portfolio through evaluation of regular portfolio reports that provide sufficient information to assess the risk of the portfolio and its relationship to the entire balance sheet. Such reports are developed by Common Capital lending staff for review and discussion by the Loan Committee, Finance Committee and Board of Directors. The respective committees may see more detailed reports relevant to their informational needs, and may at any time request additional information from the lending staff.

#### **Staff/Management**

Common Capital is administered on a day-to-day basis by its staff. The Board of Directors receives information from staff on areas including financial performance, loan activity, asset quality, programs, impact, and marketing and development efforts at the scheduled meetings. More frequent reports are presented to the Executive Committee as required.

Common Capital's CEO is selected by the Board of Directors and is responsible for all administration, management, and staff supervision. The CEO selects all other staff members, consultants, and providers of professional services.

Members of the Common Capital staff, under the supervision of the CEO, are responsible for specific program and administrative assignments including the following lending-related activities:

- Developing and implementing programs
- Underwriting, closing and properly documenting loans
- Managing individual loans including collection efforts
- Identifying and providing appropriate TA to borrowers
- Administering and servicing the Common Capital loan portfolio including loan funds and associated accounts, record keeping, processing disbursements and managing collections
- Preparing reports on loan activity, portfolio performance, delinquency and losses, impact, and loan capital
- Promoting Common Capital's programs, products and services.
- Recommending changes in lending policies to the Loan Committee.
- Attending Loan Committee meetings and other committee meetings as necessary.

#### **Lending Staff**

##### **Commercial Lender:**

The Commercial Lender has the following primary responsibilities:

- Oversee the lending staff in day-to-day activities
- Oversee lending staff training and development
- Oversee the program staff in developing and implementing new programs

- Work closely with the CEO in making lending decisions, including new loans as well as loan modification or workout decisions
- Work closely with the Loan Committee to provide loans for approval (within approval requirements) in a streamlined manner as well as to provide sufficient detailed and trend analysis for the Loan Committee to have a complete knowledge of the overall lending portfolio
- Work with the Finance Committee to provide supplemental or more detailed information on risk factors in the loan portfolio, including specific workout situations
- Provide strategic direction in developing new business partnerships, developing new loan products, and identifying trends or changes in the lending industry or the region which may impact Common Capital's processes or approach to economic development
- Actively partner with other organizations to facilitate bringing services and resources to the region

#### **Lending Staff:**

- Maintain active involvement and oversight of individual borrowers
- Market Common Capital and its resources to business partners and potential applicants
- Work with individuals making loan inquiries
- Underwrite loan requests
- Capture mission match information to represent impact

#### **COO:**

- Input and maintain loan data in Common Capital's loan system
- Ensure timely and accurate payment and fee billing and customer loan data reporting
- Ensure data integrity of loan data
- Provide periodic reports from the loan system including tickler items, portfolio detail, delinquency reports, and the like
- Develop ad hoc reports as requested by lending staff or others
- Report data to credit bureaus
- Report data to funding sources
- Coordinate information sharing with lending sources to Common Capital
- Ensure that appropriate loan documents have been executed, in accordance with approval requirements, as part of the loan booking process
- Maintain loan fund accounts to ensure that sufficient funds are available for timely loan closings/funding requirements

## **SECTION 2: LOAN COMMITTEE**

### **Composition**

The Common Capital Loan Committee consists of up to nine members appointed by the Board. Loan Committee members are appointed with a goal of maintaining balance and diversity in experience, representation of local business communities, and professional expertise. The Loan Committee will include commercial lenders, business professionals or owners, and representatives of local business or professional organizations. The majority composition will be of Board members.

### **Responsibilities**

Loan Committee will review and evaluate loan proposals, within stated approval limits, to make a loan approval decision. Approval limits will be based on the aggregate committed and proposed debt to the borrower. Loan Committee will review a loan request relative to mission, viability, loan structure, and the financing request relative to the overall portfolio. Loan Committee may request additional information in order to make its decision, and may specify conditions to be met prior to the execution of documents and disbursement of funds.

Loan Committee may also be asked to provide guidance and input on loan workout situations. This will not be reflected as an approval decision in order to allow Common Capital staff and management to be pro-active and responsive in handling workout situations. However, Loan Committee will be kept informed on major events or decisions as promptly as possible. This will also apply to restructuring of loan terms, such as an amended repayment schedule or loan restructuring. Common Capital staff and management will keep Loan Committee apprised of the status of troubled credits and the actions taken to facilitate a borrower's financial and business success. In any case where new funds are being considered for approval (versus a restructuring or modification of existing debt) then Loan Committee approval will be obtained in accordance with established loan approval limits.

