

12/11/12

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF NEIGHBORHOOD SERVICES AND COMMUNITY DEVELOPMENT TO RENEW THE AGREEMENT WITH BRIGHTBRIDGE, INC. FOR ADMINISTRATION OF SECTION 108 GUARANTEE LOAN FUNDS FROM THE UNITED STATES FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A PERIOD OF THREE (3) YEARS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Neighborhood Services and Community Development be and is hereby authorized to renew the Agreement with Brightbridge, Inc. for administration of Section 108 Guarantee Loan funds from the United States Department of Housing and Urban Development for a period of three (3) years.

ADOPTED: _____, 2012

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: November 26, 2012

Preparer: Anthony Sammons

Department: Neighborhood Services and Comm. Dev.

Brief Description of Purpose for Resolution/Ordinance: _____ Res./Ord. # _____ Council District # City Wide

A resolution authorizing the Administrator of the Department of Neighborhood Services and Community Development to renew the Agreement with Brightbridge, Inc. for administration of Section 108 Guarantee Loan Funds from the United States Department of Housing and Urban Development, for a period of three (3) years.

Name of Vendor/Contractor/Grant, etc. _____

New Contract/Project? (Yes or No) Renewal

Total project cost \$ 2,283,284.27

Funds Budgeted? (YES or NO) Yes

Total City of Chattanooga Portion \$ 2,283,284.27

Provide Fund 9301

City Amount Funded \$ _____

Provide Cost Center _____

New City Funding Required \$ _____

Proposed Funding Source if not budgeted HUD

City's Match Percentage % _____

Grant Period (if applicable) _____

List all other funding sources and amount for each contributor.

Amount(s)

Grantor(s)

\$2,283,284.27

U.S. Dept. of Housing and Urban Development

\$ _____

\$ _____

Agency Grant Number _____

CFDA Number if known _____

Other comments: (include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: Beverly L. Johnson 11-27-12

DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: October, 2011

SUBRECIPIENT AGREEMENT BETWEEN
THE CITY OF CHATTANOOGA
AND
BRIGHTBRIDGE, INC. FOR THE ADMINISTRATION OF
SECTION 108 GUARANTEE LOAN FUND PROGRAM

THIS AGREEMENT is entered into this ____ day of _____, 2012, by and between the City of Chattanooga ("Grantee") and Brightbridge, Inc. ("Subrecipient"). Grantee and Subrecipient are collectively referred to herein as the "Parties."

WHEREAS, Grantee entered into a Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974 as amended, 42 U.S.C. §5308 ("Section 108 Loan Agreement") for the purpose of obtaining Guaranteed Loan Funds. The Section 108 Loan Agreement requires Grantee to utilize \$2,283,284.27 (the "Section 108 Loan Funds") for the purpose of establishment and operation of the Brownfields /Community Development Loan Fund (the "Project") in order to finance loans to one or more for-profit and/or nonprofit businesses for the following activities: (i) housing rehabilitation, pursuant to 24 CFR §570.703(h) and §570.202; (ii) special economic development activities, pursuant to 24 CFR §570.703(i)(1) and §570.203; and (iii) construction of public facilities, pursuant to 24 CFR §570.703(1); and

WHEREAS, pursuant to 24 CFR §570.503, Grantee desires to grant the Section 108 Loan Funds received pursuant to the Section 108 Loan Agreement to Subrecipient in furtherance of the activities described above.

NOW, THEREFORE, the Parties hereby agree as follows:

I. SECTION 108 LOAN FUNDS. The "Section 108 Loan Funds" means the Guaranteed Loan Funds borrowed by Grantee in the amount of \$2,283,284.27, as evidenced by the Section 108 Loan Agreement. The Section 108 Loan Funds shall be granted by Grantee to Subrecipient in order to finance business loans for the following activities:

1. Housing Rehabilitation, pursuant to 24 CFR §570.703(h) and §570.202;
2. Special economic development activities, pursuant to 24 CFR §570.703(i)(1) and §570.203; and
3. Construction of public facilities, pursuant to 24 CFR §570.703(1).

II. SCOPE OF SERVICES

1. Program Requirements

Subrecipient shall not incur any obligations to be paid with the Section 108 Loan Funds prior to the receipt of a written determination from the HUD Knoxville office that either (i) each individual activity to be undertaken or supported with Section 108 Loan Funds meets the eligibility requirements of 24 CFR 570.703, the national objective requirements of § 570.208, and, if applicable, the public benefit standards of § 570.209(b), or (ii) the Grantee's procedures for assuring compliance with the requirements are acceptable. In addition, Subrecipient shall

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provide quarterly reports to the Knoxville Field Office and monitoring will be done by that office on a semi-annual basis.

