

THE CITY OF  
PORTLAND

OREGON

OFFICE OF  
PLANNING &  
DEVELOPMENTCOWLES MALLORY  
ADMINISTRATOR1220 S.W. FIFTH AVE.  
PORTLAND, OR 97204  
(503) 248-4579

April 25, 1980

## MEMORANDUM

TO: Mayor McCready  
Commissioner Ivancie  
Commissioner Jordan  
Commissioner Lindberg  
Commissioner Schwab

FROM: Doug Butler *DB*

SUBJECT: Energy UDAG

An ordinance (attached) was filed this morning for Council consideration next Wednesday, April 30, which accepts the \$3,000,000 Energy UDAG from HUD and authorizes the necessary contracts with HUD and with Portland Energy Conservation Inc. (PECI). A one-page summary of the UDAG and draft copies of both of these contracts are also attached.

There are several points regarding this action which I would like to call to your attention:

- 1) The ordinance includes specific language to make it clear that this action is unrelated to any future action which Council may choose to take regarding mandatory weatherization, except that anyone who carries out all of the cost-effective actions identified under this program will be considered to be in compliance with any future mandatory requirements which Council may approve.
- 2) The ordinance does not appropriate funds. Wednesday, April 30, is the last date on which Council may accept the grant under the terms of the HUD contract and, since there is not adequate time for Council to review all of the related material, I have not provided appropriation authority. I will file a second ordinance for that purpose in about two weeks.
- 3) Changes in the money market have made it necessary to dramatically alter the loan programs funded through this grant from those specified in the contract as written by HUD. As a result, some further revision to the contract and negotiation with HUD may be necessary.

Energy UDAG  
April 25, 1980  
Page 2

- 4) Detailed standards, procedures, and methods, as recommended by the Energy Commission, to implement the program will be available early next week and a process for ongoing revisions will be established through HUD's Portland office.

Please let me know if I can be of assistance or answer questions on this matter.

DEB:pb

cc: Cowles Mallory  
Lee James  
Rick Glick  
Tom Benjamin  
Greg Kulberg

## ORDINANCE NO.

An Ordinance accepting an Urban Development Action Grant in the amount of \$3,000,000 and entering into an agreement with the United States Department of Housing and Urban Development; authorizing a contract between the City of Portland, Office of Planning and Development, and Portland Energy Conservation, Inc.; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that:

1. By Ordinance No. 148693, adopted by Council on October 31, 1979, Council authorized the application for an Urban Development Action Grant (UDAG) to begin implementation of the adopted City Energy Policy.
2. On January 10, 1980, the Department of Housing and Urban Development announced an Urban Development Action Grant award of \$3,000,000 for the Energy Program.
3. On February 14, 1980, the City Energy Commission established six task forces and appointed more than sixty citizens to them to develop standard energy audit and payback methods and techniques and to develop an overall marketing strategy.
4. On April 23, 1980, the City Energy Commission considered the task force and staff recommendations and adopted a strategy, standards, procedures, and related items for this UDAG Program.
5. It is necessary and appropriate that the City accept the recommendations of the City Energy Commission by entering into a contract with the United States Department of Housing and Urban Development to accept an award of \$3,000,000, with no local match required.
6. It is further necessary and appropriate that the City enter into a contract with Portland Energy Conservation, Inc. for the administration and implementation of the UDAG Program.\*

NOW, THEREFORE, the Council directs that:

- a. The Mayor, on behalf of the City of Portland, accept an Urban Development Action Grant from the United States Department of Housing and Urban Development in the amount of \$3,000,000 and enter into a grant agreement with the Department for that purpose.
- b. The Mayor and Auditor are hereby authorized to enter into an agreement on behalf of the City with Portland Energy Conservation, Inc. to administer and implement the Urban Development Action Grant Program.

## ORDINANCE No.

- c. The standards and procedures adopted as a part of this Urban Development Action Grant Program do not presume nor require any future regulations to require the City to enforce the mandatory energy efficiency standard as set forth in the adopted Energy Conservation Policy (Ordinance No. 148251). Further, if all cost-effective conservation actions identified using the procedures set forth under ~~the Program~~ are carried out prior to the adoption of any such regulation, those actions shall be considered to satisfy all requirements of that regulation.

Section 2. The Council declares that an emergency exists because regulations governing the grant require immediate acceptance of the award and the authorization of contracts as described in Section 1 above, and delay may result in the loss of the opportunity to receive the grant; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council,

Mayor Connie McCready  
DEB:jt  
April 25, 1980

Mayor of the City of Portland.

Attest:

Auditor of the City of Portland

REVISED UDAG

4-23-80

1. UDAG LOAN PROGRAMS

	% OF MEDIAN	LEVERAGE	# OF UNITS	FUNDING	
				UDAG	PRIVATE
<u>SINGLE FAMILY</u>					
- <u>PIL-LOW/MODERATE INCOME</u>					
-0% DPL-E	0 - 50	-	146	\$366,000	-
-10% - 10 YEAR	50 - 110	10 : 1	800	\$200,000 <sup>2</sup>	\$2,000,000
SUB	0 - 110	3.53:1	946	\$566,000	\$2,000,000
- <u>5 PTS. BELOW MARKET</u>					
-13% <sup>3</sup> - 10 YEAR	110+	4.84:1	1,359	\$581,700	\$2,815,428
<u>MULTIFAMILY</u>					
- <u>8 PTS. BELOW MARKET</u>					
-10% -10 YEAR	0 - 110	2.75:1	1,842 <sup>4</sup>	\$392,900	\$1,080,475
TOTAL		3.83:1	4,147	\$1,540,600	\$5,895,903

- 1. ASSUMING \$2500 PER UNIT
- 2. SECURITY DEPOSIT
- 3. ASSUMING 18% MARKET RATE
- 4. ASSUMING \$800 PER UNIT AND 35 UNITS/STRUCTURE EQUALS 53 STRUCTURES.

2. UDAG AUDIT PROGRAMS

1. MULTIFAMILY	-	10 : 1	1,000	\$300,000	\$3,000,000
2. SMALL COMMERCIAL	-	6 : 1	1,030	\$309,000	\$1,854,000
3. LARGE COMMERCIAL	-	6 : 1	250	\$200,000	\$1,200,000
4. INDUSTRIAL	-	6 : 1	200	\$200,000	\$1,200,000

3. <u>MARKETING</u>	-	-	-	\$240,000	-
4. <u>ADMINISTRATION</u> (ONE-STOP CENTER)	-	-	-	\$210,000	-

TOTAL 4.38:1 6,627 \$3,000,000 \$13,149,903

16,149,903

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT  
 Office of Urban Development Action Grants

UDAG GRANT AGREEMENT

Urban Development Action Grant  
 Under Section 119  
 of the  
 Housing and Community Development Act of 1974  
 (Public Law 93-383, as Amended)

<p><b>A</b> <u>Name of Recipient:</u>                  Portland, Oregon</p>	<p><b>C</b> <u>UDAG Grant Number:</u>                  B-80-AA-41-0002</p>
<p><b>B</b> <u>Address of Recipient:</u>                  Office of <del>the Mayor</del> <sup>PLANNING AND DEVELOPMENT</sup>                  City Hall                  Portland, Oregon 97204                  Attention: <del>Honorable Sammie McCreary</del>                  DOUG FULTER</p>	<p><b>D</b> <u>Preliminary Approval Date:</u>                   January 10, 1980</p>

<p><b>E</b> <u>Amount of Grant</u>                  \$3,000,000</p>
---

UDAG OFFICE USE ONLY

<b>F</b> Grant Mat		
K	W	E

<b>G</b> Devel Off		
C	R	M

<b>H</b> Typed By			<b>I</b> Date			
D	H	I	Mo.	Day	Yr.	
			0	11	480	

<b>J</b> Obligation Date					
Mo.	Day	Yr.			
12	15	80			

<b>K</b> Grant Category		
C	I	R
		X

<b>L</b> Effective Date					
Mo.	Day	Yr.			
11					

<b>M</b> Ratio	
UDAG	PIF
1	: 4.1

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P R E A M B L E

1           THIS GRANT AGREEMENT is made and entered into by and between THE  
2 SECRETARY OF HOUSING AND URBAN DEVELOPMENT, acting by and through the  
3 Assistant Secretary for Community Planning and Development, as representative  
4 of the United States of America, and the RECIPIENT.  
5  
6

R E C I T A L S

7  
8  
9           THE RECIPIENT has applied to the Secretary for grant assistance  
10 under the UDAG Program to undertake activities which are consistent with the  
11 provisions of Section 119 of the Act and the UDAG Regulations; and  
12

13           THE SECRETARY, in reliance upon the representations set forth in  
14 the Application, has approved the award of grant funds to the Recipient, to  
15 be expended by the Recipient in conformity with the requirements and  
16 provisions of this Grant Agreement;  
17

18           IN CONSIDERATION of the mutual promises and covenants contained in  
19 this Grant Agreement, the Secretary and the Recipient agree as follows:  
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## ARTICLE I

## GENERAL PROVISIONS

Section 1.01 Contents of Agreement

This agreement between the parties hereto relating to the Project shall consist of this Grant Agreement, the Application, and all exhibits hereto, as the same may, from time to time, be amended.

Section 1.02 Exhibits Incorporated

All exhibits which are referred to in this Grant Agreement and are attached hereto, are incorporated herein and made a part hereof.

Section 1.03 General Definitions

For all purposes, unless specifically provided otherwise or the context otherwise requires, when used in this Grant Agreement:

(1) "Act" means the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended.

(2) "Application" means the Application For Federal Assistance, and such other submittals by the Recipient, as are specified in Exhibit A to this Grant Agreement.

(3) "Default" means any event of default set forth in subsection (a) of Section 7.01 of this Grant Agreement which continues for the period set forth in subsection (b) of said Section 7.01.

(4) "Eligible Costs" means costs incurred by the Recipient for purposes authorized by Section 2.02 and more particularly described in Exhibit D to this Grant Agreement, provided that such costs (i) are not incurred in connection with any activity which, under 24 C.F.R. Part 570, as the same may be from time to time amended, is ineligible under the UDAG Program, and (ii) conform to the requirements of Attachment B to Federal Management Circular 74-4 (Cost Principles Applicable to Grants and Contracts with State and Local Government), as the same may be from time to time amended. For purposes of determining the conformity of costs to said Attachment B, all costs set forth in Section C thereof except for "prearrangement costs" and "proposal costs" (which are eligible only to the extent authorized in Section 570.454 of 24 C.F.R. Part 570) may be considered eligible without prior approval of the Secretary.

1 (5) "Environmental Conditions" means the conditions imposed by law,  
2 applicable regulations and the provisions of Sections 3.02, 3.03, 3.05, 3.06,  
3 4.02 and 8.02 of this Grant Agreement which prohibit or limit the commitment  
4 and use of grant funds until certain procedural requirements have been completed.

5 (6) "Environmental Requirements" means the requirements described  
6 in Sections 4.01 and 4.02 of this Grant Agreement.

7 (7) "Environmental Studies" means all eligible activities necessary  
8 to produce an "environmental document", as that term is defined at Section 1508.10  
9 of 40 C.F.R. Part 1508, or to comply with the requirements of 24 C.F.R. Part 58,  
10 or the requirements of Section 4.01 or 4.02 of this Grant Agreement.