A Loan Committee member shall recuse herself or himself from considering a loan application if she or he is unable to give the loan application unbiased consideration for any reason. Committee minutes shall note such recusal. A Loan Committee member shall also disclose any factors that may appear to present a conflict of interest. The Committee Chair shall determine whether these factors warrant recusal of that member on any particular vote.

Loan Committee shall review portfolio activity reports, which shall include information on loan activity, portfolio trends, composition, delinquencies, losses, and the like. Loan Committee may request additional information and may suggest additional portfolio reports based on information provided or other factors.

Loan Committee is responsible for reviewing Common Capital's lending policies and procedures and recommending changes from time to time in order to maintain policies and procedures which support Common Capital's lending activities to the requirements of the regional economy, fit its mission, maintain its activity in concert with industry trends, and which fulfill its mission. Loan Committee is intended to provide technical expertise as well as local perspective of regional and business economic needs, and such needs are intended to be incorporated in Common Capital's lending activity on an ongoing basis. Any recommendations for changes in the Policy shall be presented to the Board of Directors for approval.

#### **Specialized Loan Program/Product Approvals**

Certain lending programs may have specialized underwriting, documentation, and structural aspects which may fall outside of the purview of the Loan Committee. In such cases, a separate committee may be formed with delegated authority which will be comprised of individuals having expertise in that particular niche or line of business. Examples of this could include Near Equity lending or pre-development agricultural lending, both of which have unique risk characteristics and repayment structures. Any such lending program will be reviewed first by the Loan Committee, and a decision made at that time as to the appropriate course of action and appropriate approval limits. In the event of such a committee being formed, that committee's activity will be reported to the Loan Committee and to the Board of Directors as part of the lending activity updates.

#### **Term of Office**

Members of the Common Capital Loan Committee serve for one year.

#### **Frequency of Meetings**

Loan Committee meets as needed to review loan applications in a timely manner. In general, Loan Committee shall meet at least monthly. Meetings will be accessible in person or via teleconference.

### **Quorum**

A quorum is represented three or more members, at least one of whom must be Board members as well. No action can be taken unless a quorum is established. A loan decision shall require a majority vote of the participating members. In some cases, approval decisions may be made via email votes, where timing and urgency so warrant.

### **SECTION 3: REPORTING**

Reports are prepared by the staff and presented at regular intervals (monthly or quarterly) to the Loan Committee and the Board of Directors as determined by the Board. These reports include the following items:

- **Capitalization**: a report or reports showing available capital funds
- **Delinquency**: a report or reports showing loan aging by individual loans or loan categories, delinquency trends, and delinquency rates
- **Charge Off Activity**: a report or reports showing loan charge offs by individual loans or loan categories, charge off trends, and charge off rates.
- **Loan Loss Reserves**: a report or reports showing loan loss reserves relative to loan portfolio outstandings
- **Portfolio Composition**: a report or reports showing the portfolio by various stratifications. Portfolio may be reflected by industry, loan size, maturity date, geography, or other representative factors.
- **Impact**: a report or reports which reflect the impact of Common Capital lending activity, which may be reflected by job creation or retention, leveraging of other debt, borrower income, census tract groupings, ethnic grouping, gender grouping, or other indicators which the staff believe to be meaningful indicators.
- **Financial Reports**: a report or reports indicating Common Capital's profit and loss statement, balance sheet, and comparison to budget

## **CHAPTER VIII**

### **PORTFOLIO MANAGEMENT**

In order to ensure prudent risk management of its assets and loan portfolio, Common Capital employs a number of techniques to assess and manage risk. These include consistent loan underwriting with an emphasis on mission and viability, appropriate loan structure, perfecting available collateral, close interaction with borrowers to ensure technical assistance is readily available and to monitor the borrower's progress, to borrowers, and monitoring of loan payment. Common Capital also assesses its own risk profile to ensure that it has appropriate lending skills and capacity.

#### **SECTION 1: EQUITY/CAPITAL STRUCTURE**

##### **Capitalization/Funding Sources**

Common Capital's loan fund is capitalized through a variety of sources, including equity grants or contributions, program-related investments and low-interest loans. Sources of capital include financial institutions, governmental agencies, private foundations, religious institutions, other corporations and individuals. These contributions or loans are made directly to Common Capital and deposited in an interest bearing account or other safe instruments. The capital may be restricted by the providers and/or designated by the Common Capital Board of Directors for targeted use. Common Capital's overall capitalization strategy strives for increased diversity in sources of capital with varying terms and conditions in the best interest of Common Capital's stability and meeting its mission.