2. Activities/Principal Tasks

Subrecipient will be responsible for administering the Project in a manner satisfactory to Grantee and consistent with any standards required by HUD as a condition of providing the Section 108 Loan Funds. Subrecipient will administer all tasks in connection with the Project in compliance with all applicable federal, state, and local rules and regulations governing the Section 108 Loan Funds and in a manner satisfactory to Grantee.

The focus of Subrecipient's efforts under this Agreement will be to finance loans for the activities described in Section I. The principal objective of the Project will be:

To make loans to businesses in underserved areas in the City of Chattanooga to create and/or retain jobs in those areas.

The major tasks that Subrecipient will perform in connection with the administration of the Project include, but are not limited to, the following:

a. **Bank Accounts:** Subrecipient will establish a bank account at a banking institution insured by the Federal Deposit Insurance Corporation and deposit the Section 108 Loan Funds granted by Grantee in the name of Subrecipient (the "Revolving 108 Loan Fund Account"). The Revolving 108 Loan Fund Account shall be established with a banking institution acceptable to Grantee. Subrecipient shall segregate and hold the Section 108 Loan Funds in the Revolving Loan Fund Account separate and apart from any of its own funds and general assets. The Revolving 108 Loan Fund Account shall be maintained and accounted for in a manner approved by Grantee for funding of future loans. Subrecipient agrees to establish a separate account for Subrecipient's operation of the Project (the "Operating Account").

b. **Refinement of the Project Procedures and Forms:** Subject to the review and approval by Grantee, Subrecipient will establish, or make any necessary revisions to, the Project design, procedures, and forms (including, but not limited to, the underwriting criteria, collateral/loan security requirements, standards for loan value-to-job creation ratio, repayment terms, loan review procedures, standard application forms and loan documents, loan servicing terms and procedures and loan renegotiation, default and/or foreclosure policies).

c. **Outreach/Marketing:** Subrecipient will market, advertise and promote the Project and conduct other forms of outreach to audiences and in areas that attract potential clients to create/retain jobs for intended population. Outreach/marketing materials/information used in promoting the project must clearly indicate the source of funding as "City of Chattanooga's HUD Section 108 Loan Guarantee.". Quarterly Status Reports shall include data on all outreach/marketing efforts. Information should include, at minimum:

- Type of Outreach/Marketing Activity/Event
- Date
- Location
- Intended Audience
- Outcomes – number of people attracted/attended/served

d. **Completion of loan application; underwriting assessment:** Subrecipient will assist businesses in completing loan applications, and will perform an assessment of each loan

request to: (i) determine the CDBG eligibility of the loan, (ii) to evaluate public benefit standards for applicable economic development loans, and (iii) evaluate the loan's potential relative to meeting the national objectives set forth in this Agreement. Subrecipient will perform a front-end assessment to determine whether each loan and the finance and terms associated with it are appropriate, and as part of this assessment will consider the potential property owner's need for financial assistance, the feasibility of the proposed venture or business activity, the past business experience of the applicant, the reasonableness of the proposed costs and return to the applicant, and the commitment of other sources of funds.

e. **Obtain Loan Collateral:** Subrecipient will identify and obtain loan collateral, or other appropriate forms of loan security, sufficient to reduce the financial risk associated with each Section 108-funded loan, consistent with the program intent of providing financing in situations where adequate conventional financing is not available.

f. **Loan Review Committee:** With assistance from Grantee, Subrecipient will establish and maintain a Project Loan Review Committee ("Loan Review Committee"), which shall include at least one (1) staff member from the City's Department of Neighborhood Services and Community Development ("DNSCD"), a representative of Subrecipient, and three (3) representatives of local financial institutions familiar with business loans. The Loan Review Committee will review all loan recommendations forwarded to it by the Section 108 Program staff of Subrecipient. The Section 108 Loan Review Committee will be responsible for analyzing and approving requests for funds in connection with the administration of the Section 108 Loan Funds. Before Subrecipient incurs any obligations to be paid with the Section 108 Loan Funds, Subrecipient shall receive a written determination from the HUD Knoxville office that the activities will meet program requirements for national objectives, eligible activities, and public benefits, if applicable. No project will be funded by Subrecipient until it has been approved in writing by the Loan Review Committee and HUD has submitted a written determination that all requirements have been met.