11 (8) "Federal Protective Rules" means all rules which are established  
12 by Federal statutes and regulations for the protection of persons or property,  
13 or for the protection of things environmental, historic, cultural, flora or  
14 fauna.

15 (9) "Grant Revenues", means the UDAG percentage of: (i) any gross  
16 income earned from the disposition of real or personal property acquired in  
17 whole or in part by the use of grant funds; (ii) the repayment proceeds  
18 (including principal and interest) of any loan made in whole or in part by the  
19 use of grant funds; and (iii) any gross income from a grant-supported activity  
20 where it is specifically declared at Exhibit A to this Grant Agreement that the  
21 income from such activity shall be deemed to be Grant Revenues. The "UDAG  
22 percentage", means an amount computed by applying the percentage of participation  
23 of UDAG funds in the total cost of acquisition of property or in the total amount  
24 of a loan, or in the total cost of a grant-supported activity, to the gross  
25 income from the disposition of such property, the total repayment proceeds of  
26 such loan, or the gross income from such grant-supported activity.

27 (10) "HUD" means the United States Department of Housing and Urban  
28 Development.

29 (11) "Letter of Credit" means the letter of credit to be issued or  
30 amended by the Department of the Treasury pursuant to Section 3.01 of this  
31 Grant Agreement.  
32

1           (12) "Non-UDAG Funded Activities" means those activities not directly  
2 assisted with UDAG Program funds, the assured completion of which was relied  
3 upon by the Secretary in selecting the Recipient for the award of funds under  
4 this Grant Agreement, which activities are more particularly described in  
5 Exhibit C to this Grant Agreement.

6           (13) "Participating Party" means any person, firm, corporation or  
7 entity identified as such in Exhibit A to this Grant Agreement. Identification  
8 as a "Participating Party" signifies that the Secretary, in selecting Recipient  
9 for the award of this grant, relied in material part upon a representation that  
10 the party so identified will, in consideration of this grant, undertake and  
11 complete one or more specified UDAG Funded Activities or Non-UDAG Funded  
12 Activities.

13           (14) "Project" means the group of integrally related activities  
14 described in Exhibits "B" and "C" to this Grant Agreement which are to be  
15 carried out to meet the objectives of the UDAG Program, and includes all UDAG  
16 Funded Activities together with all Non-UDAG Funded Activities.

17           (15) "Recipient" means the local governmental entity receiving UDAG  
18 Program funds pursuant to this Grant Agreement, as more particularly identified  
19 on the cover page to this Grant Agreement.

20           (16) "Secretary" means the Secretary of Housing and Urban Development  
21 or any other official of HUD to whom the Secretary has delegated authority to act  
22 with respect to matters covered by this Grant Agreement.

23           (17) "UDAG Funded Activities" means those activities to be directly  
24 assisted with UDAG Program funds, which activities are more particularly  
25 described in Exhibit B to this Grant Agreement.

26           (18) "UDAG Program" means the Urban Development Action Grant Program  
27 established by HUD pursuant to Section 119 of the Act.

28           (19) "UDAG Regulations" means the regulations set forth in 24 C.F.R.  
29 Part 570, Subpart G, as the same may from time to time be amended.

## ARTICLE II

## AMOUNT AND AUTHORIZED USES OF GRANT FUNDS

Section 2.01 Grant Assistance Provided

1           Section 2.01 Grant Assistance Provided  
2           In consideration of the various obligations undertaken by the  
3 Recipient pursuant to this Grant Agreement, and in consideration of the  
4 obligations to be undertaken by Participating Parties, as represented by the  
5 Recipient in the Application, the Secretary agrees, subject to the terms and  
6 conditions set forth herein, to provide the Recipient with grant funds in the  
7 amount specified in Exhibit A to this Grant Agreement.

Section 2.02 Authorized Uses of Grant Funds

8           Section 2.02 Authorized Uses of Grant Funds  
9           The funds provided to the Recipient pursuant to this Grant Agreement  
10 shall be used in connection with the UDAG Funded Activities described and  
11 depicted in Exhibit B to this Grant Agreement and shall be so used solely for  
12 the authorized purposes described in Exhibit D to this Grant Agreement.

Section 2.03 Adjustments to Grant Funds

13           Section 2.03 Adjustments to Grant Funds  
14           The amount of grant funds which the Secretary has agreed to provide  
15 to the Recipient under this Grant Agreement has been determined by the Secretary,  
16 in part, in reliance upon the cost estimates of the Recipient with respect to  
17 the UDAG Funded Activities set forth in the Application, and in part, in  
18 reliance upon the investment estimates of Participating Parties with respect  
19 to the Non-UDAG Funded Activities and UDAG Funded Activities set forth in the  
20 Application. The Secretary reserves the right to reduce the amount of funds  
21 granted under this Grant Agreement (i) to conform to any revision to which the  
22 Recipient and the Secretary may agree with respect to Exhibits B, C or D to  
23 this Grant Agreement, or (ii) if the actual costs for UDAG Funded Activities  
24 are lower than those set forth in Exhibits B or D to this Grant Agreement.

Section 2.04 Recipient's Use of Grant Revenues

25           Section 2.04 Recipient's Use of Grant Revenues  
26           (a) The Secretary shall have the right to require all Grant  
27 Revenues received by the Recipient, or by any Participating Party, prior to  
28 the completion of all UDAG Funded Activities, to be deposited in escrow  
29 under arrangements approved by the Secretary, in order to provide funds to  
30 assure completion of the UDAG Funded Activities. The Secretary may exercise  
31 said right either by specifying such requirement at Exhibit A to this Grant  
32 Agreement, or by separate written instructions to the Recipient delivered

1 at any time prior to the completion of all UDAG Funded Activities and the draw  
2 of funds to reimburse costs incurred for such activities.

3 (b) Unless otherwise specifically authorized or required at  
4 Exhibit A to this Grant Agreement, all Grant Revenues which are received by the  
5 Recipient, or by any Participating Party, during the term of this Grant Agreement  
6 and prior to completion of all UDAG Funded Activities, shall be used to  
7 reimburse costs incurred for UDAG Funded Activities. Such Grant Revenues shall  
8 be so used in place and instead of any draw under the Letter of Credit, to the  
9 extent adequate to reimburse costs so incurred.

10 (c) Unless otherwise specifically authorized or required at  
11 Exhibit A to this Grant Agreement, all Grant Revenues received by the Recipient,  
12 or by any Participating Party, after the completion of all UDAG Funded  
13 Activities, shall be used by the Recipient, or by the Participating Party  
14 subject to the approval of the Recipient, for community or economic development  
15 activities which would be eligible for assistance under Title I of the Act.

## ARTICLE III

## DISBURSEMENT OF GRANT FUNDS

Section 3.01 Letter of Credit Procedures

1  
2 (a) Promptly after it has become effective and the Secretary has  
3 received, from the Recipient, not less than three (3) fully executed copies of  
4 this Grant Agreement, the Secretary shall cause a Letter of Credit to be issued  
5 to the Recipient by the Department of the Treasury, or shall cause the Letter  
6 of Credit previously issued to the Recipient by the Department of the Treasury  
7 with respect to the Community Development Block Grant Program under Title I of  
8 the Act to be increased, in accordance with procedures established by the  
9 Department of the Treasury, in an amount not to exceed the amount of grant funds  
10 referenced in Section 2.01 and specified in Exhibit A to this Grant Agreement.

11 (b) The issuance or increase of a Letter of Credit shall not,  
12 thereby, authorize the Recipient to use such Letter of Credit or to reimburse  
13 any costs out of funds of this grant. The authorization to use the Letter of  
14 Credit and to reimburse costs out of grant funds shall be governed by the  
15 provisions of Section 3.05 of this Grant Agreement and shall be subject to all  
16 conditions precedent to the Recipient's draw of funds which are specified in  
17 Section 3.06 of this Grant Agreement. The Recipient shall not draw upon the  
18 Letter of Credit unless and until the Secretary has so authorized the Recipient,  
19 pursuant to Section 3.04 of this Grant Agreement.

20 (c) The Recipient is authorized to draw funds against the Letter of  
21 Credit only in accordance with the provisions of this Grant Agreement and the  
22 procedures established by the Secretary and the Department of the Treasury. No  
23 payment by the Department of the Treasury of an improper or unauthorized draw  
24 to the Recipient shall, to any extent, constitute a waiver of the right of the  
25 Secretary subsequently to challenge the validity of such draw, to enforce all  
26 rights and remedies set forth in Article VII of this Grant Agreement, or to take  
27 corrective or remedial administrative action pursuant to the UDAG Regulations,  
28 which action may include, without limitation, suspension or termination of the  
29 Recipient's funding under this Grant Agreement.

30 (d) The disposition of any funds provided under this Grant Agreement  
31 that remain available under the Letter of Credit following completion of the  
32 UDAG Funded Activities or the termination of this Grant Agreement by the

1 Secretary or its termination for any cause shall be in accordance with close-out  
2 procedures then in effect or established by the Secretary, and the Recipient  
3 shall neither have nor retain any rights whatsoever with respect to such funds  
4 by virtue of this Grant Agreement.

5 Section 3.02 Incurring Costs for UDAG Funded Activities

6 (a) This grant and the use of grant funds are conditioned upon the  
7 Recipient incurring costs which are to be reimbursed under this grant only in  
8 accordance with the authority specified in this Grant Agreement, or otherwise  
9 approved by the Secretary in writing. The incurring of costs to be reimbursed  
10 out of funds of this grant shall be governed by the following:

11 (1) Eligible administrative costs, including, but not limited  
12 to, costs of Environmental Studies, may be incurred before or after the date  
13 of this Grant Agreement.

14 (2) Except for eligible administrative costs, including costs  
15 of Environmental Studies, and except as specified at paragraph (3) of this  
16 subsection (a), below, no costs to be reimbursed out of funds of this grant may  
17 be incurred by the Recipient or by any Participating Party, until all of the  
18 Environmental Conditions of this Grant Agreement have been fully satisfied,  
19 including the issuance by the Secretary of all required environmental releases,  
20 in accordance with Section 8.02 of this Grant Agreement.

21 (3) If the Recipient has not satisfied all of the  
22 Environmental Conditions, or the Secretary has not issued the required releases,  
23 as aforesaid, then, after the effective date of this Grant Agreement and until  
24 all of the Environmental Conditions have been satisfied and said releases issued,  
25 the only costs to be reimbursed out of grant funds which may be incurred by the  
26 Recipient or by Participating Parties (other than for administration and for  
27 Environmental Studies) shall be as follows:

28 (i) Eligible Costs for the development of plans or designs,  
29 or for the performance of other work necessary to support an application for any  
30 Federal, State or local permits, or assistance, or to support an application  
31 for debt financing.

32



1 (ii) Eligible Costs not affecting the environment which,  
2 by their nature, in the ordinary course of events, involve critical time  
3 limitations or requirements (e.g., long leadtime equipment or material purchase  
4 orders; expiring purchase options; solicitations for bids).

