

PREPARED BY: Community Development Division  
City of Rapid City  
300 Sixth Street  
Rapid City, SD 57701  
(605) 394-4181

STATE OF SOUTH DAKOTA )  
 ) SS. CITY OF RAPID CITY INDENTURE  
COUNTY OF PENNINGTON ) OF RESTRICTIVE COVENANTS

THIS INDENTURE, dated this \_\_\_\_ day of \_\_\_\_, 2014, by and between Passages Women's Transitional Living Program ("Owner"), AND the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, with principal offices at 300 6<sup>th</sup> Street, Rapid City, South Dakota 57701 (the "City").

WITNESSETH:

WHEREAS, the Owner holds title to property located at 19 Quincy Street, Rapid City, South Dakota, 57701, and legally described as:

**Lot 2R in Block 19 of Robbinsdale Addition No. 10 in the City of Rapid City, Pennington County, South Dakota**

WHEREAS, based on Owner's representations, Owner has received, pursuant to Section 42 of the United States Code, an allocation of Community Development Block Grant Funds in the amount of One Hundred Twenty-Two Thousand Six Hundred Thirty Dollars (\$122,630) from the City which allocation is subject to Owner executing, delivering and recording in the official land deed records of Pennington County this Indenture that creates certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the United States Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, Owner under this Indenture, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the term stated herein and binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, the parties hereto, intending to be legally bound, to hereby agree as follows:

ARTICLE I  
DEFINITIONS

All words and phrases defined in Section 42 of the United States Code and in the Regulations (as such term is herein defined) pertaining thereto promulgated by the U.S. Department of Treasury and the U.S. Department of Housing and Urban Development shall have the same meanings in this Indenture.

ARTICLE II  
OWNER'S REPRESENTATIONS AND WARRANTIES

- A. Owner is and shall continue to be duly organized under the laws of the State of South Dakota as the type of entity it represents itself to be and authorized to perform the activities contemplated by the Project Financing.

- B. All statements and representations made by Owner to the City in connection with the Community Block Grant Funding allocation or relating to the Project were true and correct in all material respects when made by the Owner.
- C. Owner has and shall continue to have good and marketable title to the Project.
- D. Owner acknowledges that the Project is and shall remain in accordance with Section 42 of the United States Code and the regulations (proposed, temporary and final), which shall include, but are not limited to compliance monitoring regulations, promulgated by the United States Treasury Department thereunder, as well as all public rulings, notices, procedures, announcements, and bulletins issued by the Internal Revenue Service (collectively, the "Regulations") for the term of this Indenture. Owner will not knowingly take or permit to be taken any action which would, either directly or indirectly, subject Owner or the Project to non-compliance with Section 42 of the United States Code or the Regulations.
- E. During the term of this Indenture, Owner agrees and warrants that the **home** facility is and will remain suitable for occupancy and the agreed upon use thereof. In addition, Owner agrees and warrants that the use of such facility will comply with Section 42 of the United States Code.
- F. Owner warrants that it has not and will not execute any other agreement with provision contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Indenture are paramount and controlling as to the rights and obligations set forth, and supersede any other requirements in conflict herewith.

ARTICLE III  
USE RESTRICTIONS

Owner represents, warrants and covenants throughout the term of this Indenture that the land and facility purchased with CDBG funds will be used in accordance with Section 42 of the United States Code. Further, Owner agrees that the use of such property may not change from that for which the acquisition was made unless the Owner provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either (1) the new use of such property qualifies as meeting one of the national objectives in Volume 24 of the Code of Federal Regulations, Section 570.208 (24 CFR §570.208), or (2) if the Owner determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 24 CFR, Section 570.208, it may retain or dispose of the property for the changed use if the Owner's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

ARTICLE IV  
TERM OF INDENTURE

- A. Except as otherwise provided herein, the term of this Indenture shall begin on the first day the Owner signs the contract with the City of Rapid City. The term of this Indenture shall terminate **thirty (30)** years after the first day of the term of Indenture (such period being hereinafter referred to as the "Compliance Period").
- B. Notwithstanding paragraph A above, Owner shall comply with all relevant laws and regulations relating to the Compliance Period, provided, however, that the Compliance Period for any building that is part of the Project shall terminate on the date the Project is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the City or its designee determines that such acquisition is part of an arrangement with Owner for the purpose of terminating such Compliance Period.

ARTICLE V  
OWNER'S COVENANTS

- A. Owner further acknowledges and agrees that this Indenture shall inure to the benefit of those individuals who are low-income, and can benefit from the housing assistance.
- B. Owner shall not discriminate on the basis of race, creed, color, gender, age, handicap, marital status, national origin, family status or religion in the lease, sale, rental, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project or in connection with any improvements to be erected thereon or in connection with maintenance of the Project.
- C. If Owner becomes aware of any situation, event or condition that would result in non-compliance with Section 42 of the United States Code or the Regulations, Owner shall promptly submit written notice thereof to the City.
- D. Owner, for itself, its successors and assigns, agrees that the terms, conditions and restrictions of this Indenture shall be covenants running with the land, and that in any deed of conveyance of the Project or any part thereof, said terms, conditions and restrictions shall be incorporated by reference to this Indenture and the record hereof as fully as the same are contained herein for the Compliance Period as defined herein.
- E. Subject to the requirements of Section 42 of the United States Code and this Indenture, Owner may sell, transfer or exchange the entire Project at any time, but, unless the Compliance Period has terminated in accordance with Article IV hereof, Owner (and its successors and assigns) shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject in the requirements of this Indenture and to the requirements of Section 42 of the United States Code and Regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project.
- F. Owner agrees to notify the City in writing of any sale, transfer or exchange of the Project.