##### **Cost of Funds**

Common Capital reviews its interest rate risk including net interest margin and strategic management of fixed versus variable interest rates on capital funds and funds lent out. Management attempts to maximize the yield on its liquid assets while ensuring that funds are maintained in secure and stable deposit or investment accounts. Interest rates on individual loans are determined based on consideration of market conditions, cost of funds, borrower risk, loan term, and other factors. Management establishes goals and parameters for interest rates, terms and other conditions associated with its borrowed capital that is acceptable for meeting its program and financial goals.

##### **Equity**

To provide financial strength and flexibility to its lending program, Common Capital has a goal of maintaining 20 to 25 percent equity (or net worth) in its loan capital fund which is consistent with the standards of the CDFI industry. Common Capital's goal is to leverage its capital in order to create impact and fulfill its mission; however, Common Capital management recognizes that a sufficient capital position is necessary to provide overall financial stability and capacity against deterioration in asset quality or other market factors.

#### **SECTION 2: ASSET QUALITY REPORTING**

The Loan Committee will be provided with detailed portfolio reports on all active loans on a periodic basis which shall be at least quarterly. Portfolio reports shall address loan performance including delinquency performance; loan loss reserve adequacy; cumulative lending activity; loan portfolio concentrations; capital resources; and other reports which may be developed from time to time in order to provide an understanding of the risk components within the loan portfolio.

Asset quality reports, which may be in a summary fashion, will be provided to the Finance Committee and to the Board of Directors on a periodic basis which shall be at least semi-annually.

Any material negative loan event shall be communicated to the Loan Committee and the Finance Committee on a timely basis, typically within two weeks of the event but with timing dictated by how quickly meaningful information can be obtained. Updates on workout accounts, including loan loss

reserve coverage of the loan(s), will be provided to the Loan Committee on a periodic basis which shall be at least quarterly.

### **SECTION 3: LOAN LOSS RESERVE METHODOLOGY**

Common Capital maintains loan loss reserves to cover potential loan losses and to protect the assets of its lenders. The reserves are reflected in Common Capital's financial statements as a reduction in the net asset value of loans receivable. The reserves are an accounting reserve (a "contra asset" account) and not liquid deposit funds.

Reserves shall be maintained in accordance with specific funding source requirements, and at a level which management and the Board deem prudent based on market conditions. In general, a minimum reserve shall be maintained at 10% of the outstanding loan portfolio. In practice, a larger reserve shall likely be maintained based on portfolio risk, diversification, and general market conditions. Loan Committee and the Board of Directors shall review loan loss reserve coverage periodically, which shall be on a quarterly basis at a minimum.

The loan loss reserve methodology incorporates on two approaches: pooled reserves and specific risk. The reserve shall be calculated on a monthly basis. Reserves assigned to any individual loan may be adjusted at any time, based on loan events. The reserve methodology may be changed in accordance with economic conditions, lending practices, or other factors which influence Common Capital's lending activity or profile.

Pooled reserves shall be assessed on the pool of loans under a threshold as outlined in the Risk Rating section. For those loans, a minimum reserve of 8% shall be assessed which shall be adjusted upward based on delinquency status. For any loan in the pool which is between 60 and 90 days past due, the reserve shall be adjusted up to 75% of the loan balance. For any loan in the pool which exceeds 90 days past due, the reserve shall be adjusted up to 100% of the loan balance. As a loan becomes less delinquent, the reserve shall be adjusted accordingly, unless the lender assigns a higher loan loss reserve to that loan.

Specific reserves shall be assigned on a loan by loan basis for all loans above the threshold level. The initial reserve shall be defined by the assigned risk grade, and shall change based on a change in the risk grade or if the lender assigns a higher loan loss reserve to that loan based on circumstances or events specific to that borrower.

The default loan loss reserve by risk grade is as follows:

<b>Risk Grade</b>	<b>Reserve</b>
1	5%
2	8%
3	12%
4	15%
5	50%
6	75%
7	100%

Risk rating definitions are included in Attachment 2.

### **SECTION 4: RISK RATING OF LOANS**

The Common Capital lender shall assign a risk grade to any loan proposal as well as to existing borrowers, based on the lender's knowledge of the borrower and assessment of risk for the borrower as well as the specific loan. As noted above, risk rating for pooled loans shall be a default category and may not include as specific assigned rating. The approving parties shall review the risk rating and affirm it, as part of the loan approval process.