g. **Loan Closing:** With the authorization of the Loan Review Committee, Subrecipient will execute all necessary documents and will draw down funds from the Revolving 108 Loan Fund Account as necessary to cover the expenses of approved applicants for activities authorized by executed loan agreements. The loan documents executed with applicants will include explicit provisions describing (i) the records that loan recipients must maintain to demonstrate the eligibility of the Section 108 expenditures and the satisfaction of the Section 108 national objectives, and (ii) the conditions and procedures under which late payment penalties, default and/or foreclosure will occur.

h. **Loan Servicing/Loan Portfolio Management:** Subrecipient will establish and maintain a consistent method for recording monthly payments, with up-to-date ledgers and timely reconciliations (at least quarterly). Subrecipient will also establish a system to monitor the financial health of the ventures funded, in order to anticipate repayment problems. Subrecipient will apply its policies and procedures regarding late payments, defaults, loan renegotiation, and foreclosure in a timely and consistent manner.

i. **Management of Program Income:** Any program income generated in connection with the Project, including loan repayments, late payment penalties, recaptures, or proceeds from foreclosure, will be utilized consistent with the provisions of 24 CFR 570.500(a), 570.503(a) and (b)(3), and 570.504, all other applicable program requirements, and the Section 108 Loan Agreement and any amendments thereto. All unexpended program income shall be paid to Grantee in accordance with § 570.503(b)(8) at the end or earlier termination of this Agreement.

Section 108 Loan Guarantee Fees – As the City’s only source of program income available to cover miscellaneous fees or costs related to its Section 108 Loan Guarantee, the City will, when necessary, direct the Subrecipient to pay or provide program income proceeds to the City to pay such fees. These miscellaneous fees include an annual “Custodian Document Fee”, paid to a local financial institution to secure the loan documents.

j. **Maintenance of Records:** In addition to the financial records regarding loan repayment set forth in Paragraph h. above, Subrecipient will maintain records sufficient to fully document (i) the loan application and underwriting review, including the funding assessment of Section 108 eligibility and appropriateness of the loan, (ii) the final terms and conditions of the loan, including collateral or other forms of loan security involved, (iii) satisfaction of the national objectives and public benefit requirements consistent with the requirements of 24 CFR 570.208(a)(4) and 570.209, and (iv) proper utilization of program income received. All such records shall be maintained according to the general requirements of 24 CFR 570.506 and those specified in the section of this Agreement on retention of records as set forth in XI.2.

k. **Reporting Requirements.** In addition to the quarterly reports required from Subrecipient to HUD under Section II.1. above, Subrecipient shall prepare and submit quarterly reports (on forms prepared by DNSCD) to the DNSCD Administrator or designee and HUD outlining financial activity and status of the Section 108 Loan Funds, loan activity during the reporting period, status of the Loan Portfolio or other information needed to document compliance with program requirements and the Section 108 Loan Agreement. The quarterly reports shall be due on January 15, April 15, July 15, and October 15 of each year during the term of this Agreement. Subrecipient shall also comply with Paragraph 15(h)(iii) of the First Amendment to the Section 108 Loan Agreement with respect to the Debt Reserve Investment Account.

l. **Pledge, Assignment and Security Agreement and Delivery of Loan Portfolio** Subrecipient shall collaterally assign the loan portfolio of the Project and all documents related thereto by executing a Pledge, Assignment and Security Agreement in substantially the same form as set forth in **Exhibit “A”** to this Agreement.

m. **Program Delivery:**

- (i) Develop and manage Section 108 Loan Funds that will be used to assist property owners and potential owners in the cost of assessment, cleanup and redevelopment of Brownfield properties. The cleanup activities must be approved in advance by a State of Tennessee Cleanup Oversight and Assistance Program. Activities will occur in targeted neighborhoods with approved revitalization plans.
- (ii) Develop and manage Section 108 Loan Funds that will be used for economic and community development projects. Loans will provide 501(c)(3) community development corporations, other non-profit organizations and private for profit entrepreneurs, access to capital for a wide range of projects including housing opportunities, community development projects and economic development projects, that principally benefit low and moderate income persons and/or aid in the elimination or prevention of slums and blight.

n. **General Administration:** Subrecipient agrees to perform the following administrative duties:

- (i) design a revolving loan fund program in compliance with federal and Grantee requirements;
- (ii) establish a loan review committee;
- (iii) market the loan program;
- (iv) identify potential projects/loan applicants;
- (v) manage the loan application process, with assistance from DNSCD;
- (vi) underwrite all loans (with assistance provided by Grantee advising on project feasibility);
- (vii) service all projects approved for a loan through close-out;
- (viii) manage the loan portfolio;
- (ix) deliver loan and program related documents to Grantee's documents' custodian;
- (x) prepare and submit quarterly reports to DNSCD Administrator or designee outlining financial activity and status of the loan funds, loan activity during the reporting period, status of the loan portfolio and other information needed to document compliance with national objectives, eligibility requirements, and public benefit standards, and the Section 108 Loan Agreement and any amendments thereto;
- (xi) maintain adequate documentation to demonstrate compliance with applicable federal, state, and local laws;
- (xii) prepare and submit to Grantee and HUD all reports required under this Agreement and the Section 108 Loan Agreement and any amendments thereto;
- (xiii) establish procedures for project administration.

o. **Other:** Subrecipient agrees to perform such other acts required by Grantee as are reasonably necessary, and proper in the discharge of Subrecipient's duties under this Agreement.

3. Levels of Accomplishment – Goals and Performance Measures

With regard to the Section 108 Loan Funds, it is anticipated that the market will dictate the use of funds in the various categories.

With respect to Brownfield projects, a minimum goal of one Brownfield project is anticipated in the initial utilization of the Section 108 Loan Funds for projects.

With respect to loans to private businesses, it is anticipated that \$35,000 per job will provide a guideline with a minimum of 51% of the jobs created filled by low and moderate income persons.

With respect to other community development loans, the impacts on the community must be quantified and low- and moderate-income persons impacts described.

4. Staffing

Key staffing by Subrecipient of the various activities is as follows:

President/Chief Executive Officer
Executive Vice President

Any changes in key personnel assigned will be communicated in writing to Grantee for its review. Information submitted on the individuals will include their work history and their unique qualifications and experience related to the activity to which they are assigned.

5. Performance Monitoring

Grantee will monitor performance of Subrecipient against goals and performance standards as stated above. The objective of monitoring activities will be to determine the status of Section 108 Loan Funds and to ensure that projects are being administered properly and in accordance with the Section 108 Loan Agreement, special program requirements, and applicable city, state, and federal laws, rules and regulations.

Substandard performance as determined by Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by Subrecipient within a reasonable period of time after being notified by Grantee, contract suspension or termination procedures will be initiated.

Site visits at the discretion of HUD and City officials will be made a part of the loan agreements. The site visits, excluding financial or managerial audits, will be coordinated through Subrecipient servicing the loan in order to utilize the loan recipients time in a wise business manner.

III. TRANSFER OF SECTION 108 LOAN FUNDS

Following HUD's approval of this Agreement and execution of (i) this Agreement by the parties, and (ii) the Pledge, Assignment and Security Agreement, and delivery of an opinion of Subrecipient's counsel as more particularly described in 3. below, Grantee shall transfer the Section 108 Loan Funds to the Revolving 108 Loan Fund Account established by Subrecipient.

Not later than five (5) business days after the transfer of the Section 108 Loan Funds to Subrecipient, Subrecipient shall deliver to Grantee the following:

1. the original Subrecipient Agreement;
2. the original Pledge, Assignment and Security Agreement;
3. an opinion of Subrecipient's counsel on its letterhead, addressed and satisfactory to Grantee and HUD that:
 - a. Subrecipient is duly organized and validly existing as a corporation under the laws of the State of Tennessee and is in good standing; and
 - b. The Security Instruments specified in 1 and 2 above are valid and legally binding obligations, enforceable in accordance with their terms; and

4. any instruments, documents, agreements, and legal opinions required pursuant to the Section 108 Loan Agreement and any amendments thereto.

IV. TERM

1. The term of this Agreement shall commence upon the date on which the Mayor (or approved designee) and the Subrecipient have signed the Agreement and shall be for a period of three years.
2. Either party may terminate this Agreement at any time upon giving the other party written notice of its intent to terminate, and said notice shall be received at least sixty (60) days prior to the termination date.
3. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which Subrecipient remains in control of Section 108 Loan Funds or other CDBG assets, including program income.

V. BUDGET/COMPENSATION

It is the intent that the Project will be self-sustaining over time and continue to grow into the future. Subrecipient will maintain such records and reports as required by Grantee in accordance with generally accepted accounting practices. In addition to other reports, Subrecipient will provide Grantee with an audited financial report regarding the Section 108 Loan Funds within 90 days after the end of each fiscal year.

Marketing Fees – Subrecipient will assess a maximum fee of 1/12th of 1% per month of the Section 108 Loan Fund balance in order to initiate marketing of the program to the community. The marketing fee shall be limited to no more than 50% of the monthly interest earned on the Section 108 Loan Fund balance. All expenses, collateral pieces and costs of marketing associated with the Project will be paid by Subrecipient from this fee.