5 (iii) Eligible Costs for any other activities which are  
6 catagorical exclusions or are otherwise exempted from the Environmental  
7 Requirements by any provision in 24 C.F.R. Part 58.

8 (4) After the Recipient has satisfied all of the Environmental  
9 Conditions and the Secretary has issued the required environmental releases, as  
10 aforesaid, then, at any time after the effective date of this Grant Agreement,  
11 the Recipient and the Participating Parties may incur Eligible Costs which are  
12 to be reimbursed out of funds of this grant.

13 (b) The authorization in subsection (a) of this Section 3.02, above,  
14 to incur costs, is not an authorization to reimburse those costs and does not  
15 mean or imply that such costs will, in fact, be reimbursed out of grant funds.  
16 It means the Recipient and Participating Parties may, voluntarily, and at their  
17 own risk, and upon their own credit and expense, incur costs as authorized at  
18 said subsection (a), above, but their authority to reimburse or to be reimbursed  
19 out of grant funds shall be governed by the provisions of this Grant Agreement  
20 applicable to the reimbursement of costs and the release of funds by the  
21 Secretary.

22 (c) Neither the Recipient nor any Participating Party shall incur  
23 any costs in connection with any UDAG Funded Activity, even though such costs  
24 or action will not be reimbursed or funded out of grant funds, unless such costs  
25 could be incurred pursuant to subsection (a) of this Section 3.02, above, if such  
26 costs were to be reimbursed or funded out of grant funds.

27 Section 3.03 Incurring Costs for Non-UDAG Funded Activities

28 The Recipient shall not incur any costs, in connection with any Non-  
29 UDAG Funded Activity, other than any costs which could be incurred pursuant to  
30 subsection (a) of Section 3.02, in the case of a UDAG Funded Activity, until all  
31 of the Environmental Conditions of this Grant Agreement have been satisfied,  
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1 including the issuance by the Secretary of all required environmental releases  
2 in accordance with Section 8.02 of this Grant Agreement.

3 Section 3.04 Authorization by the Secretary for the Recipient  
4 to Draw Funds

5 (a) If Exhibits E or F to this Grant Agreement do not require or  
6 authorize the phasing or staging of the Recipient's draw of funds, then upon a  
7 finding by the Secretary that the Recipient has submitted, in a timely manner  
8 and in acceptable form and content, all of the evidentiary materials required by  
9 this Grant Agreement to be submitted to and accepted by the Secretary; and upon  
10 acceptance and approval by the Secretary of said evidentiary materials; and if  
11 no event of default has occurred, as defined at subsection (a) of Section 7.01  
12 of this Grant Agreement, the Secretary shall promptly issue to the Recipient a  
13 written authorization to draw grant funds under the Letter of Credit, for all  
14 of the UDAG Funded Activities specified at Exhibit B to this Grant Agreement.

15 (b) If Exhibits E or F to this Grant Agreement do require or  
16 authorize the phasing or staging of the Recipient's draw of funds, then upon a  
17 finding by the Secretary that the Recipient has submitted, in a timely manner and  
18 in acceptable form and content, all of the evidentiary materials specified and  
19 required at said Exhibit E to be submitted to and accepted by the Secretary  
20 respecting any particular phase or stage of the draw of funds; and upon  
21 acceptance and approval by the Secretary of said evidentiary materials; and if  
22 no event of default has occurred, as defined at subsection (a) of Section 7.01  
23 of this Grant Agreement, the Secretary shall promptly issue to the Recipient  
24 a written authorization to draw funds under the Letter of Credit in accordance  
25 with any requirements or authorizations described at said Exhibit E respecting  
26 the particular phase or stage of the draw of funds.

27 Section 3.05 Reimbursement of Costs

28 (a) No costs shall be reimbursed by the Recipient out of grant funds  
29 prior to the issuance by the Secretary of a written authorization to draw funds  
30 under the Letter of Credit, pursuant to Section 3.04 of this Grant Agreement.  
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1 (b) All evidentiary materials required by this Grant Agreement to be  
2 submitted to and approved or accepted by the Secretary, as conditions precedent  
3 to the Recipient's authority to reimburse costs, shall be so submitted by the  
4 Recipient and approved or accepted by the Secretary before the Secretary will  
5 issue any authorization to the Recipient to draw funds under the Letter of  
6 Credit.

7 (c) All certifications and other materials required by this Grant  
8 Agreement to be submitted to the Secretary as conditions precedent to the  
9 Recipient's authority to reimburse costs shall be so submitted by the Recipient  
10 prior to any draw of funds under the Letter of Credit.

11 (d) Notwithstanding any of the foregoing subsections (a), (b) and  
12 (c) of this Section 3.05, and notwithstanding the issuance by the Secretary of  
13 any unconditional authorization to the Recipient to draw funds under the Letter  
14 of Credit, the Recipient is prohibited from reimbursing any costs and from  
15 drawing any funds under the Letter of Credit, unless and until the Recipient  
16 has satisfied all of the Environmental Conditions of this Grant Agreement and  
17 the Secretary has issued all of the required environmental releases, in  
18 accordance with Section 4.02 of this Grant Agreement.

19 Section 3.06 Conditions Precedent to Recipient's Draw of Funds  
20 Under Letter of Credit

21 Prior to the Recipient's reimbursement of any costs with grant funds,  
22 and prior to the Recipient's drawing of any grant funds under the Letter of  
23 Credit, the following conditions shall have been satisfied:

24 (a) General: Conditions Applicable in All Cases

25 (1) The Recipient shall have satisfied all of the Environmental  
26 Conditions of this Grant Agreement.

27 (2) The Secretary shall have issued all of the required  
28 environmental releases, in accordance with Section 4.02 of this Grant  
29 Agreement.

1 (3) The Recipient shall not have been served by the Secretary  
2 with any notice suspending the Recipient's authority to draw funds under the  
3 Letter of Credit, pursuant to Section 7.02 of this Grant Agreement, nor be in  
4 breach of the Recipient's obligation to report an event of default, pursuant to  
5 subsection (a) of Section 5.05 of this Grant Agreement.

6 (b) Specific: Conditions Applicable When Authorization to Draw  
7 Funds is Not Phased or Staged

8 (1) The Recipient shall have submitted to the Secretary, no  
9 later than the date specified at Exhibit F to this Grant Agreement, all of the  
10 evidentiary materials required by Exhibit E to this Grant Agreement to be  
11 submitted to and approved or accepted by the Secretary.

12 (2) The Secretary shall have approved and accepted said  
13 evidentiary materials and shall have issued to the Recipient a written  
14 authorization to draw funds under the Letter of Credit.

15 (3) The Recipient shall have submitted to the Secretary all  
16 certifications and other materials required by Section 8.01 of this Grant  
17 Agreement to be submitted by the Recipient prior to any draw of funds under the  
18 Letter of Credit.

19 (c) Specific: Conditions Applicable When Authorization  
20 to Draw Funds is Phased or Staged

21 (1) As to each phase or stage of a draw of funds which is  
22 described at Exhibits E or F to this Grant Agreement, the Recipient shall have  
23 submitted to the Secretary, no later than the date specified at Exhibit F to  
24 this Grant Agreement, all of the evidentiary materials required by Exhibit E to  
25 this Grant Agreement to be submitted to and approved or accepted by the  
26 Secretary.

27 (2) As to each such phase or stage of a draw of funds, the  
28 Secretary shall have approved and accepted said evidentiary materials and  
29 shall have issued to the Recipient a written authorization to draw funds under  
30 the Letter of Credit to reimburse costs applicable to that phase or stage.  
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1                   (3) The Recipient shall have submitted to the Secretary all  
2 certifications and other materials required by Section 8.01 of this Grant  
3 Agreement to be submitted by the Recipient prior to any draw of funds under  
4 the Letter of Credit.  
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ARTICLE IV  
COMPLIANCE WITH FEDERAL PROTECTIVE RULES

1           Section 4.01 Delegation and Acceptance of Responsibilities

2           Under Federal Protective Rules

3           By its execution of this Grant Agreement, the Recipient represents  
4 and warrants that it has the legal capacity to assume the responsibilities  
5 for compliance with all applicable Federal Protective Rules and agrees and  
6 undertakes to assume and carry out all such responsibilities in accordance  
7 with all the requirements which are or may be established by the Secretary.

8           Section 4.02 Environmental Requirements

9           (a) The Project which is the subject of this grant is subject to  
10 the Environmental Requirements contained in 24 C.F.R. Part 58, as the same may  
11 from time to time be amended, and to the requirements of 40 C.F.R. Parts 1500,  
12 et seq.

13           (b) The Environmental Requirements contained in 24 C.F.R. Part 58  
14 set forth the responsibilities to be assumed and carried out by the Recipient  
15 with respect to applicable Federal Protective Rules.

16           (c) No grant funds may be committed by the Recipient, except as  
17 provided at Section 3.02 of this Grant Agreement, until all applicable  
18 Environmental Requirements have been completed by the Recipient; all required  
19 environmental certifications and requests for release of funds have been  
20 submitted to the Secretary by the Recipient; and the Secretary has issued all  
21 required written environmental releases of funds, as provided at 24 C.F.R.  
22 Part 58.

## ARTICLE V

## REPRESENTATIONS, WARRANTIES, AND SPECIFIC OBLIGATIONS

Section 5.01 Recipient's Representations and Warranties

1           The Recipient has, by and through consultations had among all  
2 members of the Recipient's governing body, chief executive officer, chief  
3 community development officer, chief financial officer, chief clerk, and chief  
4 legal officer, and each of them, examined into each of the following and by its  
5 execution of this Grant Agreement the Recipient does, upon their information  
6 and belief, represent and warrant to the Secretary that:

7           (1) The Recipient is duly organized and validly existing under the  
8 laws of the jurisdiction of which the Recipient is a part, and has all requisite  
9 power and authority to enter into this Grant Agreement.

10           (2) A resolution, motion or ordinance has been duly adopted, passed  
11 or enacted as an official act of the Recipient's governing body, authorizing the  
12 execution and delivery of this Grant Agreement by the Recipient and authorizing  
13 and directing the person executing this Grant Agreement to do so for and on  
14 behalf of the Recipient.

15           (3) This Grant Agreement has been executed and delivered by the  
16 Recipient, and by the person executing it for and on behalf of the Recipient,  
17 in such manner and form as to comply with all laws of the jurisdiction of which  
18 the Recipient is a part, and the Charter and ordinances of the Recipient, which  
19 are necessary to be complied with in order to make this Grant Agreement the valid  
20 and legally binding act and agreement of the Recipient.

21           (4) Except as set forth in Exhibit A to this Grant Agreement, there  
22 is no action, proceeding, or investigation now pending, nor any basis therefor,  
23 known or believed to exist by the Recipient, which (i) questions the validity  
24 of this Grant Agreement, or any action taken or to be taken under it; or  
25 (ii) is likely to result in any material adverse change in the authorities,  
26 properties, assets, liabilities, or conditions (financial or otherwise) of the  
27 Recipient which would materially and substantially impair the Recipient's  
28 ability to perform any of the obligations imposed upon the Recipient by this  
29 Grant Agreement.