The risk rating should be maintained in accordance with the borrower's risk profile, including multiple factors such as business viability, payment history, guarantor support, and collateral support. The risk rating system is also a means to allow Common Capital management, Loan Committee and the Board of Directors to review the aggregate loan portfolio risk profile. Risk rating definitions are included in Attachment 2.

#### **SECTION 5: LIQUIDITY RESERVES**

In general, Common Capital will not lend more than 90 percent of its total loan capital at any one time. Common Capital shall generally retain a liquidity reserve of 25% for use in loan restructuring, refinancing of existing loans, and debt service or investor repayments on borrowed capital.

#### **SECTION 6: PORTFOLIO DIVERSIFICATION**

Common Capital seeks to establish and maintain a diverse loan portfolio which reflects the financing needs of its current and target borrowers throughout the region. Common Capital will attempt to provide access to different types of financing arrangements, directly and through its business partners, to meet local economic development needs in an effective manner. Common Capital will also attempt to maintain a diverse portfolio which incorporates different industries, covers the geographic territory, and may be tailored to specific community or niche requirements. Common Capital shall make every effort to reach into underserved populations directly and through partner organizations, and will attempt to structure financing arrangements which facilitate those individuals or groups obtaining sufficient access to capital to foster economic development.

Common Capital management will also attempt to keep a diverse portfolio of loans to balance overall interest rate risk, portfolio maturity, industry concentrations, start-up versus established businesses, and account maintenance requirements. This is in order to ensure an overall balanced portfolio as well as to ensure that Common Capital's resources, including staff time, are utilized as effectively as possible.

## **CHAPTER IX**

### **LOAN FUND ACCOUNTING**

#### **SECTION 1: LOAN FUND ACCOUNTING**

Loan funds will be maintained in accordance with appropriate fiscal and audit controls, and will be maintained in accounts which comply with any specific requirements of funding sources, including requirements as to interest bearing accounts, segregation of accounts and the like. Loan fund accounts will be reconciled on a monthly basis.

#### **SECTION 2: USE OF LOAN FUNDS**

Loan funds will be used in accordance with any specific requirements of the associated funding source, with appropriate reporting to the funding source as required by that funding source.

## **CHAPTER X ETHICS POLICIES**

### **SECTION 1: CONFIDENTIALITY**

All persons serving on Common Capital's staff, committees and Board of Directors shall maintain information disclosed to him or her in a strictly confidential manner where release of such information could be inappropriate or perceived as damaging in anyway.

Common Capital staff, committee members and Board Members will likely be presented with information from time to time which is specific to Common Capital, its borrowers or applicants, funding sources, peers, business partners or organizations, and the like. It is difficult to define such information and its degree of confidentiality ahead of time; however, if such information is not public knowledge and is not intended to become public knowledge, such information should be held in strictest confidence. If question arises as to what information can be shared, the individual should review the situation with the CEO for clarification prior to any disclosure.

With specific regard to borrowers and lending decisions, no information shall be disclosed or released other than by authorized Common Capital staff. Members of the Loan Committee, the Finance Committee and the Board of Directors may be involved in decisions which are based on confidential and proprietary information but shall maintain their roles as advisors to Common Capital and shall not take an active or public role with regard to such borrowers or situations.

If confidentiality is breached, Common Capital consults legal counsel to determine the extent of damage and determine a proper way to handle the situation.

### **SECTION 2: LENDING CONFLICT OF INTEREST POLICY**

Any person on the Common Capital staff, Board or Loan Committee who may have a real conflict of interest including but not limited to a financial or familiar relationship where the interest of the borrower or Common Capital by may be compromised regarding a loan proposal under consideration by Common Capital shall immediately disclose the nature of the conflict. Any person with such a conflict of interest will be excluded from participation in recommendations or decision-making regarding that matter and/or excluded from receipt of materials or from public and private discussions.

## **ATTACHMENT 1**

### **SAMPLE CREDIT MEMO FORMAT**

Common Capital shall utilize a standard credit memo format which shall be utilized for the loan approval process. The format shall be modified as appropriate to specific lending programs or to reflect the complexity of specific lending transactions. However, the standard format shall incorporate the following information:

- Borrower name and address
- Mission fit and impact
- Loan terms including amount, loan type, term, repayment schedule, interest rate, collateral, guarantors, risk grade/loan loss reserve, fees, whether the financing falls within a particular program or specific funding source, program eligibility as applicable, other lenders involved in the transaction, and any specific terms or conditions. Multiple loans may be represented in one credit memo.
- Financial reporting requirements
- Business background, including management, ownership, nature of industry, specific activities of borrower, and site visit if applicable.
- Financing request, including use of funds, other lending sources, owner contribution, and overall scope of funding need.
- Financial analysis, including discussion of historic performance, projected financial performance, cash flow, and debt service coverage.
- Fallback analysis including guarantor support and collateral support.
- Lender recommendation, including overall strengths and weaknesses of financing request.
- Approval signatures with approval dates.