ARTICLE VI  
ENFORCEMENT OF PROVISIONS

Owner acknowledges that the primary purpose for requiring compliance with the restrictions provided in this Indenture are to assure compliance of the Project and Owner (and its successors and assigns) with Section 42 of the United States Code and the Regulations. Owner, in consideration for receiving **One Hundred Twenty-Two Thousand Six Hundred Thirty Dollars (\$122,630)** of Community Block Grant Funding, hereby agrees and consents that the (i) City of Rapid City, and/or the United States of America shall be entitled to enforce specific performance by Owner, its successors and assigns, or Article III of this Indenture in addition to all other remedies provided by law or in equity with regard to any breach of said Article III.

ARTICLE VII  
MISCELLANEOUS

- A. This indenture shall not be amended without the prior written agreement of the parties hereto.
- B. The City of Rapid City or its agents shall have the right of entry and inspection for the Project and shall have access to inspection and reproduction of all records, books and accounts for the project during regular business hours.
- C. The invalidity of any clause, part or provision of this Indenture shall not affect the validity of the remaining portions thereof.

D. This Indenture and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Dakota and, where applicable, the laws of the United States of America. Further, any litigation between the parties arising out of this Indenture and all matters relating thereto shall be heard in the Seventh Circuit Judicial Court for the State of South Dakota located in Rapid City, South Dakota.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be signed on the date first written above.

CITY OF RAPID CITY

ATTEST:

By: \_\_\_\_\_  
Sam Kooiker, Mayor

\_\_\_\_\_  
Pauline Sumption, Finance Officer

State of South Dakota    )  
                                  SS.  
County of Pennington    )

On this the \_\_\_\_ day of \_\_\_\_\_, **2014**, before me, the undersigned officer, personally appeared **Sam Kooiker and Pauline Sumption**, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires:

(SEAL)

Passages Women's Transitional  
Living Program

ATTEST

By: *Dennis Kelley*  
*DENNIS KELLEY*  
Its: *BOARD PRESIDENT*

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

State of South Dakota )  
  SS.  
County of Pennington )

On this the 23<sup>rd</sup> day of July, 14, before me, the undersigned officer, personally appeared *Dennis Kelley*, who acknowledged himself/herself to be the *Board President* of Passages Women's Transitional Living Program, a non-profit corporation, and that he/she as such *Board President*, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as *Board President*.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



*Barbara Garcia*  
Notary Public, South Dakota

My Commission Expires: *08-09-2016*

(SEAL)

**SUBRECIPIENT CONTRACT FOR  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDING  
ENTITLEMENT FUNDS CFDA# 14.253**

**SECTION I.  
RECITALS**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the **City of Rapid City** ("City/Grantee,") and **Passages Women's Transitional Living Program**, ("Subrecipient,") witnesseth:

WHEREAS, the City/Grantee has, under date of July 21, 2014 entered into an Agreement, attached hereto and incorporated herein, with the U.S. Department of Housing & Urban Development providing for financial aid to the City/Grantee under Title I of the Housing and Community Development Act of 1974, as amended to date (HCD Act), Public Law 93-383 for Community Development Block Grant (CDBG) entitlement funds CFDA # 14.253; and

WHEREAS, pursuant to such Agreement, the City/Grantee is undertaking certain activities necessary for the execution of a project situated in the project area described in the Scope of Service; and

WHEREAS, the Common Council finds it in the City/Grantee's best interest to disburse funds to the Subrecipient to execute certain projects in conjunction with such undertaking of the City/Grantee.

NOW, THEREFORE, in consideration of the mutual covenants, conditions contained herein, the City/Grantee and the Subrecipient hereby agree as follows:

**SECTION II.  
RESPONSIBILITY OF THE CITY/GRANTEE**

City/Grantee shall designate representatives of the City/Grantee who will be authorized to make all necessary decisions required of the City/Grantee on behalf of the City/Grantee in connection with the execution of this Agreement and disbursing funds in connection with the program. Disbursements require prior City/Grantee Council approval.

**SECTION III.  
SCOPE OF SERVICE**

**A. Activities**

The Subrecipient will be responsible for administering a **CDBG Fiscal Year 2014**

**Entitlement**  Housing  Rehabilitation  Public Facility  Public Improvement  Public Service or  Economic Development program in a manner satisfactory to the City/Grantee, and consistent with any standards required as a condition of providing

these funds, and consistent with all provisions of this Agreement. Subrecipient warrants and represents it has the requisite authority and capacity to perform all terms and conditions on Subrecipients part to be performed hereunder.

**Program Delivery**

**Passages Women's Transitional Living Program** shall use **One Hundred Twenty-Two Thousand Six Hundred Thirty & 00/11 Dollars (\$122,630)** of Community Development Block Grant funds **for acquisition of six bedroom home at 19 E. Quincy Street that will house women participating in the Passages Women's Transitional Living Program** as submitted in the application for Community Development Block Grant (CDBG) funds dated October 1, 2013.

**General Administration:**

Toward the goal of **for acquisition of a house for women participating in the Passages Women's Transitional Living Program** the major tasks the Subrecipient will perform include, but are not necessarily limited to the following:

1. Identify property for purchase
2. Execute purchase agreement
3. Complete project, move in and provide services to low-to-moderate income disabled persons;
4. Submission of invoices for draw downs against grant;
5. Submission of reports to Community Development and maintenance of all required documentation;
6. Maintain program and financial records documenting the eligibility, and provisions of services.

**B. National Objective Compliance**

All activities funded with CDBG funds must meet one of the H.U.D. Community Development Block Grant Program National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet the following H.U.D. National Objective:

- Benefit low- and/or moderate-income persons;**
- Aid in the elimination of slums or blight;
- Meet a community development need of particular urgency, as defined in 24 CFR 570.208

Failure by the Subrecipient to fulfill the national objective may result in grant funds being disallowed and required to be returned to the City/Grantee.