1           (5) The representations, statements, and other matters contained  
2 in the Application were true and complete in all material respects as of the  
3 date of filing. Except as set forth in Exhibit A to this Grant Agreement, the  
4 Recipient is aware of no event which has occurred since the date of such  
5 filing which would require any amendment of the Application (other than an  
6 amendment which has been filed with and approved by the Secretary) in order  
7 to make such representations, statements, and other matters true and complete  
8 in all material respects and not misleading in any material respect. The  
9 Recipient is aware of no event or other fact which should have been, and has  
10 not been, reported in the Application as material information.

11           (6) The Recipient has obtained or has reasonable assurance that  
12 there will be obtained all Federal, State and local government approvals and  
13 reviews required by law to be obtained by the Recipient for the Project; and  
14 all Participating Parties have obtained, or the Recipient has reasonable  
15 assurances there will be obtained by such Participating Parties all such  
16 approvals and reviews required by law to be obtained by the Participating Parties  
17 for the Project.

18           (7) Insofar as the capacity of the Recipient to carry out any obliga-  
19 tion under this Grant Agreement is concerned, (i) the Recipient is not in  
20 material violation of its Charter, or any mortgage, indenture, agreement,  
21 instrument, judgment, decree, order, statute, rule or regulation and (ii) the  
22 execution and performance of this Grant Agreement will not result in any such  
23 violation.

24           (8) None of the principal officials, officers, agents or employees  
25 of the Recipient is a Participating Party, or owns or controls any substantial  
26 interest in any Participating Party, excepting only as shall have been disclosed  
27 in the Application, and, as to any such disclosure, the Recipient acknowledges  
28 and agrees that the facts set forth at Exhibit A to this Grant Agreement  
29 constitute all of the facts concerning such ownership, control or interest  
30 which have been disclosed to the Secretary by the Recipient. An interest in  
31 a Participating Party is "substantial", within the meaning of this subsection,  
32 if it would violate any conflict of interest law of the jurisdiction of which



1 Recipient is a part, in the event Recipient and the Participating Party were to  
2 enter into any contract, or if it consists of more than 3% ownership of the  
3 Participating Party, or if the official, officer, agent or employee receives  
4 more than 5% of his or her total annual income from the Participating Party.

5 Section 5.02 Obligation to Complete UDAG Funded Activities

6 As Scheduled

7 (a) In consideration of the selection of the Recipient for the award  
8 of this grant and of the funds provided pursuant to this Grant Agreement, the  
9 Recipient undertakes and assures the Secretary, by its execution of this Grant  
10 Agreement, that Recipient shall use its best efforts to assure the completion  
11 of the UDAG Funded Activities described at Exhibit B to this Grant Agreement  
12 within the time periods specified at Exhibit F to this Grant Agreement.

13 (b) The Recipient understands and by its execution of this Grant  
14 Agreement agrees that the foregoing undertaking and assurance means that  
15 Recipient shall, to the maximum extent permitted by law, use and apply all of  
16 its governmental and proprietary powers, including but not limited to those  
17 powers governing taxes, other revenues, credit, eminent domain and appropri-  
18 ations, if necessary, for the purpose of providing any shortfall between funds  
19 available under this grant and otherwise, and funds necessary to complete all  
20 of the UDAG Funded Activities described at Exhibit B to this Grant Agreement.

21 Section 5.03 Obligation to Achieve Projected Jobs

22 (a) In approving the Application and in selecting the Recipient for  
23 the award of this grant, the Secretary considered certain representations by  
24 Recipient to the Secretary that the use of funds of this grant is expected to  
25 create a specific number of both temporary and permanent new job opportunities,  
26 including a specific number of new permanent job opportunities for persons who,  
27 at the time of their employment, will be persons of low or moderate income,  
28 within the meaning of Section 570.3 of 24 C.F.R. Part 570, as the same may be  
29 from time to time amended.

30 (b) By its execution of this Grant Agreement, the Recipient  
31 acknowledges its representations in the Application pertaining to the creation  
32 of jobs and obligates itself to use its best efforts to create, or cause to be

1 created, during the existence of this Grant Agreement, the numbers and kinds of  
2 jobs represented in the Application as being expected to be created through the  
3 use of funds of this grant.

4 (c) By its execution of this Grant Agreement, the Recipient obligates  
5 itself to use all powers available to Recipient to enforce the undertakings or  
6 assurances of Participating Parties respecting the creation of jobs which are  
7 specified at Exhibit A to this Grant Agreement.

8 Section 5.04 Obligation to Cure Title Defects

9 (a) During the term of this Grant Agreement and until completion of  
10 all of the UDAG Funded Activities, the Recipient shall use its best efforts to  
11 promptly cure, or cause to be cured, any defect in the title to any real  
12 property necessary to the completion of said activities, where such defect will  
13 or may have any material adverse effect on the use of such real property for the  
14 purposes intended under the Grant Agreement.

15 (b) The Recipient understands and by its execution of this Grant  
16 Agreement agrees that the foregoing obligation means that the Recipient shall,  
17 to the maximum extent permitted by law, use and apply all of its governmental  
18 and proprietary powers, including, but not limited to, those powers governing  
19 taxes, other revenues, credit, eminent domain and appropriations, if necessary,  
20 for the purpose of assuring the availability, free and clear of adverse and  
21 inhibiting title defects, of all real property which is necessary to assure and  
22 effect the completion of all of the UDAG Funded Activities.

23 Section 5.05 Notification and Action Upon Events of Default

24 (a) The Recipient shall promptly give written notice to the  
25 Secretary upon the discovery by the Recipient of any event of default involving  
26 any Participating Party, as described at Section 7.01 of this Grant Agreement.

27 (b) Promptly upon the discovery of any such event of default, the  
28 Recipient shall vigorously pursue all remedies which are available to the  
29 Recipient under any agreement with any Participating Party, or otherwise, to  
30 remove or cure such event of default, or to seek redress or relief from its  
31 effects and to prevent or mitigate any adverse effects on the Project.  
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## ARTICLE VI

## INSPECTION AND REVIEW

1           Section 6.01 Duty to Maintain, and Rights to Inspect and Copy,  
2           Books, Records and Documents

3           (a) Except as otherwise provided in this Section 6.01, the Recipient  
4 shall keep and maintain such books, records and other documents as shall be  
5 required under rules and regulations now or hereafter applicable to grants made  
6 under the UDAG Program, including but not limited to 24 C.F.R. 570.907, and as  
7 may be reasonably necessary to reflect and disclose fully the amount and dis-  
8 position of the funds provided under this Grant Agreement, the total cost of the  
9 UDAG Funded Activities, and the amount and nature of all investments related to  
10 the UDAG Funded Activities which are supplied or to be supplied by other sources.

11           (b) All such books, records and other documents shall be available at  
12 the offices of the Recipient (except that books, records, and other documents of  
13 a Participating Party which are subject to this Section 6.01 may be maintained  
14 at the offices of such Participating Party) for inspection, copying, audit and  
15 examination at all reasonable times by and duly authorized representative of  
16 the Secretary or the Comptroller General of the United States.

17           Section 6.02 Site Visits

18           Any duly authorized representative of the Secretary shall, at all  
19 reasonable times, have access to all portions of the Project.

20           Section 6.03 Duration of Inspection Rights

21           The rights of access and inspection described in this Article VI  
22 shall continue until the completion of all close-out procedures respecting this  
23 grant, and until the final settlement and conclusion of all issues arising out  
24 of this grant or under this Grant Agreement.

25           Section 6.04 Reports

26           The Recipient shall promptly furnish to the Secretary all reports  
27 required to be filed in accordance with any directives of the Secretary or any  
28 statute, rule or regulation of HUD.

## ARTICLE VII

## DEFAULTS AND REMEDIES

Section 7.01 Defaults

(a) An event of default shall consist of any use of grant funds for any purpose other than as authorized at Section 2.02 of this Grant Agreement, without the Secretary's prior written approval, or any other material failure in the performance by, or breach of any covenant, agreement, provision, or warranty of (i) the Recipient, made in this Grant Agreement; or, (ii) the Recipient, made pursuant to any agreement entered into between the Recipient and any Participating Party relating to the Project; or, (iii) any Participating Party, made pursuant to any agreement between such Participating Party and the Recipient relating to the Project; or, (iv) any Participating Party, made pursuant to any agreement between Participating Parties relating to the Project.

(b) Continuance of an event of default described in subsection (a) of this Section 7.01 for a period of thirty (30) consecutive days after delivery to the Recipient of a written notice issued by the Secretary specifying such default or breach and requiring it to be remedied shall constitute a Default under this Grant Agreement.

Section 7.02 Remedies Upon Event of Default and Default

(a) Upon the occurrence of any event of default as described in subsection (a) of Section 7.01, above, the Secretary may suspend the Recipient's authority to draw any funds under the Letter of Credit at any time by notice to the Recipient. If such event of default is not cured within the time and in the manner described in subsection (b) of said Section 7.01, the Secretary shall have the right to continue such suspension or, at any time thereafter while such Default shall be continuing, to notify the Recipient that the Secretary, by delivery of such notice, is terminating this Grant Agreement. In the event of a termination, the Recipient's authority to draw any funds under the Letter of Credit shall be deemed to have terminated at the time of the notice suspending such authority, and thereafter the Recipient shall have no right, title or interest in or to any funds remaining under the Letter of Credit.

1 (b) If an event of default consists of the Recipient's failure to  
2 satisfy the conditions of paragraph (1) of subsection (b) or paragraph (1) of  
3 subsection (c) of Section 3.06 by the date specified in Exhibit F to this Grant  
4 Agreement, the Secretary shall have the right, in the Secretary's sole and  
5 absolute discretion and notwithstanding any other provision of this Article VII  
6 to terminate this Grant Agreement and the award of UDAG Program funds to which  
7 this Grant Agreement relates by delivery of written notice thereof to the Recipient.  
8 In the event of such termination, all obligations of the Secretary  
9 pursuant to this Grant Agreement and such award shall cease and the Recipient  
10 shall neither have nor retain any rights whatsoever with respect to the UDAG  
11 Program funds provided under this Grant Agreement or such award.

12 (c) In case a Default shall have occurred and be continuing, the  
13 Secretary may at any time or from time to time proceed to protect and enforce  
14 all rights available to the Secretary under this Grant Agreement by suit in  
15 equity, action at law, or by any other appropriate proceedings, whether for  
16 specific performance of any covenant or agreement contained in this Grant Agreement,  
17 or damages, or other relief, or proceed to take any action authorized or  
18 permitted under applicable law or regulations.

19 (d) The rights and remedies available to the Secretary under this  
20 Article VII in the event of a suspension or termination of this Grant Agreement,  
21 and any related rights and remedies set forth in this Grant Agreement, shall  
22 survive such suspension or termination.

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ARTICLE VIII  
CERTIFICATIONS BY RECIPIENT

1           Section 8.01 Certifications Upon Draw of Funds

2           Prior to each and every draw of grant funds under the Letter of Credit,  
3 the Recipient shall submit to the Secretary a written certification, executed by  
4 the chief executive officer of the Recipient, certifying to the Secretary that:

5           (1) All of the representations and warranties of the Recipient as set  
6 forth in Section 5.01 of this Grant Agreement continue to be valid, true, and in  
7 full force and effect.