## **ATTACHMENT 2**

### **LOAN RISK RATING/LOAN LOSS RESERVE GUIDELINES**

#### **Common Capital Loan Risk Ratings**

Risk ratings are used to assess individual credit risk and as a tool in assessing overall portfolio risk. Risk ratings are used by Common Capital to capture business risk and viability. Historic financial performance and collateral protection are not considered material drivers of risk rating until such time as a loan appears to have reduced viability. In the event of a question of viability, the loan loss reserve may be set separately from the risk rating in order to capture loss potential.

The loan amount for threshold purposes is based on the committed amount, which will be the commitment amount in the case of a line of credit or a draw period on a term loan, or will be the outstanding balance for an amortizing loan.

Loans at or below a threshold amount shall be assigned a default risk rating and a default loan loss reserve. A specific loan loss may be assigned to a loan outside of the default parameters.

**The threshold amount is currently \$50,000.**

Loans above the threshold amount shall be assigned a specific risk rating which shall also have an assigned loan loss reserve. That reserve may be adjusted upward (i.e., to a higher reserve coverage) at the lender's discretion and based on the specific risk characteristics of the loan.

The risk rating charge is below:

Risk Rating	General Characteristics	Loan Loss Reserve
Default or "P"	Loans at or below the threshold limit. The default reserve will be assigned unless delinquency or other specific event dictates a higher reserve.	Default (8%)
1	Established company (2+ years of operation) Strong management team with defined management roles and support Stable industry, company well positioned in industry Debt service coverage of 1.2x+ based on readily achievable performance Good financial controls Viability is very high Loan payments have been maintained on a current basis	5%
2	Recently established company (1-2 years of operation) or borrower has long history in industry but newly formed company Project financing with committed repayment source and structure Capable management team/owners Stable industry, borrower may be establishing its position in industry Debt service coverage of 1.1x+ based on probable performance Good financial controls Viability is high Loan payments have been maintained on a current basis	8%
3	Start-up business or business going through re-engineering Project financing with identified repayment source and structure Adequate management team/owners Industry may be undergoing changes but borrower's position or market within industry is clearly identified Debt service coverage of 1.0x+ based on probable performance Adequate financial controls Viability is good but subject to external factors Loan payments have been generally current	12%
4	Start-up business which is higher risk but has high impact Adequate management team/owners Industry may be in flux, or borrower's position in industry may be changing Debt service coverage of 1.0x+ based on probable performance Need for improved financial controls Strong business concept and need but viability may be subject to external factors Loan payments have generally been current but borrower may be evidencing financial strain	15%
5	<b>Portfolio Borrower:</b> May have deteriorating financial history Management team may need outside support to address business or industry issues There is a reasonable change of effecting a turnaround or restructuring Industry may be state of flux, contracting or otherwise unstable Borrower's position in industry may be deteriorating Financial reporting may be inadequate or unreliable Aggregate debt service coverage of 1.0x or less Vendor payments may be stretched, or borrower may have debt burden	50%  (may be adjusted based on loss potential)

	<p>beyond company's cash flow capacity to support  Management is developing or executing business plan to achieve improved financial performance  Senior or other lenders may be unsupportive of borrower  Loan may be chronically delinquent</p>	
6	<p><b>Portfolio Borrower:</b>  Management team unable to effectively address business challenges, with or without outside support  Probability of turnaround is low  Industry may be in high distress  Financial reporting is inadequate or unreliable  Financial capacity severely impaired  Borrower has severe third party or vendor delinquencies  Loan is chronically delinquent  Borrower is in liquidation mode</p>	<p>75%   (may be adjusted based on loss potential)</p>
7	<p><b>Portfolio Borrower:</b>  Loss Status  Business assets liquidated  May have non-business assets which provide loan protection  May have real estate liens which may create future recovery</p>	<p>100%  (may be adjusted based on loss potential)</p>

NOTE: ADDITIONAL APPENDICES THAT MUST BE ATTACHED

D. Corporate Certification

E. Board Authorization to Execute Contract

F. Insurance Certificate

G. Internal Control Questionnaire

H. Debarment Certificate on Letterhead

I. Conflict of Interest Statement on Letterhead

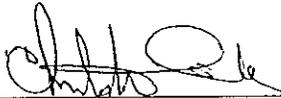
J. Notarized Tax Certification Form

### Conflict of Interest Statement

No staff or Board of Director of Common Capital, Inc. will financially benefit from performing their prescribed duties other than receiving their normal compensation per salary of contract. Additionally no staff member of Board of Director can use or take possession of any of the Springfield Public Service Subrecipient Agreement resources without express approval of its Board of Director's Chairperson.