**C. Level(s) of Performance & Accomplishment - Goals and Performance Measures**

In addition to the normal administrative services required as part of this Agreement, the Subrecipient agrees to provide monthly reports on achievements and program impact to include the following information:

**Passages Women’s Transitional Living Program** goal is to **acquire house at 19 Quincy Street that will house women participating in the Passages Women’s Transitional Living Program.**

**Definition(s) of Units of Service include:**

Activity	% Completed/ Month	Total % Completed / Year
Acquire house at 19 Quincy Street for participants in program		
Impact Results	# People/ Month	# People/ Year
Number new clients benefitting from new facility		
Number of existing clients benefitting from new facility		

**Program Impact:**

**Narratives**

Narrative section may be used to explain goals, accomplishments, activities, issues or any other information pertinent to your agency’s activities in meeting your program objectives.

**D. Personnel Assigned to Scope of Work**

**Personnel Assigned to Scope of Work**

Staff Member	Job Title	General Program Duties	Est. Time Allocation Per Week
Marge Beam	Director	Program Implementation	Varies
Micki Harlow	Volunteer	Program Curriculum	15 hrs/week

Any changes to the program goals, scope of services, schedule or budget, unless otherwise noted, may only be made through a written amendment to this Agreement, executed by the Subrecipient and the City/Grantee. Changes to key Personnel assigned or their general responsibilities under this project are subject to notification and approval from the City/Grantee.



**E. Performance Monitoring**

The City/Grantee reserves the right to monitor and evaluate the progress and performance of the Subrecipient to assure the terms of this Agreement are being satisfactorily met in accordance with HUD, City/Grantee and other applicable monitoring and evaluating criteria and standards. Subrecipient shall cooperate with the City/Grantee relating to such monitoring and evaluation.

The City/Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the City/Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City/Grantee, Agreement suspension or termination procedures will be initiated.

**F. Project Schedule/Milestones**

The Subrecipient is required to provide the City/Grantee with a written project schedule as Exhibit C of this Agreement. The project schedule is an estimate of project completion, and the start date is contingent upon prompt return of signed contracts from the Subrecipient. The Subrecipient agrees to expend all funds by the end of the CDBG year. Subrecipient will also submit request for proposals public notice ads, *prior to publication*, for review by the Community Development Division for compliance with Davis Bacon and Related Acts and HUD guidelines.

**G. Time of Performance**

**Wellspring** shall perform the services set out above, and shall expend the Community Development Block Grant funding provided for above **between April 1, 2014 and March 31, 2015**. 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 CDBG assets, including program income.

**H. Budget**

**Passages Women’s Transitional Living Program** shall use **One Hundred Twenty-Two Thousand Six Hundred Thirty & 00/11 Dollars (\$122,630)** of Community Development Block Grant funds provided for above as follows:

Program/Administrative Costs:		\$ _____
Salaries	\$ _____	
Office Space (Program only)	\$ _____	
Utilities	\$ _____	
Communications	\$ _____	
Reproduction & Printing	\$ _____	
Supplies & Materials	\$ _____	
Mileage	\$ _____	
Other (Specify below)	\$ _____	
Indirect Costs (Specify below)	\$ _____	
Construction/Equipment:		\$ _____

Engineering Costs: \$ \_\_\_\_\_  
Land Acquisition and Site Development \$122,630

**Total Grant** **\$122,630**

**Other: Program Delivery Costs not to exceed \$0.**

Indirect costs: None

Any Indirect costs charged must be consistent with the conditions of this Agreement. See Section IX. C, 2. In addition, the City/Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City/Grantee.

Any amendments to this budget must be approved in writing by the City/Grantee and Subrecipient.

#### **I. Compensation and Method of Payment**

If Subrecipient is not in default hereunder, and subject to City/Grantee's receipt of the U.S. Department of Housing & Urban Development Community Development Block Grant funds, and provided the Agreement and Scope of Service are eligible expenditures of Community Development Block Grant funds, the City/Grantee agrees to pay the Subrecipient an amount not to exceed **One Hundred Twenty-Two Thousand Six Hundred Thirty & 00/11 Dollars (\$122,630)**. Of that amount, eligible program delivery costs will not exceed **\$0**. Payments may be contingent upon certification of the Subrecipients' financial management system in accordance with the standards specified in 24 CFR 84.21.

Draw-downs for the payment of eligible expenses shall be made against the line item budgets specified in Paragraph III E herein and in accordance with performance. Expenses for general administration shall also be paid against the line item budgets specified in Paragraph III E and in accordance with performance.

**1. Draw-down requests may be submitted to the Community Development Specialist on a monthly basis.** Draw-down requests must be in writing and accompanied by acceptable documentation supporting the draw-down amount, per the Payment Procedures outlined in Section IX. C, 3.

**Documentation should include, at a minimum, the following information:**

- a) Invoice itemizing amounts requested;**
- b) Supporting documentation for each item; and**
- c) Payroll slips or time cards, if applicable.**

Additional documentation may be requested as needed for clarification. Payment requests require City/Grantee Council approval prior to disbursement.

## **2. Special Conditions for Release of Funds**

Funding in the amount stipulated in Section III of this Agreement will not be released to the Subrecipient by the City/Grantee until the following special conditions for release of funds are met, and the City/Grantee reserves the right to terminate this Agreement if these special conditions are not met within ninety (90) days of the Agreement execution date.

a) Environmental Review

**An Environmental Review must be completed prior to the Subrecipient committing or expending any Community Development Block Grant funds.** The City/Grantee will conduct the Environmental Review and provide documentation of the findings to the Subrecipient upon its completion. **The Subrecipient may not proceed with any services until receipt of written notification of the Environmental Review findings by the City/Grantee.** Housing projects will require environmental reviews to be conducted on each property as it is identified. If the Environmental Review requires mitigation, no funds may be expended until mitigation has been accomplished and certified as completed and meeting HUD minimum standards by an acceptable source to the City/Grantee. Documentation evidencing the Subrecipients' completion of its responsibilities and compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of federal law as specified in 24 C.F.R. Part 58 which furthers the purposes of the NEPA.

b) Procurement Standards and Code of Conduct

c) Documentation evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in the Office of Management and Budget (OMB) Circular A-102, Attachment O and 24 C.F.R. Part 570.

d) Fair Housing

e) Documentation that the Subrecipient has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. (Applicable to housing projects)

f) Implementation Schedule

g) CDBG Subrecipient to complete and submit to the City/Grantee the Implementation Schedule form.

h) Sources and Uses of Funds

i) Listing of funding sources being utilized for the funded project

j) Other Special Conditions

k) Indenture of restrictive covenants, Davis Bacon subrecipient and contractor's meeting, Davis Bacon regulations apply.