8           (2) The Recipient has carried out all of the Recipient's obligations  
9 specified at Sections 5.02, 5.03, 5.04 and 5.05 of this Grant Agreement which,  
10 by their terms or intent, will be applicable at the time of the draw of grant  
11 funds.

12           (3) Upon the submittal of the within certification to the Secretary,  
13 all conditions precedent to the Recipient's authority to draw the grant funds  
14 shall have been satisfied, in accordance with Section 3.06 of this Grant Agree-  
15 ment.

16           (4) The grant funds to be drawn will reimburse Eligible Costs actually  
17 incurred by the Recipient, in accordance with the provisions of Exhibits B and D  
18 to this Grant Agreement.

19           (5) All Grant Revenues which have been received by the Recipient and  
20 by any Participating Party have been deposited or used in accordance with the  
21 provisions of Section 2.04 of this Grant Agreement.

22           Section 8.02 Environmental Certifications

23           (a) The Recipient shall submit to the Secretary and the Secretary shall  
24 have approved and accepted all certifications relating to compliance with Federal  
25 Protective Rules which are required to be so submitted and approved and accepted  
26 by the provisions of 24 C.F.R. Part 58, as the same may from time to time be  
27 amended, or by any other regulation of the Secretary.

28           (b) The approval of such environmental certifications by the  
29 Secretary does not, thereby, authorize the Recipient to draw funds under the  
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1 Letter of Credit. The authorization to draw grant funds is subject to the  
2 compliance by the Recipient with all other conditions of this Grant Agreement  
3 which affect the use of grant funds and to the issuance of the written authori-  
4 zation of the Secretary pursuant to Section 3.04 of this Grant Agreement.  
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1           Section 9.05 Completion of Project

2           The Recipient shall cause to be included in all contracts with  
3 Participating Parties and in all contracts between Participating Parties to the  
4 Project, a representation on the part of each Participating Party that the  
5 Participating Party acknowledges that the Secretary, in selecting the Recipient  
6 for the award of this grant, relied in material part upon the assured completion  
7 of the activities to be undertaken by the Participating Party in connection with  
8 the Project; and that the Participating Party assures the Recipient that such  
9 activities will be completed by the Participating Party.

10           Section 9.06 Assurances of Projected Jobs

11           The Recipient shall cause to be included in all contracts with  
12 Participating Parties, or shall secure in the most legally binding and enforceable  
13 form for such assurance available under the laws of Recipient's State, written  
14 assurances from each Participating Party, that such Participating Party will use  
15 its best efforts to create or cause to be created, within a specified time not  
16 exceeding forty-eight (48) months after the date of the assurance, a specified  
17 number of new job opportunities, including a specified number of permanent new  
18 job opportunities for persons who, at the time of their employment, will be  
19 persons of low and moderate income. Each assurance shall state that in order to  
20 assist and enable the Recipient to report to the Secretary, as the Secretary may  
21 require, the assuring Participating Party consents to report to the Recipient, as  
22 the Recipient may from time to time require, on the numbers and kinds of such  
23 jobs created or caused to be created and filled. The assurances shall contain  
24 such other provisions as may be required by the Recipient to enable the Recipient  
25 to comply with any reporting requirements of the Secretary and to cause the  
26 assurances to be legally binding and enforceable to the maximum extent available  
27 under the applicable law.

28           Section 9.07 Maintaining Records and Rights to Inspect

29           The Recipient shall include in all contracts with Participating Parties  
30 receiving, directly or indirectly, funds provided under this Grant Agreement,  
31 provisions requiring to the effect that (i) each such Participating Party shall  
32 keep and maintain books, records and other documents relating directly to the



1 the receipt and disbursement of such grant funds; and (ii) any duly authorized  
2 representative of the Secretary or Comptroller General of the United States shall,  
3 at all reasonable times, have access to and the right to inspect, copy, audit,  
4 and examine all such books, records and other documents of such Participating  
5 Party until the completion of all close-out procedures respecting this grant,  
6 and until the final settlement and conclusion of all issues arising out of this  
7 grant or under this Grant Agreement.

8 Section 9.08 Access to Project

9 The Recipient shall include in all contracts with Participating Parties  
10 a provision to the effect that each Participating Party agrees that any duly  
11 authorized representative of the Secretary shall, at all reasonable times, have  
12 access to any portion of the Project in which such Participating Party is  
13 involved. The period of such right to access shall be the same as that set forth  
14 in Section 9.07 of this Grant Agreement.

15 Section 9.09 No Assignment or Succession

16 The Recipient shall include in all contracts with Participating Parties  
17 receiving, directly or indirectly, funds provided under this Grant Agreement, an  
18 acknowledgement and agreement by the Participating Party that no transfer of  
19 grant funds by the Recipient to the Participating Party shall be or be deemed an  
20 assignment of grant funds, and such Participating Party shall neither succeed  
21 to any rights, benefits or advantages of the Recipient under this Grant Agree-  
22 ment, nor attain any rights, privileges, authorities or interests in or under  
23 this Grant Agreement.

24 Section 9.10 Secretary Approval of Amendments

25 The Recipient shall include in all contracts with Participating  
26 Parties and shall cause to be included in all contracts between Participating  
27 Parties, which are required to be submitted to and approved or accepted by the  
28 Secretary, a provision that during the term of this Grant Agreement such  
29 contract shall not be amended in any material respect, after such approval and  
30 acceptance, without the prior written approval of the Secretary, and that an  
31 amendment shall be deemed "material," within the meaning of said provision, if  
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1 it cancels or reduces any developmental, construction, job creating, or financial  
2 obligation of any Participating Party by more than ten (10%) percent, or if it  
3 changes the situs or character of any development activity, or if it increases  
4 any time for performance by any Participating Party by more than ten (10%) per-  
5 cent; provided, that an increase in any time for performance which does not  
6 exceed thirty (30) days, shall not be deemed "material."

7 Section 9.11 Disclaimer of Relationship

8 The Recipient shall include in all contracts with Participating Parties  
9 and in all contracts with any party involving the use of grant funds or connected  
10 with the Project, an acknowledgement by all parties to such contracts that no-  
11 thing contained in this Grant Agreement, or in the contract between the parties,  
12 nor any act of the Secretary, or of the Recipient, or of any of the parties,  
13 shall be deemed or construed by any of the parties, or by the third persons, to  
14 create any relationship of third-party beneficiary, or of principal and agent,  
15 or of limited or general partnership, or of joint venture, or of any association  
16 or relationship involving the Secretary.

## ARTICLE X

## EVIDENTIARY MATERIALS

Section 10.01 Opinions of Recipient's Attorney

(a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, the opinion of an attorney is required as part of any evidentiary material to be submitted to the Secretary, the opinion shall be in writing and shall be that of the attorney for the Recipient, unless otherwise specified.

(b) In the formulation or rendering of any statement or opinion, Recipient's counsel may rely upon the certification of other persons, or the written statements or opinions of other counsel; provided, that in any such case, Recipient's counsel shall attach a copy of each such certification, statement, or opinion, to the opinion submitted by Recipient's counsel.

(c) If, in the formulation and rendering of any statement or opinion, the Recipient's counsel predicates the statement or opinion upon "information and belief," then in all such cases the statement and opinion submitted by Recipient's counsel shall contain, or have attached thereto, a statement or description of all of the information upon which the belief of counsel is predicated.

Section 10.02 Commitments of Participating Parties - In General

(a) In selecting the Recipient for the award of this grant, the Secretary has relied, in material part, upon the representations of the Recipient that Participating Parties (i) will carry out certain activities connected with the Project; and (ii) will complete those activities; and (iii) have, or will have, the financial capability to assure the carrying out of the activities to their completion; and (iv) will invest, or cause to be invested, a specific value amount in the Project. The Secretary has also relied upon the Recipient's representations that such Participating Parties will, prior to any use of grant funds for the Project, enter into legally binding undertakings evidencing the commitments which were so relied upon by the Secretary.

(b) All evidentiary materials to be submitted to, and approved and accepted by, the Secretary, in support of the commitments of Participating Parties, should include, in accordance with the foregoing: (i) the legally binding and enforceable promise of the Participating Party, in unequivocal terms, to undertake and carry out and complete specified activities connected with the Project, and to invest or inject into the Project a specified minimum amount of funds or

1 other form of investment; and (ii) clear and convincing proof that the Partici-  
2 pating Party has on hand, or will have available to said party, any finances or  
3 other things of value necessary to carry out the promise by completing the  
4 activities and making the specified investment in connection with the Project.

5 (c) Evidentiary materials in support of the commitments of Recipient  
6 or of Participating Parties, which have been submitted to and approved by the  
7 Secretary, shall not thereafter be amended in any material respect, without the  
8 prior written approval of the Secretary.

9 Section 10.03 Form of Documentary Evidence - General

10 All documentary evidence of commitments submitted to the Secretary  
11 for approval or acceptance shall be in the form of (i) either a duplicate ori-  
12 ginal, or (ii) a photographic copy of the fully executed original, of the  
13 documents.

14 Section 10.04 Evidence of Contracts - Form

15 (a) Evidence of contractual commitments submitted to the Secretary  
16 shall be in the form specified at Section 10.03; shall include all of the docu-  
17 ments evidencing the contractual commitment; and shall have attached the written  
18 statement and opinion of an attorney, made in accordance with Section 10.01.

19 (b) The attorney's statement shall certify that the documents comply  
20 with Section 10.03; that the attorney has examined into the authority of all  
21 parties to the documents, and of all persons executing the documents on behalf  
22 of the parties; and that said parties and persons were authorized to enter into  
23 and execute the documents.

24 (c) The attorney's opinion shall be that the documents constitute a  
25 valid and legally enforceable contract under the laws of the Recipient's state  
26 and that the documents conform to the provisions of this Grant Agreement,  
27 excepting as to any particulars specified in the opinion.

28 Section 10.05 Evidence of Loan Commitment - Form

29 (a) Evidence of loan commitments from private lending institutions  
30 shall be in the form specified at Section 10.03; shall include all of the docu-  
31 ments evidencing the loan commitment, an acceptance by the borrower, the purposes  
32 of the loan, the authorized use of loan funds, and all other terms and conditions

1 of the loan commitment, the acceptance, and the loan; and shall have attached  
2 the written statement and opinion of an attorney, made in accordance with  
3 Section 10.01.

4 (b) A loan commitment may specify contingencies or conditions which  
5 must be satisfied before the closing of the loan, or the disbursement of loan  
6 funds, but the commitment shall be an irrevocable commitment, enforceable by the  
7 borrower upon satisfaction of all contingencies or conditions.

8 (c) The attorney's statement shall certify that the documents comply  
9 with Section 10.03; that the attorney has examined into the authority of all  
10 parties to the loan commitment and the acceptance, and of all persons executing  
11 the loan commitment and acceptance on behalf of the parties; and that said  
12 parties and persons were authorized to make the loan commitment and acceptance.

13 (d) The opinion of the attorney shall be that, subject only to such  
14 contingencies and conditions as are expressed in the documents, the lending  
15 institution is irrevocably committed to loan, and the borrower to accept upon  
16 the terms and conditions specified, the principal amount specified in the loan  
17 commitment; and that the loan commitment, and the acceptance, and all of the  
18 terms and conditions of the loan commitment, and the loan, are lawful and  
19 enforceable under the laws of the Recipient's state; and that the documents  
20 conform to the provisions of this Grant Agreement, excepting in any particulars  
21 specified in the opinion.