Origination Fees – Subrecipient will assess a fee of 1½% of the principal amount of all loans.

Servicing Fees – Subrecipient will assess an annual fee of 2% for the servicing of all loans.

The marketing, origination, and servicing fees are collectively defined as “Subrecipient Fees.”

Any additional administrative costs incurred shall be borne by Subrecipient. Any amendments to the Subrecipient Fees must be approved in writing by both Grantee and Subrecipient.

VI. LOAN DOCUMENTS/PLEDGE, ASSIGNMENT, AND SECURITY AGREEMENT

1. Each loan shall be evidenced by a promissory note (individually, the “Business Note” and collectively, the “Business Notes”) and a loan agreement (the “Business Loan Agreement”). The Business Note and Business Loan Agreement shall contain such provisions as Grantee deems necessary.

The loan shall be fully secured by one or more of the following forms of collateral (collectively the “Collateral”).

- a. A lien on real property (the "Real Property") established through an appropriate and properly recorded Deed of Trust (the "Business Deed of Trust"). The Business Deed of Trust shall contain such provisions as Grantee deems necessary.
 - b. (i) A security interest (collectively referred to as the "Security Interests" in machinery and equipment, accounts receivable, inventory, and other items of personal property (collectively, the "Personal Property").

(ii) The Security Interests shall be granted pursuant to an appropriate security agreement (the "Security Agreement"), which Security Agreement also shall be referenced in appropriate Uniform Commercial Code Financing Statements filed in accordance with the Uniform Commercial Code. The Security Agreement and such Uniform Commercial Code Financing Statements shall contain such provisions as the Grantee deems necessary.
 - c. Any and all rights, titles, and interests of the borrower to any leases covering the Real Property. Such rights, titles, and interests shall be the subject of an appropriate and properly recorded collateral assignment of leases and rents (the "Collateral Assignment of Leases and Rents"). The Collateral Assignment of Leases and Rents shall be in a form acceptable to Grantee.
 - d. Any and all rights, titles, and interests of the borrower in any loan or debt service reserve accounts established for the purpose of securing the loan. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in loan or debt service reserve accounts (the "Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts"). The Collateral Assignment of Interest in Loan or Debt Service Reserve Accounts shall be in a form acceptable to Grantee.
 - e. Such other alternative collateral or security arrangements as may be requested by the borrower and approved by Grantee in writing.
2. In addition to the loan documents required in subsection 1. of this Section VI, all loans made by Suprecipient shall require the following:
- a. An appraisal of the fee simple ownership interest in the Real Property if the Real Property is being acquired with Section 108 Loan Funds. The appraisal shall be completed by an appraiser who is certified by the State and has a professional designation (such as "SRA" or "MAI"). For all other loans secured by Real Property as additional collateral, tax assessment appraisals may be used to establish the value of the Real Property.
 - b. A mortgagee title policy, issued by a company and in a form acceptable to Grantee, naming Grantee as the insured party. The policy must either include in the definition of the "insured" each successor in ownership of the indebtedness secured by the Business Deed of Trust or be accompanied by an endorsement of the policy to Grantee;
 - c. A certified survey with a legal description conforming to the title policy and the Business Deed of Trustis required for Real Property acquired using Section 108 Loan Funds. Real Property that serves as additional collateral for a loan will not require a survey.

- d. Environmental Reports:
 - i. For Brownfields Loans:
 - (a) An environmental assessment describing all investigative and remedial work performed on the property, if any, and a summary of all prior environmental assessments and conclusions, including attachments of copies of all environmental reports generated for any part of the property.
 - (b) A letter agreement or other written documentation from the Tennessee Department of Environmental Conservation ("TDEC") evidencing TDEC's approval of the borrower's cleanup activities.
 - ii. For business loans: A Phase I Environmental Site Assessment of the Real Property pledged as collateral, if applicable, prepared in accordance with ASTM 2009 Standards.
 - e. Appropriate documentation evidencing that the borrower is duly organized and validly existing as a [corporation, partnership, etc.] under the laws of its state of incorporation, is qualified to do business in the State of Tennessee, and is in good standing.
 - f. Corporate resolution or other document as may be appropriate that the loan documents have been duly executed and delivered by an authorized party and is a valid and binding obligation of the borrower, enforceable in accordance with its terms, except as limited by bankruptcy and similar laws affecting creditors generally.
 - g. Any instruments, documents, and agreements that are reasonably required for the closing of the loan contemplated in the loan agreement.
3. Subrecipient covenants that it shall:
- a. Ensure the diligent performance of the usual and customary functions related to the servicing of the Business Notes; and
 - b. Promptly file the Business Deed of Trust with the Register's Office of Hamilton County, Tennessee and promptly perfect the Security Interest by filing a financial statement in accordance with the requirements of the Uniform Commercial Code and shall file such additional statements as are necessary to maintain the perfected Security Interests.
4. Grantee shall obtain from Subrecipient the following collateral (collectively, the "Collateral"):
- a. A security interest in all rights, titles, and interest of Subrecipient (but none of the obligations of Subrecipient), in and to:
 - i. a portfolio of Business Notes (the "Pledge Loan Notes") and supporting security documents (the "Pledge Loan Security Documents"), which together constitute the loans (the "Pledge Loans") further described in attachment to a Pledge, Assignment and Security Agreement as **Exhibit "B."**