## **J. Notices**

Notices required by this Agreement shall be in writing and delivered via United States Postal Service mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the

capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed to the following agreement representatives:

**City/Grantee:**

City of Rapid City  
Community Development Division  
Attn: Barbara Garcia  
300 Sixth Street (Mail)  
333 Sixth Street (Office)  
Rapid City, SD 57701  
[Barbara.Garcia@rcgov.org](mailto:Barbara.Garcia@rcgov.org)  
Tel. Number (605) 394-4181  
Fax Number (605) 355-3520

**Subrecipient:**

Passages Women's Transitional  
Living Program  
Attn: Marge Beam  
19 Quincy Street  
  
Rapid City, SD 57701  
[marge.beam@passagesliving.com](mailto:marge.beam@passagesliving.com)  
Tel. Number (605) 791-0984  
Fax Number (605) 593-5822

**SECTION IV.**  
**GENERAL CONDITIONS**

**A. General Compliance**

The Subrecipient hereby agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including Subpart K of these regulations) except that (1) the Subrecipient does not assume the City/Grantee's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the City/Grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement.

**The Subrecipient further agrees to 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 an "independent contractor" with respect to services to be performed under this Agreement. The City/Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as the Subrecipient is an independent contractor. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

**C. Hold Harmless**

Subrecipient further agrees to indemnify, defend and hold harmless the City/Grantee, its officers, agents and employees, from and against any and all claims, liabilities, costs,

expenses, penalties or attorney fees, arising from such injuries to persons, or damages to property, or based upon or arising out of the performance or non-performance of this Agreement by Subrecipient, or out of any violation of Subrecipient of any local, state, or federal statute, ordinance, rule or regulation.

**D. Worker's Compensation**

The Subrecipient shall provide Workers' Compensation Insurance coverage in the amount required by law, for all of its employees involved in the performance of this Agreement.

**E. Insurance and Bonding**

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City/Grantee. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

**F. City/Grantee Recognition**

The Subrecipient shall ensure recognition of the role of the City/Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

**G. Amendments**

The City/Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the City/Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City/Grantee or Subrecipient from its obligations under this Agreement.

The City/Grantee may, in its discretion, amend this Agreement to conform with federal, state or local governmental 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 will be incorporated only by written amendment signed by both City/Grantee and Subrecipient.

**SECTION V.  
LIABILITY**

Subrecipient agrees to assume the risk of all personal injuries, including death resulting therefrom, to persons, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of the performance or non-performance of this Agreement by Subrecipient, or by the conditions created thereby.

**SECTION VI.**  
**SUSPENSION OR TERMINATION FOR CAUSE**

In accordance with 24 CFR 85.43, the City/Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include 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 applicable 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/Grantee reports that are incorrect or incomplete in any material respect; or
5. Financial instability of the Subrecipient organization that will affect the abilities of the organization to carry out or complete the stated activities and scope of work.

In the event of agency financial instability, a default or violation of the terms of this Agreement by the Subrecipient, or failure to use the grant for only those purposes set forth, the City/Grantee may take the following actions:

**A. Suspension for Cause**

After notice to the Subrecipient, the City/Grantee may suspend the Agreement and withhold any further payment or prohibit the Subrecipient from incurring additional obligations of grant funds, pending corrective action by the Subrecipient or a decision to terminate.

**B. Termination for Cause**

This Agreement may be terminated, in accordance with 24 C.F.R. 85.43, if the Subrecipient materially fails to comply with any term of the Agreement or applicable federal regulations. The City/Grantee may terminate the Agreement upon ten (10) days written notice, together with documentation of the reasons therefore, and after an opportunity for a hearing is afforded. The determination of the City/Grantee as to the cause of termination and the appropriateness therefore shall be final and binding upon both City/Grantee and Subrecipient. In the event projects are delayed, the Subrecipient shall notify the City/Grantee in writing, informing the City/Grantee of the issues surrounding the delay of the project. In cases where the project is not moving forward, the City/Grantee shall notify the Subrecipient of termination of the funding, as per Section VIII.

In the event of termination, all finished or unfinished documents, data, studies and reports prepared by the Subrecipient under this Agreement shall, at the option of the

City/Grantee, become its property and the Subrecipient shall be entitled to receive just and equitable compensation for satisfactory work completed on such materials for which compensation has not previously been paid.

**SECTION VII.**  
**TERMINATION FOR CONVENIENCE**

This Agreement may be terminated for convenience in accordance with 24 C.F.R. 85.44 by either the City/Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City/Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City/Grantee may terminate the award in its entirety.

**SECTION VIII.**  
**TERMINATION OF CITY/GRANTEE'S OBLIGATIONS**

The City/Grantee's obligations under this Agreement will terminate in the event of suspension or non-receipt of Community Development Block Grant funds by the City/Grantee.

**SECTION IX.**  
**ADMINISTRATIVE REQUIREMENTS**

**A. Financial Management**

Records of the Subrecipient and reimbursable expenses pertaining to the Scope of Services and records of accounts between the City/Grantee and the Subrecipient shall be kept on a generally recognized accounting basis.

**1. Accounting Standards**

The Subrecipient agrees to comply with 24 CFR 84.21-28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

**2. Cost Principles**

The Subrecipient shall administer its program in conformance with 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.