22 (e) If, under the terms of the loan commitment, the making of the  
23 loan is contingent upon the happening of any condition precedent, then the  
24 acceptance and approval of the commitment, as the evidence required under this  
25 Grant Agreement, may be conditioned by the Secretary upon the submittal and  
26 acceptance of further evidence that such contingencies have been satisfied, or  
27 that the contingencies have been otherwise removed, or that the loan has closed.

28 (f) In all cases wherein evidence of a loan commitment is required to  
29 be submitted to the Secretary under this Grant Agreement, evidence of the actual  
30 closing of the loan shall be acceptable, in lieu of the foregoing, provided such  
31 evidence complies with Section 10.06.

32

1           Section 10.06 Evidence of Loans - Form

2           (a) Evidence of a loan having been made or closed shall be in the  
3 form specified at Section 10.03; shall be on the letterhead of the lending  
4 institution; shall state the principal amount of the loan, its purposes (interim  
5 or permanent), and the authorized uses of loan funds; shall describe or identify  
6 the security for the loan; shall state the term of the loan; shall identify all  
7 parties to the loan; shall be executed by an authorized officer of the lending  
8 institution; and shall either be duly notarized, or shall have attached the  
9 written statement of an attorney, made in accordance with Section 10.01, certi-  
10 fying that the documents comply with Section 10.03, and that the officer of the  
11 lending institution was authorized to execute the documents.

12           (b) Evidence of a loan having been made or closed may also be  
13 submitted in the form of copies of recorded notes, deeds, bonds, indentures and  
14 other documents which may comply with Section 10.03 and which contain sufficient  
15 evidence, including evidence of recordation, to enable the Secretary to determine  
16 to the satisfaction of the Secretary, the matters specified above at subsection  
17 (a) of this Section 10.06 and that the loan has been made or closed.

18           Section 10.07 Evidence of Investor's Equity - Form

19           Whenever, at Exhibit E of this Grant Agreement, or otherwise, a  
20 Participating Party is required to provide evidence of equity or equity invest-  
21 ment funds in an amount and manner satisfactory and acceptable to a lending  
22 institution, such evidence shall be in the form specified at Section 10.03; shall  
23 be on the letterhead of the lending institution; shall identify the Participating  
24 Party; and shall state that the Participating Party has, on hand, or immediately  
25 available to the Participating Party, equity, or equity investment funds, of a  
26 value and in an amount satisfactory and acceptable to the lending institution,  
27 and that the availability and use of the equity or funds for the activities to be  
28 carried out by the Participating Party in connection with the Project, is assured  
29 to the satisfaction of the lending institution. The document shall be executed  
30 by an authorized officer of the lending institution; and shall either be  
31 notarized, or shall have attached the written statement of an attorney, made in  
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1 accordance with Section 10.01, that the documents comply with Section 10.03 and that  
2 the officer of the lending institution was authorized to execute the same.

3 Section 10.08 Evidence of Finances Satisfactory to Counsel - Form

4 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise,  
5 evidence is required in the form of a statement and opinion of an attorney that a  
6 Participating Party will provide a specific amount of finances for purposes of  
7 carrying out the commitment of that Participating Party in connection with the  
8 Project, such evidence shall be in the form of a written statement and opinion of  
9 an attorney made in accordance with Section 10.01.

10 (b) The attorney's statement shall certify that the attorney has ex-  
11 amined into the availability to the Participating Party of equity investment funds  
12 and/or of debt financing; shall state the amount and the source of equity funds on  
13 hand or immediately available to the Participating Party for use in the Project;  
14 and shall state the amount and the source of debt financing which is available, or  
15 irrevocably committed to the Participating Party for use in the Project. The  
16 attorney shall be guided by the provisions of Sections 10.05, 10.06 and 10.07 in  
17 making these determinations.

18 (c) The attorney's opinion shall be that the Participating Party has on  
19 hand, or immediately available, or irrevocably committed to the Participating  
20 Party, for use in carrying out the commitments of the Participating Party to the  
21 Project, equity investment funds and/or debt financing in a sum equal to the  
22 specified amount of finances required in this Grant Agreement to be invested by  
23 that Participating Party.

24 Section 10.09 Anti-Speculation Provisions - Sale of Real Property

25 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, a  
26 document is required to contain a provision for the prevention or discouragement of  
27 speculation in the purchase and sale of property by a purchaser who receives the  
28 benefits of the use of grant funds, then, unless otherwise specified, such provision  
29 shall comply with Section 10.09.

30 (b) The document shall provide that the purchaser shall not sell the  
31 property within a period of three (3) years after the date of the purchase, for  
32

1 an amount in excess of the purchase price paid, plus the actual costs of any  
2 improvements to the property by the purchaser. This provision in the document  
3 shall specify that in the event of any attempted sale, in violation of the pro-  
4 vision, the Recipient shall be entitled to the ex parte issuance of an injunction  
5 restraining such sale. The provision in the document shall provide that the  
6 prohibition against sale shall have the same force and effect as a lis pendens.  
7 The document shall be in form and substance as to have the effect under the laws  
8 of the Recipient's state; shall be executed and authenticated in such manner  
9 and form as may be required to authorize its recordation at the place of  
10 recordation of deeds, as if a lis pendens; and the document shall be so recorded.

11 (c) The provision in the document may, in conjunction with the fore-  
12 going, or in lieu thereof, describe a procedure whereunder, in the event of any  
13 sale of the property within the three (3) year period, the amount of grant funds  
14 which benefited the purchaser shall be repaid by the purchaser to the Recipient.  
15 Such procedure may include a pro-rata reduction of the amount to be repaid,  
16 based upon the time elapsing between the date of the initial purchase of the  
17 property and its sale by the initial purchaser. The provision should either  
18 specify the amount of grant funds which benefited the purchaser, or set forth a  
19 formula or agreed method for determining such amount. In any event, the pro-  
20 vision shall be contained in a document which is executed and authenticated in  
21 such manner and form as may be required to authorize its recordation, as if a  
22 lis pendens; and the document shall be so recorded.

23 Section 10.10 Evidence of Title to Real Property - Form

24 (a) Whenever, at Exhibit E of this Grant Agreement, or otherwise, a  
25 Participating Party or the Recipient is required to acquire title to real  
26 property, and proof of such commitment is required, evidence of such commitment  
27 may be in the form of a written statement and opinion of an attorney, made in  
28 accordance with Section 10.01.

29 (b) The attorney's statement shall certify that on a specified date,  
30 either an original ALTA policy of land or mortgage title insurance, or other  
31 records identified in the statement, were examined by the attorney; that said  
32 policy or other records identified the Participating Party, or a wholly-owned



1 subsidiary of the Participating Party, or the Recipient (whichever be the case)  
2 as the owner of record, in fee simple, of said property.

3 (c) The attorney's opinion shall be that on the date specified by the  
4 attorney, the record title to said real property was vested, in fee simple, in  
5 the Participating Party, or such subsidiary thereof, or in the Recipient, as the  
6 case may be.

7 (d) Proof of title to real property may also be submitted in the form  
8 of documents which comply with Section 10.03 and which contain sufficient evi-  
9 dence, including evidence of recordation, to enable the Secretary to determine,  
10 to the satisfaction of the Secretary, that the Participating Party or the  
11 Recipient did acquire the title, as required.

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ARTICLE XI  
MISCELLANEOUS

1           Section 11.01 Notices

2           (a) All amendments, notices, requests, objections, waivers, rejections,  
3 agreements, approvals, disclosures and consents of any kind made pursuant to this  
4 Grant Agreement shall be in writing.

5           (b) Any such communication shall be deemed effective for all purposes  
6 as of the date such communication is mailed, postage prepaid, by registered or  
7 certified mail, return receipt requested, to be delivered only to the office of  
8 the addressee, addressed as follows:

9           (1) Communications to the Secretary, shall be mailed simulta-  
10 neously to: The Director, Office of Urban Development Action Grants, U. S.  
11 Department of Housing and Urban Development, P. O. Box 23756, L'Enfant Plaza  
12 Station, Washington, D. C. 20024; and to: The Area Office Manager, of the HUD  
13 Area Office authorized to receive the Application of the Recipient for the grant  
14 hereunder; and/or such other persons or at such other addresses as may be fur-  
15 nished by the Secretary to the Recipient.

16           (2) Communications to the Recipient, shall be addressed to the  
17 Recipient, at the address set forth in Exhibit A to this Grant Agreement, or  
18 such other address as may be furnished by the Recipient to the Secretary.

19           Section 11.02 Assignment

20           No right, benefit, or advantage inuring to the Recipient under this  
21 Grant Agreement and no burden imposed on the Recipient hereunder may be assigned  
22 without the prior written approval of the Secretary. An authorization by the  
23 Secretary for the transfer of grant funds by Recipient to a Participating Party  
24 shall not be deemed an authorization for an assignment, and such Participating  
25 Party shall not succeed to any rights, benefits or advantages of the Recipient  
26 hereunder.

27           Section 11.03 Successors Bound

28           This Grant Agreement shall bind, and the rights, benefits and advantages  
29 shall inure to, the Recipient's successors.

30           Section 11.04 Remedies Not Impaired

31           No delay or omission of the Secretary in exercising any right or remedy  
32 available under this Grant Agreement shall impair any such right or remedy or

1 or constitute a waiver of any event of default, or Default, or an acquiescence  
2 therein.

3 Section 11.05 Indemnification

4 To the fullest extent permitted by law, the Recipient at its sole cost  
5 and expense, will indemnify, defend, satisfy all judgments, and hold harmless  
6 the Secretary and any officers, agents, and employees of HUD, in their capacities  
7 as such, from and against all claims, actions, judgments, costs, liabilities,  
8 damages, losses, and expenses arising out of or relating to the Project.

9 Section 11.06 Cumulative Remedies

10 Except as otherwise specifically set forth herein, all rights and  
11 remedies of the Secretary under this Grant Agreement shall be cumulative.

12 Section 11.07 Severability

13 The invalidity of any Article, Section, subsection, clause or provision  
14 of this Grant Agreement shall not affect the validity of the remaining Articles,  
15 Sections, subsections, clauses or provisions hereof.

16 Section 11.08 Entire Agreement

17 This Grant Agreement constitutes the entire agreement between the  
18 Secretary and the Recipient and supersedes all prior oral and written agreements  
19 between the parties hereto with respect to the subject matter hereof. Notwith-  
20 standing the provisions of Section 1.01 of this Grant Agreement, in the event  
21 of any inconsistency between the provisions of this Grant Agreement, including  
22 all exhibits hereto, and anything contained in the Application, as defined at  
23 paragraph (2) of Section 1.03, then the provisions of this Grant Agreement shall  
24 prevail.

25 Section 11.09 Execution in Counterparts

26 This Grant Agreement may be executed in any number of counterparts.  
27 All such counterparts shall be deemed to be originals and together shall con-  
28 stitute but one and the same instrument.