All transactions conducted by staff and the Board of Directors must be arms length transactions, whose sole intent is to enhance the role and the mission of Common Capital, Inc.

Dated: August 14, 2014

  
\_\_\_\_\_  
(signature of authorized agent)

Christopher Sikes, CEO  
(printed name of agent)

**DEBARMENT CERTIFICATE**

Name of Subrecipient: Common Capital, Inc.

Described herein and attached here to as Attachment IV is a certification from the SUBRECIPIENT stating that neither the SUBRECIPIENT nor any subcontractor secured by the SUBRECIPIENT has been debarred, suspended or determined ineligible to engage in the activity necessary to perform the services of this contract.

By signing this Certificate, the organization expressly understands and acknowledges that any person responsible for performing activities/services under this agreement are currently eligible to engage in the activity under this contract.

Dated: August 14, 2014

  
\_\_\_\_\_  
(signature of authorized agent)

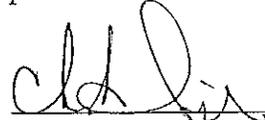
Christopher Sikes, CEO  
(printed name of agent)

National Objective Compliance Certificate

In accordance with the statutes and regulations set forth by the U.S. Department of Housing and Urban Development (HUD), activities funded through the Community Development Block Grant (CDBG) must be used to meet one of the three national objectives named by HUD. Those three objectives are (1) benefiting low- or moderate- income persons; (2) preventing or eliminating slums or blight and (3) meeting an urgent need. To be eligible for funding, every CDBG-funded activity must meet one of these national objectives.

I, Christopher Sikes, certify that the activity proposed in this application for CDBG funding will meet one of the three national objectives as set forth above. Common Capital, Inc. also certifies that it will maintain sufficient documentation to ensure compliance with national objectives.

Dated: August 14, 2014

  
(signature of authorized agent)

Christopher Sikes  
(printed name of agent)

CEO  
(title of agent)

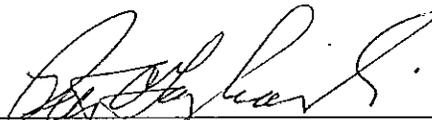
**Common Capital, Inc.**  
**Board of Directors Resolution**

The Common Capital Board of Directors authorizes Christopher Sikes, CEO, to execute in the name and on the behalf of Common Capital the PUBLIC SERVICE SUBRECIPIENT AGREEMENT as part of the City of Springfield's Office of Community Development COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM to create a \$500,000 revolving loan fund to assist Springfield businesses affected by the natural disasters over the last several years.

**CERTIFICATION**

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution regularly presented to and unanimously adopted by the Board of Directors of Common Capital, Inc. at their July 22, 2014 meeting, in conformity with law and the Bylaws of the Corporation and that such resolution is duly recorded in the minute book of this Corporation; that the Directors so notified and voting have been duly elected or appointed to, and are the present incumbents of the Board of Directors; and that I am the duly elected or appointed Clerk.

(seal)



---

Peter Gagliardi, Clerk  
duly authorized

**VOTE OF CORPORATION AUTHORIZING  
EXECUTION OF CONTRACT**

I, the undersigned, a resident of Springfield in the State of Massachusetts hereby certify that I am the Clerk or duly authorized officer of Common Capital, Inc., a Massachusetts Corporation duly organized by law and that this is a true, correct and complete copy of vote prepared at a meeting of the Directors of said corporation, duly called and held on July 22, 2014, at which meeting a majority of the Directors were present and acting throughout.

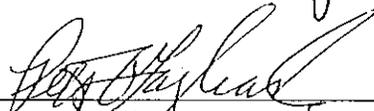
VOTED: That Christopher Sikes the CEO of the  
(Authorized Official\*) (Title)

aforementioned corporation, be and hereby is authorized to affix the corporate Seal, sign and deliver in the name and on behalf of the corporation a contract with the City of Springfield Office of Community Development for the Community Development Block Grant Disaster Recovery Program in the amount of \$500,000.00 effective for the Fiscal Year 2015 commencing 7/1/2014 and ending 6/30/2015, for activities authorized in accordance with the United States Department of Housing and Urban Development.