**B. Documentation & 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 are not limited to:

- a) Record(s) providing a full description of each activity undertaken;
- b) Record(s) demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c) Record(s) required to determine the eligibility of activities;
- d) Record(s) required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e) Record(s) documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f) Financial records as required by 24 CFR Part 570.502 and 24 CFR 84.21-28, OMB Circular A-110;
- g) Other records as necessary to document compliance with Subpart K of 24 CFR 570; and
- h) Real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR 570.505, as applicable.

## **2. Retention**

The Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years. The retention period begins on the date of submission of the City/Grantee's Consolidated Annual Performance and Evaluation Report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four (4) years after he/she has 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 four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

## **3. Client Data**

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such information shall be made available to City/Grantee monitors or their designees for review upon request. Such data shall include, but not be limited to:

- a) Client name;
- b) Client address;
- c) Client/Household income level or other basis for determining eligibility;
- d) Description of services provided;
- e) Dates services provided;
- f) Beneficiary information (ethnicity, income, sex, female head of household, elderly, disabled, etc.); and
- g) Household/Family Size.



Such information shall be made available to City/Grantee monitors or their designees for review upon request.

**4. 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/Grantee's or Subrecipients 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.

**5. Close-outs**

The Subrecipient's obligation to the City/Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City/Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income. All financial records pertaining to this Agreement upon completion shall remain the property of the City/Grantee.

**6. Audits & Inspections**

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

Upon completion of the aforementioned required annual financial audit, Subrecipient shall notify City/Grantee in writing of an A-133 audit findings within five (5) business days of Subrecipient receiving notification of such findings. Further, as soon thereafter as is practicable, Subrecipient shall notify City/Grantee in writing of all steps taken or to be taken to resolve such A-133 audit findings, and the final resolution of such findings.

## C. Reporting and Payment Procedures

### 1. Program Income

The Subrecipient shall immediately report to the City/Grantee all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. Program income generally means gross income received by the Subrecipient, directly generated from the use of CDBG funds, with some exceptions which are detailed in 24 C.F.R. §570.500.

Program income includes, but is not limited to:

- a) Payments of principal and interest on loans made using CDBG funds;
- b) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- c) Proceeds from the disposition of equipment purchased with CDBG funds;
- d) Interest earned on program income pending its disposition; and
- e) Interest earned on CDBG funds held in a revolving loan fund's cash balance interest bearing account.

The use of program income by the Subrecipient must be approved by the City/Grantee prior to such use and must comply with the requirements set forth at 24 CFR 570.504. The Subrecipient may retain and use program income funds only for the activity (ies) approved under this Agreement. Program income funds should be held in a non-interest bearing account. **If program income funds are held in an interest bearing account, any interest earned on the program income funds must be returned to the City/Grantee on a monthly basis.** Receipt and expenditures of program income funds shall be reported, in writing, at the time of receipt and expenditure, along with supporting documentation. Program income must be expended prior to drawing any remaining grant funds. In the event the Subrecipient desires to use the program income for some other activity, it must request and receive permission from the City/Grantee of Rapid City/Grantee before undertaking such a use. The City/Grantee of Rapid City/Grantee will determine whether the proposed use meets the eligibility criteria of the regulations established by the CDBG funds, and notify the Subrecipient of either approval or disapproval. At conclusion of the Agreement period, or in the case of disapproval, all program income will be returned to the City/Grantee.

### 2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipients share of administrative costs and shall submit such plan to the City/Grantee for approval, in a form specified by the City/Grantee. In addition, the City/Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City/Grantee.

### **3. Payment Procedures**

Draw-downs for the payment of eligible expenses and general administration items shall be made against the line item budgets specified in the Scope of Service, Paragraph H, and in accordance with performance. Payments shall be made upon presentation of invoices that Subrecipient certifies are true and correct copies of payments due on behalf of the Subrecipient for an activity covered by this Agreement and made in accordance and compliance with the Scope of Service. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City/Grantee in accordance with advance fund and program income balances available in the Subrecipient account. In addition, the City/Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the City/Grantee on behalf of the Subrecipient. Subrecipient monthly or quarterly reports shall be submitted, as stated in Section IX., C, 4. Payment may be suspended by the City/Grantee in the event of nonperformance by the Subrecipient.

Payments may be contingent upon certification of the Subrecipients financial management system in accordance with the standards specified in 24 C.F.R. 84.21.

### **4. Progress Reports**

**The Subrecipient shall submit monthly progress reports to the City/Grantee in the form and content as required by the City/Grantee. The Fiscal Year runs from April 1, 2014 to March 31, 2015. Monthly progress reports are due by the 5<sup>th</sup> of the following month.**

Progress reports should include, but are not limited to: progress on goals to be achieved by program; total number of people assisted for the month; total number of people assisted year-to-date; and demographic information of people assisted by the program. A brief narrative should also be included to cover any additional information about your program, progress, issues and accomplishments not addressed on the progress report form. *Reporting Form attached hereto as Exhibit B1 & B2 (Program Goals and Accomplishments and Monthly Report) and incorporated herein shall be used in conjunction with Logic Model form submitted with application. Reporting forms submitted must be complete or they will be returned for completion and draws suspended until receipt of a complete report.*

Additional documentation may be requested as needed for clarification.

## **D. Procurement**

### **1. Compliance**

The Subrecipient shall comply with current City/Grantee policies concerning the purchase of equipment and shall maintain inventory records of all non-expendable property as defined by such policies as may be procured with funds provided herein. All program assets (unexplained program income, property, equipment, etc.) shall revert to the City/Grantee upon termination of this Agreement.

### **2. OMB Standards**

The Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48, OMB Circular A-110, Procurement Standards, and shall subsequently follow Property Management Standards as modified by 24 CFR 84.31-37, covering utilization and disposal of property.