- ii. the fund balance in the Section 108 Loan Fund Account established with the \$2,283,284.27.00 grant to Subrecipient.
- b. Such other alternative collateral or security arrangements as may be requested by HUD and/or Grantee.

VII. PAYMENT

It is expressly agreed and understood that the total amount to be paid by Grantee under this Agreement shall not exceed the amounts as outlined in Section V above. Draw downs from the Revolving Section 108 Loan Account for payment of Subrecipient Fees should be made on no more than a monthly basis in such amounts as outlined in Section V; provided, however, that Subrecipient Fees shall not be disbursed until Grantee receives and approves a report in a mutually agreed upon format verifying the amounts earned by Subrecipient. Subrecipient may retain legal and other professional services at the expense of the loan recipients in the servicing of the loans and those expenses will be charged against the respective loans, and efforts will be made to collect those amounts due in accordance with the respective Business Loan Agreement. Subrecipient shall coordinate with the Chattanooga City Attorney with respect to any uninsured claims or legal actions other than foreclosures that may result in losses to the Section 108 Loan Funds in excess of \$10,000. Loan losses will be charged against the Section 108 Loan Funds.

VIII. NOTICES

Notices required by this Agreement shall be in writing and delivered and shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.

Communication and details concerning the Agreement shall be directed to the following contract representatives unless otherwise modified by subsequent written notice.

<u>Grantee</u>	<u>Subrecipient</u>
THE CITY OF CHATTANOOGA Department of Neighborhood Services Attention: Beverly Johnson, Administrator Department of Neighborhood Services and Community Development City Hall 101 East 11 th Street Chattanooga, Tennessee 37402 Phone 423-425-3700 Fax 423-425-3728	BRIGHTBRIDGE, INC. Attention: Joe Guthrie, CEO P.O. Box 871 Chattanooga, Tennessee 37401 Phone 423-424-4220 Fax 423-424-4262

IX. SPECIAL CONDITIONS

Subrecipient shall act as Grantee's agent in administering the Project. Subrecipient agrees to abide by the terms and conditions of the Section 108 Loan Agreement and any amendments thereto, a copy of which is attached hereto as **Exhibit "C,"** and all other loan documents executed by Grantee in connection with the Project.

X. GENERAL CONDITIONS

1. General Compliance

Subrecipient 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) Subrecipient does not assume the recipient's environmental responsibilities described in 24CFR 570.604 and (2) Subrecipient does not assume the recipient's responsibility for initiating the review process (for initiating the review process) under the provisions of 24 CFR Part 52. Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations and policies governing the funds provided under this Agreement. Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

2. 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. Subrecipient shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance, as Subrecipient is an independent contractor.

3. Indemnification

Subrecipient agrees to defend, indemnify, and save harmless Grantee from all claims, investigations, and suits with respect to (i) any alleged or actual violation of state or federal labor or other laws pertaining to employees, it being expressly agreed and understood that as between Grantee and Subrecipient, all persons employed in connection with the Project are employees of Subrecipient, not Grantee; or (ii) Subrecipient's breach of this Agreement which has a material adverse effect on the Project or the Grantee, or the Subrecipient's negligence or willful misconduct; and all injury and property damage, or any loss, claim, costs or expenses (including reasonable attorneys fees) as a result of performance of services pursuant to this Agreement. Any breach, negligence, willful misconduct, or violation of any law by Subrecipient which results in a financial penalty relating to the Project shall be indemnified by Subrecipient to Grantee. This indemnification of Subrecipient shall survive the expiration or sooner termination of this Agreement.