29 Section 11.10 Table of Contents; Titles and Headings

30 Any table of contents, the title of the Articles, and the headings of  
31 the Sections and subsections set forth herein are not a part of this Grant Agree-  
32

1 ment and shall not be deemed to affect the meaning or construction of any of  
2 its provisions.

3 Section 11.11 Amendment of this Grant Agreement

4 This Grant Agreement, or any part hereof including its exhibits, may  
5 be amended from time to time hereafter only in writing executed by the Secretary  
6 and the Recipient.

7 Section 11.12 Disclaimer of Relationships

8 The Recipient acknowledges that the obligation of the Secretary is  
9 limited to providing grant funds in the manner and on the terms set forth in  
10 this Grant Agreement. Nothing in this Grant Agreement, nor any act of either  
11 the Secretary or of the Recipient, shall be deemed or construed by either of  
12 them, or by third persons, to create any relationship of third-party beneficiary,  
13 or of principal and agent, or of limited or general partnership, or of joint  
14 venture, or of any association or relationship whatsoever involving the Secretary.

15 Section 11.13 Governing Law

16 This Grant Agreement as it may affect the rights, remedies, duties,  
17 and obligations of the Secretary shall be governed by and construed in accordance  
18 with federal law. Insofar as federal law does not apply, the provisions of this  
19 Grant Agreement shall be governed by and construed in accordance with the laws  
20 of the Recipient's state.

21 Section 11.14 Waiver by Secretary

22 The Secretary reserves and shall have the exclusive right to waive, at  
23 the sole discretion of the Secretary, and to the extent permitted by law, any  
24 requirement or provision under this Grant Agreement. No act by or on behalf of  
25 the Secretary shall be, or be deemed or construed to be, any waiver of any such  
26 requirement or provision, unless the same be in writing, signed by the Secretary,  
27 and expressly stated to constitute such waiver.

28 Section 11.15 Effective Date

29 (a) This Grant Agreement shall, when executed and dated by the Sec-  
30 retary, constitute an offer by the Secretary to the Recipient to make the within  
31 grant and to enter into this Grant Agreement. When delivered to the Recipient  
32 so executed and dated, the same shall constitute a tender of said offer, which

1 shall be promptly accepted, if at all, by the Recipient. The Secretary may  
2 revoke the tender and rescind the offers at any time prior to their acceptance  
3 by the Recipient, by written notice of the Secretary to the Recipient, given as  
4 specified at Section 11.01 of this Grant Agreement.

5 (b) This Grant Agreement shall be deemed to have been accepted, and  
6 shall become effective, as of the date of this Grant Agreement is executed and  
7 dated by the Recipient.

8 Section 11.16 Termination of Grant Agreement

9 Unless otherwise terminated by the Secretary pursuant to Article VII  
10 of this Grant Agreement, or by the mutual consent of Recipient and the Secretary,  
11 this Grant Agreement shall terminate upon the completion of all close-out  
12 procedures respecting this grant and the final settlement and conclusion between  
13 Recipient and the Secretary of all issues arising out of this grant or under  
14 this Grant Agreement.

SIGNATURE PAGE

1 THIS GRANT AGREEMENT is hereby executed and delivered  
2 by the parties hereto on the dates set forth below their respective  
3 signatures, as follows:

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THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By: Robert C. Embry, Jr.

ROBERT C. EMBRY, JR.  
Assistant Secretary for Community Planning and Development

15 FEB 1980

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

THE Portland, Oregon

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

Title: \_\_\_\_\_

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

IMPORTANT  
One (1) fully executed copy of this Grant Agreement must be mailed to the Director, Office of Urban Development Action Grants, and two (2) fully executed copies of this Grant Agreement must be mailed to the HUD Area Office Manager, in accordance with Section 11.01, on the same date executed by Recipient.

Recipient: Portland, OregonGrant No. B-80-AA-41-0002EXHIBIT A

## SUPPLEMENTARY PROVISIONS

1           Rider to Section 1.03(2). In addition to Recipient's  
2 Application For Federal Assistance (SF 424), the "Application"  
3 shall include the following submittals from Recipient:

4           Revised application submitted December 10, 1979.

5           Letter to Marion Hemphill from Mr. Fred Jensen, President, Fred Meyer  
6 Savings and Loan, dated December 19, 1979.

7           Letter to Marion Hemphill, from Mr. Don McIntyre, Senior Vice President,  
8 Ben Franklin Federal Savings and Loan Association, dated December 19, 1979.

9  
10           Rider to Section 1.03(1). The term "Participating  
11 Party" includes the following persons, firms and entities:

12           "PECI" shall mean Portland Energy Conservation, Inc., a non-profit corpora-  
13 tion of Portland, Oregon.

14           "PDC" shall mean Portland Development Commission.

15           "Lenders" shall mean Ben Franklin Federal Savings and Loan Association of  
16 Portland, Oregon, Fred Meyer Savings & Loan of Portland, Oregon, and other  
17 Lenders approved by Recipient and HUD.

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31           Rider to Section 2.01. The amount of this UDAG grant is:

32           THREE MILLION DOLLARS (\$3,000,000).

1 Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-0002

2 Continuation Sheet --- EXHIBIT A

3  
4 Rider to Sections 5.03 and 9.06. The jobs referenced at Section 5.03  
5 and the assurances required at Section 9.06 shall aggregate:

6  
7 Total Permanent Jobs: 0

8 Total Permanent Jobs for Low and Moderate Income Persons: 0

9  
10 Rider to Section 11.01. The address of the Recipient for the purposes  
11 of communications relating to this Grant Agreement shall be the following:

12 *PLANNING AND DEVELOPMENT*  
13 Office of the ~~Mayor~~  
City Hall  
14 Attention: ~~Honorable Connie McQuinn~~ *DOUG BUTLER*  
Portland, Oregon 97204

15 Rider to Section 2.04(c) and 9.03. Recipient shall apply all repayment  
16 proceeds (including principal and any interest from loaned grant funds or default  
17 payments), first to the project pursuant to Article IX of this Grant Agreement;  
18 second, to the maximum extent feasible, for additional principal reduction deferred  
19 payment loans to low- and moderate-income persons and for additional energy audits,  
20 consistent with the terms of this Grant Agreement; and third, for economic develop-  
21 ment activities eligible under the Act.



Recipient: Portland, OregonUDAG Grant No. B-80-AA-41-0002EXHIBIT B

## DESCRIPTION OF UDAG FUNDED ACTIVITIES

1 Rider to Section 1.03(17). The term "UDAG Funded  
2 Activities" shall mean the following:

## I

3 Transfer of UDAG funds from Recipient to PEGI who shall <sup>MAKE AND SERVICE THE LOANS DESCRIBED</sup> contract with PDC <sup>AS SET FORTH IN PARAGRAPHS II, E, IV AND V</sup>  
4 to make the loans described in paragraph II ~~below~~.

## II

5  
6 The making by PDC of approximately ~~\$366,000~~ <sup>\$366,000 DEFERRED PAYMENT LOANS</sup> in principal reduction pay-  
7 AND PROVISION OF A \$200,000 SECURITY DEPOSIT IN CONJUNCTION WITH  
8 ~~ments to Lenders participating in the Portland energy retrofit loan program,~~  
9 in order to provide low interest loans to low- and moderate-income single  
10 family homeowners, as more fully described in the <sup>ATTACHED</sup> ~~application.~~ ADMINISTRATIVE  
NOTEBOOK.

## III

11 The making by <sup>PECI</sup> ~~PECI~~ of approximately \$581,700 in principal reduction <sup>DEFERRED</sup> pay-  
12 ~~ments to Lenders no longer able to participate in the State of Oregon Weather-~~  
13 ~~ization Loan Program,~~ in order to provide ~~the~~ energy retrofit loans to City of  
14 <sup>AT 5 POINTS BELOW THE NORMAL MARKET RATE</sup> Portland single family homeowners, as more fully described in the <sup>ATTACHED</sup> ~~application.~~  
ADMINISTRATIVE NOTEBOOK.

## IV

15  
16 The making by <sup>PECI</sup> ~~PECI~~ of approximately \$392,900 in principal reduction <sup>DEFERRED</sup> pay-  
17 ~~ments to Lenders participating in the Portland energy retrofit loan program,~~  
18 in order to provide <sup>ENERGY RETROFIT</sup> ~~low interest~~ loans to owners of multifamily buildings  
19 serving low- and moderate-income persons, <sup>AT 8 POINTS BELOW THE NORMAL MARKET RATE</sup> as more fully described in the  
20 <sup>ATTACHED</sup> ~~application.~~ ADMINISTRATIVE NOTEBOOK.

## V

21  
22 The use by PEGI of approximately \$300,000 in UDAG funds for energy audits  
23 for approximately 1,000 multi-family residential buildings in which owners  
24 agree to invest a minimum of ten times the cost of the audit in cost effective  
25 energy retrofit.

## VI

26  
27 The use by PEGI of approximately \$309,000 in UDAG funds for energy audits  
28 for approximately 1,030 small commercial buildings in which owners agree to  
29 invest a minimum of six times the cost of the audit in cost effective energy  
30 retrofit.

## VII

31 The use by PEGI of approximately \$200,000 in UDAG funds for energy audits  
32 for approximately 250 large commercial structures in which owners agree to in-

Continuation Sheet --- EXHIBIT B

1 vest a minimum of six times the energy audit in cost effective energy retrofit.

## VIII

2 The use by PEGI of approximately \$200,000 in UDAG funds for energy audits  
3 for approximately 200 industrial facilities in which owners agree to invest a  
4 minimum of six times the energy audit in cost effective energy retrofit.

## IX

5  
6 The use by PEGI of approximately \$240,000 in UDAG funds for marketing  
7 the energy retrofit program, as more fully described in the application.

## X

8  
9 The use by PEGI of approximately \$210,400 in UDAG funds for administration  
10 of the energy retrofit program.

Recipient: Portland, OregonUDAG Grant No. B-80-AA-41-0002EXHIBIT CDESCRIPTION OF NON-UDAG FUNDED ACTIVITIES

1 Rider to Section 1.03(12). The term "Non-UDAG Funded  
2 Activities" shall mean the following:

## I

3  
4 The ~~making and servicing~~ <sup>PROVISION</sup> by Lenders of a minimum of ~~\$1,434,000~~ <sup>\$2,000,000</sup> for  
5 interest energy retrofit loans to low- and moderate-income homeowners, in con-  
6 junction with \$566,000 in UDAG funds for ~~principal reduction payments.~~ <sup>WHICH WILL BE MADE AND SERVICED BY PDC</sup>  
7 ~~A SECURITY DEPOSIT.~~ <sup>DEFERRED PAYMENT LOANS AND</sup>

## II

8 The making and servicing by Lenders ~~unable to participate in the State~~  
9 ~~of Oregon Weatherization Program~~ <sup>\$2,815,428</sup> of a minimum of ~~\$2,700,000~~ in MARKET-RATE  
10 ~~the~~ weatherization loans, in conjunction with \$581,700 in UDAG funds for  
11 principal reduction <sup>LOADS</sup> ~~payments.~~

## III

13 The making and servicing by Lenders of a minimum of ~~\$1,254,000~~ <sup>\$1,080,475</sup> in ~~low~~ MARKET-  
14 <sup>RATE</sup> interest energy retrofit loans to owners of multi-family structures serving  
15 low- and moderate-income residents, in conjunction with \$392,900 in UDAG funds  
16 for principal reduction <sup>LOADS</sup> ~~payments.~~

## IV

18 ~~THE MAKING~~  
19 ~~Commitment~~ by Lenders to making not less than \$7,254,000 in energy  
20 retrofit loans at not above market rates to participants in PEGI's energy audit  
21 program.