### **3. Travel expenses**

Travel and related expenses for travel outside the city limits of the City of Rapid City, South Dakota shall not be paid with funds provided under this Agreement without prior written approval from the City/Grantee.

## **E. Use & Reversion of Assets**

Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development Block Grant funds, as set forth in the Scope of Service. In the event Subrecipient ceases to use a personal asset or real property acquired or improved with Community Development Block Grant funds, in accordance with the Scope of Service, the use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- 1. The Subrecipient shall transfer to the City/Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.**
- 2. Real property under the Subrecipients control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of Fifteen Thousand dollars (\$15,000) shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until thirty (30) years after expiration of this Agreement. Real property acquired or improved, in whole or in part, with funds under this Agreement between Seven Thousand and One Dollars (\$7,001) and Fifteen Thousand dollars (\$15,000) shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after expiration of this Agreement.**
- 3. Subrecipient hereby agrees to use all personal assets and all real property, acquired or improved, in whole or in part, with Community Development**

**Block Grant funds, as set forth in the Scope of Service.** In the event Subrecipient ceases to use a personal asset or real property acquired, or improved, with Community Development Block Grant funds, in accordance with the Scope of Service, the Subrecipient shall return the personal asset or real property to the City/Grantee, or pay to the City/Grantee, a sum equal to its fair market value, less any portion of the value attributable to expenditures of non-Community Development Block Grant funds for the acquisition of, or improvement to, the asset or property. The Subrecipient shall transfer to the City/Grantee any Community Development Block Grant funds on hand at the time of expiration of this Agreement and any accounts receivable of Community Development Block Grant funds.

Subrecipient also hereby agrees to enter into an Indenture of Restrictive Covenants Agreement ("Indenture") with the City/Grantee of Rapid City/Grantee at the time of real property purchase. In this Indenture, Subrecipient agrees to represent, warrant and covenant throughout the term of the Indenture that the land and/or facility purchased with CDBG funds will be used in accordance with Section 42 of the United States Code. Further, Subrecipient agrees that the use of such property may not change from that for which the acquisition was made unless the Owner provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either (1) the new use of such property qualifies as meeting one of the national objectives in Volume 24 of the Code of Federal Regulations, Section 570.208 (24 CFR, § 570.208), or (2) if the Owner determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 24 CFR, Section 570.208, it may retain or dispose of the property for the changed use if the Subrecipients CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

- a) The Indenture of Restrictive Covenants shall terminate in the year designated in the Restrictive Covenant according to the terms stated in paragraph E 2. above, based on the dollar amount of the funds granted, after the first day of the Compliance Period (such period being herein referred to as the "Compliance Period" or the "Extended Use Period"):
- b) Notwithstanding paragraph "a" above, the Compliance period for any building that is part of the Project shall terminate on the date the Project is acquired by foreclosure or transferred by a deed or other instrument in lieu of foreclosure unless the Secretary of the Treasury determines that such acquisition is part of an arrangement with Subrecipient a purpose of which is to terminate such Compliance Period.

4. **In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent that funds received under this Agreement were used to acquire the equipment).** Equipment not needed by the

Subrecipient for activities under this Agreement shall be:

- a. Transferred to the City/Grantee for the CDBG program, or
- b. Retained after compensating the City/Grantee (an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment).

**SECTION X.**  
**RELOCATION, REAL PROPERTY ACQUISITION AND**  
**ONE-FOR-ONE HOUSING REPLACEMENT**

The Subrecipient agrees to comply with:

- A. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b);
- B. The requirements of 24 CFR 570.606(c) governing the **Residential Anti-displacement and Relocation Assistance Plan** under (42 USC 5304(d)); and
- C. **The requirements in 24 CFR 570.606(d) governing optional relocation policies.** [The City/Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b) (2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable City/Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

**SECTION XI.**  
**ASSURANCES**

The Subrecipient hereby agrees to use Community Development Block Grant funds for the purposes authorized by the Rapid City/Grantee Common Council. The Subrecipient further hereby agrees to comply with the assurances in Section XII, XIII, and Exhibit "A" attached hereto and incorporated herein which are required by the U.S. Department of Housing & Urban Development for all Community Development Block Grant projects. These include Federal Labor Standards requirements.

**SECTION XII.**  
**PERSONNEL & PARTICIPANT CONDITIONS**

**A. Civil Rights**  
**1. Compliance**

The Subrecipient hereby agrees to comply with all applicable state, local and civil rights laws 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 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107, and 12086.

## **2. Nondiscrimination**

The Subrecipient hereby agrees to 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 (42 USC 5309 (a)) are still applicable. Sub-recipients shall comply with state and local civil rights laws proscribing housing discrimination based on sexual orientation or gender identity.

## **3. Land Covenants**

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.) and 24 CFR 570.601 and 570.602. 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/Grantee 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, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

## **4. Section 504**

The Subrecipient agrees to comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any federally assisted program. The City/Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

## **B. Affirmative Action**

### **1. Approved Plan**

The Subrecipient hereby agrees that it shall be committed to carry out pursuant to the City/Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City/Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

**2. Women-and Minority-Owners Businesses (W/MBE)**

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms, "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51%) percent owned and controlled by minority group members or women. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

**3. Access to Records**

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City/Grantee, HUD or its agent, 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. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement**

The Subrecipient will, 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.

**6. Subcontract Provisions**

The Subrecipient will include the provisions of paragraphs, XII. A., Civil Rights, and XII. B., Affirmative Action in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

**C. Employment Restrictions**

**1. Prohibited Activity**

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.



## **2. Labor Standards**

The Subrecipient hereby agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act and Related Acts as amended (40 USC 3141 et seq.), the provisions of Contract Work Hours and Safety Standards Act (40 USC 3701 et seq.) 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 agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. 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/Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 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/Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29CFR Parts 1,3,5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder 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 contracts subject to such regulations, provisions meeting the requirements of this paragraph.