I further certify that the said vote as set out above has not been revoked or rescinded and is now in full force and effect, that said vote and action ordered thereby are in pursuance of the By-Laws of this Corporation.

IN WITNESS WHEREOF, I hereto set my hand this 20th day of August, 2014.

Corporate Seal

  
\_\_\_\_\_  
Clerk/Secretary

\*This Must be the Person Authorized in your By-Laws to sign contracts.

NOTE: Since an Officer cannot certify to himself, this must be signed by someone other than the one signing the contract.

**CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT  
INTERNAL CONTROL QUESTIONNAIRE**

DATE August 14, 2014

NAME OF OPERATING AGENCY Common Capital, Inc.

ADDRESS OF OPERATING AGENCY 4 Open Square Way, Suite 407 Holyoke, MA 01040

TELE # 413-420-0183 FAX # 413-420-0543 CONTACT PERSON Christopher Sikes

TITLE OF PROJECT Community Development Block Grant Disaster Recovery Program

PROJECT LOCATION: Springfield, MA

AMOUNT OF FUNDING \$500,000.00

DUNS#: 011806170

SOURCE OF FUNDING: CDBG  OTHER

1. Name and Title of individual(s) signing Schedule of Reimbursable expenses request and checks:

A. REIMBURSABLE EXPENSE REQUEST Christopher Sikes, CEO

B. CHECK SIGNATURE Christopher Sikes, CEO

C.

2. Name of person responsible for maintaining records for this contract. (list title also)

Michael Abbate, COO

3. Name of person who is responsible for:

A. Maintaining payrolls Michael Abbate, COO

B. Maintaining Time Sheets Michael Abbate, COO

C. Reconciling Bank Statements Michael Abbate, COO

D. Preparing Statement of Project Costs Michael Abbate, COO

E. Preparing Checks Michael Abbate, COO

F. Purchasing Michael Abbate, COO

4. Name of person who will maintain the following books of record (at least)

1. Cash Receipts and Disbursements Ledger Michael Abbate, COO

2. Voucher Register Michael Abbate, COO

3. Project Cost Ledger Michael Abbate, COO

5. Name of Employees Bonded:

All employees including Christopher Sikes, Michael Abbate, Sam Ortiz, Callie Niezgoda, Roberto Nieves and Kimberly Gaughan

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6. Does the agency maintain a purchase requisition system, and who authorizes purchases?  
Purchases are authorized by Christopher Sikes or Michael Abbate. There is no formal IT purchasing system.

7. Who signs all vouchers ready for payment? Christopher Sikes

8. What is included or needed for authorization to disburse checks? Invoice copy or other appropriate expense backup, check voucher if there is no invoice.  
(voucher, purchase order & receiving slip)

9. Who is responsible for hiring personnel? Christopher Sikes and Michael Abbate

10. Who is responsible for submitting time sheets of employees? Each employee submits their timesheet to Michael Abbate who processes the payroll.

11. What controls are in place for equipment purchases? All equipment is labeled as the property of Common Capital and an annual audit is completed to make sure they are still in possession of the corporation.

I HEREBY ATTEST THAT THE ABOVE INFORMATION IS ACCURATE AND CORRECT.

  
\_\_\_\_\_  
Signature of Authorized Representative  
For Agency – Christopher Sikes

August 14, 2014  
Date

**FOR COMMUNITY DEVELOPMENT USE ONLY**

Interview Conducted By: \_\_\_\_\_

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



MASSACHUSETTS DEPT. OF REVENUE  
 PO BOX 7066  
 BOSTON, MA 02204



AMY A. PITTER, COMMISSIONER  
 MICHAEL J. LIVIDOTI, DEPUTY COMMISSIONER



COMMON CAPITAL INC.,  
 4 OPEN SQUARE WAY STE 407  
 HOLYOKE MA 01040-6378

243C

Notice 80619  
 T/P ID 223 051 402  
 Date 07/09/14  
 Bureau CERTIFICATE

OP

**CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE**

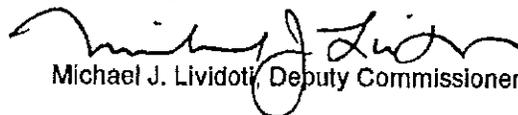
The Commissioner of Revenue certifies as of the above date, that the above named individual or entity is in compliance with its tax obligations payable under M.G.L. c. 62C, including corporation excise, sales and use taxes, sales tax on meals, sales and use tax on Boats/RV, withholding taxes, room occupancy excise and personal income taxes, with the following exceptions.