4. Worker's Compensation

Subrecipient shall provide Worker's Compensation Insurance coverage as required by law for all of its employees involved in the performance of this Agreement.

5. Insurance and Bonding

Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount not less than \$2,283,284.27.00.

Subrecipient shall comply with the bonding and insurance requirements of 24 CFR §§ 84.31 and 84.48, including, but not limited to, the following insurance to the extent stated:

- a. Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than \$2,000,000.00 aggregate and \$2,000,000.00 per occurrence. Such insurance is to be written on an occurrence basis.
- b. Automobile Liability and Property Damage Insurance, if applicable, in an amount not less than \$1,000,000.00 combined single limit for both bodily injury and property damage.
- c. Workers' Compensation coverage for employer's liability and disability benefits as required by the State of Tennessee.
- d. Certificates of Insurance for all of the aforementioned coverages shall be provided to Grantee prior to the commencement of work under this Agreement. Grantee shall be named as additional insured on each such certificate of insurance. Copies of the certificates of insurance shall be delivered to and approved by Grantee's Risk Manager and the City Attorney prior to commencement of work under this Agreement.

6. Grantee Recognition

Subrecipient shall insure recognition of the role of Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with the Section 108 Loan Funds made available under this Agreement.

7. Amendments

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

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 Grantee and Subrecipient.

8. Suspension or Termination

In accordance with CFR 85.43, Grantee may suspend or terminate this Agreement if Subrecipient materially fails to comply with any terms of this Agreement or the Section 108 Loan Agreement, which include (but are not limited to) the following:

- a. 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;
- b. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement or the Section 108 Loan Agreement;
- c. Ineffective or improper use of the Section 108 Loan Funds provided under this Agreement; or
- d. Submission by Subrecipient to Grantee reports required by this Agreement or the Section 108 Loan Agreement and any amendments thereto that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either Grantee or Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, that the remaining portion of the award will not accomplish the purpose for which the award was made, Grantee may terminate the award in its entirety. Termination by either Grantee or Subrecipient must comply with the termination procedures outlined in Section IV of this Agreement.

XI. ADMINISTRATIVE REQUIREMENTS

1. Financial Management

a. Accounting Standards

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 costs incurred.

b. Cost Principles

Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations". These principles shall be applied for all costs whether charged on a direct or indirect basis.

2. Documentation and Record Keeping

a. Retention

Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a period of seven (7) years following the close-out of each loan. The retention period begins on the date of the submission of Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. 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 must be retained until completion of the actions and resolutions of all issues, or the expiration of the seven (7) year period, whichever occurs later.

b. Client Data

Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level, or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

c. Disclosure

Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by State or Federal law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

d. Close-outs

Subrecipient's obligation to Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but not be limited to: making final payments, disposing of program assets to Grantee and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Subrecipient has control over CDBG Section 108 Loan Funds, including program income.

e. Audit Provision.

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to Grantee, Grantor Agency, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, exam, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within thirty (30) days after receipt by Subrecipient. Failure of Subrecipient to comply with the audit requirements outlined below will constitute a violation of this Agreement. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Subrecipient audits and OMB circular A-133.

- i. Grantee or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement. Grantee may further audit any records of Subrecipient to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of this Agreement) or to identify conflicts of interest.
- ii. Subrecipient shall at all times during the term of and for a period of seven years after the end of this Agreement, keep and maintain records of the work performed pursuant to this Agreement. Documents shall be maintained by Subrecipient necessary to clearly reflect all work and actions taken to perform its obligations under this Agreement. All such records shall be

maintained in accordance with generally accepted accounting principles. Subrecipient shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by Grantee at all reasonable times and without prior notice.

- iii. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Subrecipient and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of Subrecipient's obligations to Grantee.
- iv. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by Grantee unless the audit identifies significant findings that would benefit Grantee. Subrecipient shall reimburse Grantee for the total costs of an audit that identifies significant findings that would benefit Grantee.
- v. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which Grantee may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

3. Reporting and Payment Procedures

a. Indirect Costs

If indirect costs are charged, Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to Grantee for approval.

b. Payment Procedures

Subrecipient Fees shall be drawn monthly by Subrecipient from the Section 108 Revolving Loan Fund Account established by Subrecipient and will be accounted for in required quarterly financial reports to Grantee.