## **3. "Section 3" Clause**

### **a. Compliance**

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended (12 USC 1701u), and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the City/Grantee, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. The Subrecipient certifies and hereby agrees that no contractual or other disability exists that would prevent compliance with these requirements.

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

“The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

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

**b. Notifications**

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

**c. Subcontracts**

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

provided it with a preliminary statement of ability to comply with the requirements of these regulations.

## **D. Conduct**

### **1. Assignability**

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City/Grantee; provided however, that claims for money due or to become due to the Subrecipient from the City/Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be promptly furnished in writing to the City/Grantee.

### **2. Subcontracts**

#### **a. Approvals**

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the prior written consent of the City/Grantee prior to the execution of the agreement.

#### **b. Monitoring**

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

#### **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**

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City/Grantee along with documentation concerning the selection process.

### **3. Hatch Act**

The Subrecipient hereby agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engage in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

### **4. Conflict of Interest**

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

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds;

- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved;
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes but is not limited to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City/Grantee, the Subrecipient, or any designated public agency; and
- d. The Subrecipient covenants that neither it nor any member of its Board of Directors, officers, or employees presently have any interest in any project to be financed under the Scope of Service, and shall not acquire any interest therein which would conflict with the performance of the Scope of Service required under this Agreement or applicable statute, rule or regulation. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm/household selected for award. The Subrecipients officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements during office tenure or for one year after the closeout of the grant. This stipulation must be included in all other contracts and subcontracts to this grant.

## **5. Lobbying**

The Subrecipient certifies, to the best of its knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, 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, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall

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

- c. The Subrecipient 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 subcontracts, sub-grants, and contracts under grants, loans, and co-operative agreements) and that all Subrecipients shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. 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.

#### **6. Copyright**

If this Agreement results in any copyrightable material or inventions, the Grantee and/or City/Grantee reserves the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

#### **7. Religious Activities**

The Subrecipient hereby agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

### **SECTION XIII. ENVIRONMENTAL CONDITIONS**

#### **A. Air and Water**

The Subrecipient hereby agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- 1. Clean Air Act, 42 U.S.C., 7401, et seq.;**
- 2. Federal Water Pollution Control Act, as amended, 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 308, and all regulations and guidelines issued thereunder; and
- 3. 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 U.S.C. 4001), the Subrecipient shall assure that the activities located in an area identified by the Federal Emergency Management Agency (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**

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR 35.100 et seq. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

**D. Historic Preservation**

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) 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.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list.

**SECTION XIV.  
SEVERABILITY**

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

**SECTION XV.  
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.

**SECTION XVI.**  
**WAIVER**

The City/Grantee's failure to act with respect to a breach by the Subrecipient shall not result in a waiver of its right to act with respect to subsequent or similar breaches. The failure of the City/Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

**SECTION XVII.**  
**ENTIRE AGREEMENT**

The provisions set forth in Items I-XVII, and all attachments of this Agreement constitute, the entire agreement between the parties hereto and no statement, promise, conditions, understanding, inducement or representation, oral or written, express or implied, which is not contained herein shall not be binding or valid.

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

**IN WITNESS WHEREOF**, the Subrecipient and the City/Grantee have executed this agreement as of the date first above written and under the laws of the State of South Dakota.

The City/Grantee may undertake any legal or equitable action available to enforce the provisions of this Agreement. Subrecipient hereby agrees the City/Grantee may recover from it the City/Grantee's reasonable expenses, including attorney's fees incurred in respect to such actions.

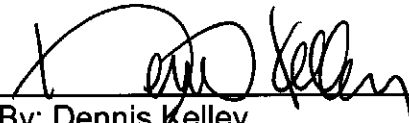
The parties hereby agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of law, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in the City of Rapid City, Pennington County, South Dakota.

**CITY OF RAPID CITY**

**SUBRECIPIENT**

Passages Women's Transitional Living Program

\_\_\_\_\_  
By: Sam Kooiker  
Its: Mayor

  
\_\_\_\_\_  
By: Dennis Kelley  
Its: President of the Board of Directors

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
By: Pauline Sumption  
Its: City Finance Officer

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

Federal I.D. #: 46-6000380

Federal I.D. #: 80-0486496

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY**

**AFFIRMATIVE ACTION APPROVAL**

\_\_\_\_\_  
By:  
Its: City Attorney

\_\_\_\_\_  
Contract Compliance Supervisor



**Office Use Only**  
**IDIS #**

**PROGRAM GOALS AND ACCOMPLISHMENTS**

**Passages Women's Transitional Living - FY2014**

**DATE:**

<b>Activity</b>	<b>% Complete</b>	<b>YTD % Complete</b>
Purchase of Property		
	<b>Units / Month</b>	<b>Total Units / Year</b>
<b>Impact Results</b>		
Number of new residents benefitting from housing for the first time.		
Number of existing residents benefitting from housing program.		

**NARRATIVE:**

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**MONTHLY REPORTS FOR CDBG GRANT**

**Exhibit "B"**

FY 2014

AGENCY: Passages Women's Transitional Living

CONTACT: Dr. Marge Beam

PHONE #: 605-791-0984

Activity # \_\_\_\_\_

	# for April 2014		# for May 2014		# for June 2014		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males							0	
Females					0		0	
<b>TOTAL PEOPLE ASSISTED</b>	<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>	
Female Head of Household							0	
Elderly (over 65)							0	
Disabled							0	
<b>RACE</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>	<b># of Each Race</b>	<b># Hispanic/Latino of each race</b>
1) White							0	0
2) Black or African American							0	0
3) Asian							0	0
4) American Indian or Alaskan Native							0	0
5) Native Hawaiian or Other Pacific Islander							0	0
6) American Indian/Alaskan Native & White							0	0
7) Asian & White							0	0
8) Black/African American & White							0	0
9) Amer Indian/Alaskan Native & Black/African Amer							0	0
10) Other multi-racial							0	0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Beneficiaries by Income (% of HUD Median Income for Household Size)**