This Certificate certifies that individual taxpayers are in compliance with income tax obligations and any sales and use taxes, sales tax on meals, withholding taxes, and/or room occupancy taxes related to a sole proprietorship. Persons deemed responsible for the payment of these taxes on behalf of a corporation, partnership or other business entity may not use our automated process to obtain a Certificate.

This Certificate does not certify that the entity's standing as to taxes such as unemployment insurance administered by agencies other than the Department of Revenue, or taxes under any other provisions of law. Taxpayers required to collect or remit the following taxes must submit a separate request to certify compliance: Alcoholic Beverage Excise, Cigarette Excise, International Fuels Tax Agreement, Smokeless Tobacco or Ferry Embarkation.

THIS IS NOT A WAIVER OF LIEN ISSUED UNDER GENERAL LAWS, CHAPTER 62C, SECTION 52.

Very truly yours,

  
 Michael J. Lividoti, Deputy Commissioner

TAX CERTIFICATION AFFIDAVIT FOR CONTRACTS

Individual Social Security Number \_\_\_\_\_ 223-051-402 State Identification Number 22-3051402 Federal Identification Number

Company: Common Capital, Inc.
P.O. Box (if any): \_\_\_\_\_ Street Address Only: 4 Open Square Way, Suite 407
City/State/Zip Code: Holyoke, MA 01040
Telephone Number: 413-420-0183 Fax Number: 413-420-0543

List address(es) of all other property owned by company in Springfield: NONE

Please Identify if the bidder/proposer is a:

- Corporation [X]
Individual \_\_\_\_\_ Name of Individual: \_\_\_\_\_
Partnership \_\_\_\_\_ Names of all Partners: \_\_\_\_\_
Limited Liability Company \_\_\_\_\_ Names of all Managers: \_\_\_\_\_
Limited Liability Partnership \_\_\_\_\_ Names of Partners: \_\_\_\_\_
Limited Partnership \_\_\_\_\_ Names of all General Partners: \_\_\_\_\_

You must complete the following certifications and have the signature(s) notarized on the lines below. Any certification that does not apply to you, write N/A in the blanks provided.

FEDERAL TAX CERTIFICATION

I, Christopher Sikes, certify under the pains and penalties of perjury that Common Capital, Inc., to my best knowledge and (authorized agent) (Bidder/Proposer) belief, has/have complied with all United States Federal taxes required by law.

Common Capital, Inc. [Signature] Date: 9/3/14
Bidder/Proposer Authorized Person's Signature

CITY OF SPRINGFIELD TAX CERTIFICATION

I, Christopher Sikes, certify under the pains and penalties of perjury that Common Capital, Inc., to my best knowledge and (authorized agent) (Bidder/Proposer) belief, has/have complied with all City of Springfield taxes required by law(has/have entered into a Payment Agreement with the City).

Common Capital, Inc. [Signature] Date: 9/3/14
Bidder/Proposer Authorized Person's Signature

COMMONWEALTH OF MASSACHUSETTS TAX CERTIFICATION

Pursuant to M.G.L. c. 62C '49A, I, Christopher Sikes, certify under the pains and penalties of perjury that Common Capital, Inc., (authorized agent) (Bidder/Proposer) to my best knowledge and belief, has/have filed all state tax returns and has/have complied with all state taxes required by law.

Common Capital, Inc. [Signature] Date: 9/3/14
Bidder/Proposer Authorized Person's Signature

Notary Public

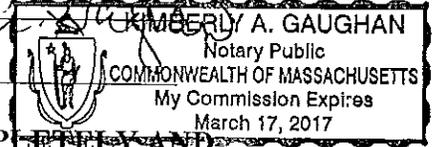
COMMONWEALTH OF MASSACHUSETTS

,ss. Sept 3, 2014

Then personally appeared before me [name] Christopher Sikes, [title] CEO  
of [company name] COMMON CAPITAL, Inc., being duly sworn, and made oath that he/she has read the foregoing document, and  
knows the contents thereof; and that the facts stated therein are true of his/her own knowledge, and stated the foregoing to be his/her free act and  
deed and the free act and deed of [company name] COMMON CAPITAL, Inc.

Kimberly A. Gaughan  
Notary Public

My commission expires: \_\_\_\_\_



**YOU MUST FILL THIS FORM OUT COMPLETELY AND  
YOU MUST FILE THIS FORM WITH YOUR BID.**