4. Use and Reversion of Assets

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:

- a. Subrecipient shall transfer to Grantee any funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation or termination of this Agreement.
- b. Real Property under Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$10,000 shall be used to meet one of the national objectives pursuant to 24 CFR 570.208 until five

(5) years after expiration of this Agreement (or such longer period of time as Grantee deems appropriate). In lieu of this restriction of use, Subrecipient may pay Grantee an amount equal to the current market value of the property less any portion of the value attributed to expenditures of non-CDBG funds for acquisition of, or improvement to, the property.

- c. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds, prorated to reflect the extent that funds received under this Agreement were used to acquire the equipment shall be returned to the fund and or Grantee.

XII. RELOCATION, REAL PROPERTY, ACQUISITION AND ONE FOR ONE HOUSING REPLACEMENT

Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606.(b) and 570.606 (c) governing the Residential Anti-displacement and Relocation Assistance Plan under Section 104 (d) of the HDC Act. Subrecipient shall provide relocation assistance to displace persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion of a project assisted by 108 funds provided by Grantee. Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions, and policies concerning the displacement of persons from their residences.

XIII. PERSONNEL AND PARTICIPANT CONDITIONS

1. Civil Rights

a. Compliance

Subrecipient agrees to comply with local and Chattanooga, Hamilton County and Tennessee 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, and Section 109 of Title I of the Housing and Community Development Act of 1974 ("HCDA"), as amended, Section 504 of the Rehabilitation Act of 1973, the American and 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.

b. Nondiscrimination

Subrecipient 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 of Section 109 of the HCDA are still applicable.

c. 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 570.602. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, 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 Grantee and the United States are beneficiaries of and entitled to enforce such covenants. 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.

d. Section 504

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. Grantee shall provide Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

2. Affirmative Action

a. Approved Plan

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

b. Women-and Minority-Owned Businesses (W/MBE)

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. For the purpose of this definition, "minority group" members are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

c. Access to Records

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 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.

d. Notifications

Subrecipient will send to each labor union or representative or 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 Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

f. Subcontract Provisions

Subrecipient will include the provisions of Paragraphs 1, Civil Rights, and 2, Affirmation 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.

3. Employment Restrictions

a. Prohibited Activity

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.

b. Labor Standards

Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *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. 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. Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to Grantee for review upon request.

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 \$2,000,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by Grantee pertaining to such contracts 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 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 Subrecipient of its obligation, if any, to require payment of the higher wage. 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.

c. "Section 3" Clause

i. Compliance

Compliance with the provisions of Section 3 of HUD Act of 1968, as amended, 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 contract, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon Grantee, Subrecipient and any of Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject Grantee, Subrecipient and any of Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

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."

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.

Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

ii. Notifications

Subrecipient agrees to send to each labor organization 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.

iii. Subcontracts

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. 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.

4. Conduct

a. Assignability

Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of Grantee thereto; provided, however, that claims for money due or to become due to Subrecipient from Grantee 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 Grantee.

b. Subcontracts

i. Approvals

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

ii. Monitoring

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.

iii. Content

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.

iv. Selection Process

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 Grantee along with documentation concerning the selection process.

c. Hatch Act

Subrecipient agrees that 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 of the U.S.C.

d. Conflict of Interest

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

- i. Subrecipient shall maintain a written code or standards or conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- ii. No employee, officer or agent of 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.
- iii. 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 any person who is an employee, agent, consultant, officer, or elected or appointed official of Grantee, Subrecipient, or any designated public agency.

e. Lobbying

Subrecipient hereby certifies that:

- i. No federal appropriated 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, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- iii. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly; and
- iv. Lobbying Certifications

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.

f. Copyright

If this Agreement results in any copyrightable material or inventions, Grantee and/or grantor agency 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 or materials for governmental purposes.

g. Religious Activities

Subrecipient 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.

XIV. ENVIRONMENTAL CONDITIONS

1. Air and Water

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

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- 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 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

2. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Subrecipient shall assure that for 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).

3. Lead-Based Paint

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 Part 35, Subpart B. 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 by be conducted.

4. Historic Preservation

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.

5. Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Subrecipient agrees to comply with the procedures set forth in 24 CFR Part 58 insofar as they apply to the performance of this Agreement.

XV. 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.

XVI. SECTION HEADINGS AND SUBHEADINGS

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

XVII. WAIVER

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

XVIII. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and constitute a binding obligation upon Grantee and Subrecipient and their respective successors and assigns; provided, however, that Subrecipient shall not assign this Agreement, or any of its duties hereunder, without the prior written consent of Grantee.

XIX. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between Grantee and Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between Grantee and Subrecipient with respect to this Agreement.

BRIGHTBRIDGE, INC.

CITY OF CHATTANOOGA TENNESSEE
A MUNICIPAL CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____