Extremely Low Income (= 30%)							0
Low Income (= 50%)							0
Moderate Income (= 80%)							0
Non-Low/Moderate Income (greater than 80%)							0
<b>TOTAL ALL INCOMES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**HUD INCOMES EFFECTIVE 12/11/12**

HOUSEHOLD SIZE	30 % MEDIAN	50 % MEDIAN	80 % MEDIAN
1	12,850	21,350	34,200
2	14,650	24,400	39,050
3	16,500	27,450	43,950
4	18,300	30,500	48,800
5	19,800	32,950	52,750
6	21,250	35,400	56,650
7	22,700	37,850	60,550
8	24,200	40,300	64,450

**NOTE:**  
Orange shaded box totals must match

**NOTE:**  
Yellow shaded box totals must match

MONTHLY REPORTS FOR CDBG GRANT

Exhibit "B"

FY 2014

AGENCY: Passages Women's Transitional Living

CONTACT: Dr. Marge Beam

PHONE #: 605-791-0984

Activity #

	# for July 2014		# for Aug 2014		# for Sep 2014		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males							0	0
Females							0	0
<b>TOTAL PEOPLE ASSISTED</b>	<b>0</b>		<b>0</b>		<b>0</b>		<b>0</b>	<b>0</b>
Female Head of Household							0	0
Elderly (over 65)							0	0
Disabled							0	0
<b>RACE</b>								
1) White							0	0
2) Black or African American							0	0
3) Asian							0	0
4) American Indian or Alaskan Native							0	0
5) Native Hawaiian or Other Pacific Islander							0	0
6) American Indian/Alaskan Native & White							0	0
7) Asian & White							0	0
8) Black/African American & White							0	0
9) Amer Indian/Alaskan Native & Black/African Amer							0	0
10) Other multi-racial							0	0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Beneficiaries by Income (% of HUD Median Income for Household Size)

Extremely Low Income (≤ 30%)									
Low Income (≤ 50%)									
Moderate Income (≤ 80%)									
Non-Low/Moderate Income (greater than 80%)									
<b>TOTAL ALL INCOMES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

HUD INCOMES EFFECTIVE 12/11/12

HOUSEHOLD SIZE	30 % MEDIAN	50% MEDIAN	80% MEDIAN
1	12,850	21,350	34,200
2	14,650	24,400	39,050
3	16,500	27,450	43,950
4	18,300	30,500	48,800
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**NOTE:**  
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MONTHLY REPORTS FOR CDBG GRANT

Exhibit "B"

FY 2014

AGENCY: Passages Women's Transitional Living

CONTACT: Dr. Marge Beam

PHONE #: 605-791-0984

Activity #

	# for Oct. 2014		# for Nov. 2014		# for Dec. 2014		YTD Totals	
	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race	# of Each Race	# Hispanic/Latino of each race
Males							0	
Females							0	
<b>TOTAL PEOPLE ASSISTED</b>			0		0		0	
Female Head of Household							0	
Elderly (over 65)							0	
Disabled							0	
<b>RACE</b>								
1) White							0	
2) Black or African American							0	
3) Asian							0	
4) American Indian or Alaskan Native							0	
5) Native Hawaiian or Other Pacific Islander							0	
6) American Indian/Alaskan Native & White							0	
7) Asian & White							0	
8) Black/African American & White							0	
9) Amer Indian/Alaskan Native & Black/African Amer							0	
10) Other multi-racial							0	
<b>TOTAL BENEFITING FROM ACTIVITY</b>	0	0	0	0	0	0	0	0

Beneficiaries by Income (% of HUD Median Income for Household Size)		TOTAL ALL INCOMES	
Extremely Low Income (≤ 30%)		0	
Low Income (≤ 50%)		0	
Moderate Income (≤ 80%)		0	
Non-Low/Moderate Income (greater than 80%)		0	
<b>TOTAL ALL INCOMES</b>		0	0

HUD INCOMES EFFECTIVE 12/11/12

HOUSEHOLD SIZE	30 % MEDIAN	50% MEDIAN	80% MEDIAN
1	12,850	21,350	34,200
2	14,650	24,400	39,050
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MONTHLY REPORTS FOR CDBG GRANT

FY 2014

Exhibit "B"

AGENCY: Passages Women's Transitional Living

CONTACT: Dr. Marge Beam

PHONE #: 605-791-0984

Activity #

	# for Jan 2015	# for Feb 2015	# for Mar 2015	YTD Totals
Males				0
Females				0
<b>TOTAL PEOPLE ASSISTED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Female Head of Household				0
Elderly (over 65)				0
Disabled				0
<b>RACE</b>	<b># of Each Race</b>	<b># of Each Race</b>	<b># of Each Race</b>	<b># of Each Race</b>
	<b># Hispanic/Latino of each race</b>	<b># Hispanic/Latino of each race</b>	<b># Hispanic/Latino of each race</b>	<b># Hispanic/Latino of each race</b>
1) White				0
2) Black or African American				0
3) Asian				0
4) American Indian or Alaskan Native				0
5) Native Hawaiian or Other Pacific Islander				0
6) American Indian/Alaskan Native & White				0
7) Asian & White				0
8) Black/African American & White				0
9) Amer Indian/Alaskan Native & Black/African Amer				0
10) Other multi-racial				0
<b>TOTAL BENEFITING FROM ACTIVITY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Beneficiaries by Income (% of HUD Median Income for Household Size)

Extremely Low Income (≤ 30%)				0
Low Income (≤ 50%)				0
Moderate Income (≤ 80%)				0
Non-Low/Moderate Income (greater than 80%)				0
<b>TOTAL ALL INCOMES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

HUD INCOMES EFFECTIVE 12/11/12

HOUSEHOLD SIZE	30 % MEDIAN	50% MEDIAN	80% MEDIAN
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