## V

23 Investment of not less than \$7,254,000 in energy retrofit by participants  
24 in PEGI's energy audit program pursuant to written contracts, as described  
25 in Exhibit E, paragraph I, (a) 3, i) below.

Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-0002

EXHIBIT D

PROJECT BUDGET — SUMMARY OF PROPOSED EXPENDITURES				
Line Item Activity	SOURCES OF FUNDS			
	UDAG Funds	Private Funds	Other Funds	Total Costs
a. Land Acquisition				
b. Streets & Site Improvements				
c. Parking Facilities				
d. Foundations and Platforms				
e. Pedestrian Malls				
f. Water and Sewer Facilities				
g. Clearance and Demolition				
h. Relocation of Persons and Businesses				
i. <del>Principal reduction payments</del> Single Family Low Income	566,000	<del>2,000,000</del> 1,834,000		<del>2,500,000</del> 2,300,000
j. <del>Principal reduction payments</del> Multi-family Low Income	392,900	<del>1,080,475</del> 1,054,000		<del>1,472,475</del> 1,446,900
k. <del>Principal reduction payments</del> 5 PT. State Tax Credit Program	581,700	<del>2,015,428</del> 2,788,000		<del>3,396,428</del> 2,999,000
l. Energy Audits—Multi-Family Residential	300,000	3,000,000		3,300,000
m. Energy Audits - Small Commercial	309,000	1,854,000		2,163,000
n. Energy Audits - Large Commercial	200,000	1,200,000		1,500,000
o. Energy Audits - Industrial	200,000	1,200,000		1,400,000
p. Marketing	240,000			240,000
q. Administration	210,400			210,400
r. Subtotal (Sum of lines a. - n.)	3,000,000	<del>13,149,903</del> 12,300,000		<del>16,149,903</del> 15,500,000
s. Contingencies				
t. Grant Amount (Sum of lines o. + p.)	3,000,000			
u. Program Income (Revenue from UDAG Funds)				
v. TOTAL PROJECT COSTS (Sum of lines q. + r.)	3,000,000	13,149,903 <del>12,300,000</del>		16,149,903 <del>15,500,000</del>

Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-0002

EXHIBIT E

REQUIRED EVIDENTIARY MATERIALS

1 The evidentiary materials to be submitted by the Recip-  
2 ient for the approval and acceptance of the Secretary shall be as  
3 follows:

I

5 (a) Recipient and PEGI shall enter into a contract, in consideration of  
6 (LESS APPROPRIATE ADMINISTRATIVE COSTS)  
7 Recipient transferring \$3,000,000 in grant funds to PEGI consistent with Letter of  
8 Credit procedures, to include provisions consistent with the following:

9 1. An administrative manual, which shall be attached as an appendix  
10 to the agreement, for use by Lenders and borrowers participating in each of the  
11 <sup>Four</sup> Energy Retrofit Loan Programs, which manual must be approved by the Secretary  
12 of HUD. The Manual shall include, but shall not be limited to, the following:

13 i) Eligibility criteria for low- and moderate-income single family  
14 homeowners, for multi-family building owners, and for lenders, ~~no longer partici-~~  
15 ~~pating in the State Weatherization Program.~~

16 ii) Interest rates which shall be set for the low- and moderate-  
17 income single-family and multi-family loan programs as low as possible but in no  
18 case to be set lower than that rate which would result in the ratio of 2.5 times  
19 lender participation in the mortgage to UDAG participation.

20 iii) Term of Loans which shall be set at maximum length possible  
21 in the case of low- and moderate-income single and multi-family loan programs.

22 iv) Security required, including a promissary note secured by  
23 mortgage lien or other appropriate security instrument ~~in which PEGI or PDC is not~~  
24 ~~less than equal second position, as signers, risk pool insurance or other security~~  
25 as approved by PEGI and HUD.

26 <sup>THE RECIPIENT,</sup> v) Maximum Loan amounts under each program.

27 vi) Eligible retrofit activities.

28 vii) Role of PDC in the low- and moderate-income single family  
29 ~~State Weatherization~~ program ~~and multi-family program~~ in terms of applicant  
30 qualification, loan processing, preparation of work specifications, cost  
31 estimates and contract documents, entering into participation agreements with  
32 Lenders, and other such activities as are agreed upon by Recipient, PEGI and PDC.

viii) Role of Lenders in origination and servicing of the  
participation energy retrofit loans.

Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-000

Continuation Sheet --- EXHIBIT E

ix) Certification of weatherization contractors.

x) Certification of contract compliance.

xi) Methodology for energy audits approved by Recipients.

2. PEGI shall agree to enter into, or cause PDC to enter into, participation agreements with Lenders in which Lenders agree to make retrofit loans at low interest rates and terms as set by PEGI for each program, based on use of UDAG funds for principal reductions on a loan by loan basis. In no case shall the interest rate cause the participation by lender in such loans to be less than 2.5 times the UDAG participation.

3. An administrative manual, which shall be attached as an exhibit to the agreement for use by participants in Portland's energy audit program; which manual must be approved by the Secretary of HUD. The manual shall include, but not be limited to, the following:

i) Sample audit contracts for the energy audit program that include the following: for multi-family audits, that each participant agrees by written contract to invest not less than ten (10) times the cost of the audit in cost effective energy retrofit activities; for small commercial, large commercial and industrial audits, that each participant agrees by written contract to invest not less than six (6) times the cost of the audit in cost effective energy retrofit. PEGI shall also specify remedies for violation of such contracts which shall at a minimum include repayment to PEGI by contract participants of the amount of the audit, prorated for energy retrofit completed, in one year time if at that time participants do not provide PEGI with receipts and certification from a PEGI approved contractor or as otherwise decided by PEGI indicating that the minimum amount has been invested in energy retrofit activities.

ii) Eligibility criteria for participants.

iii) Eligibility criteria for retrofit activities for each category of participants.

Continuation Sheet --- EXHIBIT E

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iv) Methodology for energy audits, approved by Recipient.

v) A copy of the contracts to be used to satisfy (i) above, shall be attached as exhibits to the agreement.

4. PECI shall make best efforts to create or cause to be created a total of 85 direct jobs for energy retrofit contractors, energy auditors and marketing specialists, of which 49 shall be for persons of low- and moderate-income at the time of their employment. Further, PECI shall work with CETA program prime sponsors to train and hire CETA eligible persons for the above mentioned jobs.

(b) Evidence of this commitment shall be in accordance with Section 10.04 of this Grant Agreement.

(c) Recipient shall not provide the secretary with evidentiary materials related to investor's equity (Section 10.07 of this grant agreement), provisions preventing or discouraging speculation on the sale and purchase of real property (Section 10.09 of this grant agreement); and requirements to acquire title to real property (Section 10.10 of this grant agreement); as these matters are not applicable to recipient's programs supported by this grant and approved by the secretary.

Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-0002

Continuation Sheet --- EXHIBIT E

II

(a) PECEI and PDC shall enter into a contract, in consideration of PECEI transferring ~~\$1,500,000~~ <sup>\$566,000</sup> to PDC for purposes of making ~~principal reduction pay~~ <sup>DEFERRED PAYMENT LOANS</sup> AND A SECURITY DEPOSIT IN SUPPORT OF ~~ments to lenders for~~ retrofit loans, PDC shall agree to the following:

i). As described in the administrative manual, process loans, qualify applicants, prepare work specifications, cost estimates and contract activities, enter into participation agreements with Lenders and perform other activities related to the making of such loans as are included in the administrative manual.

ii) Give priority to use of Community Development Block Grant Funds and Section 312 funds in-eligible areas of Portland, for low- and moderate-income borrowers of energy retrofit loans who need additional rehabilitation work to bring their homes up to code standards.

(b) Evidence of this commitment shall be in accordance with Section 10.04 of this Grant Agreement.

III

(a) PECEI or PDC shall enter into agreements with Lenders, in which Lenders commit a total amount in energy retrofit participation loans of not less than ~~\$5,246,000~~ <sup>\$5,895,903</sup> in all ~~three~~ <sup>Four</sup> PECEI energy retrofit loan programs, as described in Exhibit B and C of this Grant Agreement. Such agreements shall explicitly include Lender's acceptance of the administrative manual specified in paragraph I(a) 1 above. The agreement shall include all the terms and conditions related to Lenders' participation.

(b) Evidence of this commitment shall be in accordance with Section 10.04 of this Grant Agreement.

IV

(a) PECEI shall enter into agreements with Lenders, in which Lenders commit a total amount in market rate loans to participants in PECEI's energy audit program of not less than \$7,254,000. The agreement shall include all the terms and conditions of Lenders' participation.

(b) Evidence of this commitment shall be in accordance with Section 10.04 of this Grant Agreement.



Recipient: Portland, Oregon UDAG Grant No. B-80-AA-41-0002

EXHIBIT F

PROJECT PERFORMANCE SCHEDULE

I

(a) All of the evidentiary materials required at paragraphs I, II <sup>AND</sup> ~~and III~~ of Exhibit E to this Grant Agreement shall be submitted by the Recipient no later than April 30, 1980.

(b) Upon acceptance by the Secretary of the evidentiary materials submitted in accordance with subparagraph (a) of this paragraph, the Recipient shall be authorized to use grant funds not to exceed \$210,400 for administration, <sup>AND</sup> \$100,000 for marketing. ~~AND \$1,540,600 in energy retrofit principal reduction payments on a loan by loan, as needed basis. Recipient's written request for drawdown of grant funds for principal reduction payments shall include Recipient's express certification that Recipient is in possession of a copy of the fully executed and approved contract as described in Exhibit E, paragraph I(a)(3).~~

II

III AND

(a) All of the evidentiary materials required at paragraphs <sup>III AND</sup> IV of Exhibit E to this Grant Agreement shall be submitted by the Recipient no later than May 30, 1980.

(b) Upon acceptance by the Secretary of the evidentiary materials submitted in accordance with subparagraph (a) of this paragraph and subparagraph (a) of paragraph I above, the Recipient shall be authorized to use remaining grant funds in the amount of \$140,000 for marketing, <sup>V \$1,009,000</sup> and ~~\$1,249,000~~ for energy audits on an audit by audit as needed basis. Recipient's written request for <sup>PRINCIPAL REDUCTION LOANS OR</sup> draw-down of grant funds for <sup>an</sup> audit shall include Recipient's express certification that Recipient is in possession of a copy of the fully executed and approved contract as described in Exhibit E paragraph I(a) 3).

III

Activities constituting the project shall be consistent with the following:

<u>Activity</u>	<u>Commence on or before</u>	<u>Completed on or before</u>
1. Making of energy retrofit loans	<del>May 1,</del> 1980 JUNE 1,	<del>MAY 1,</del> 1981 JUNE 1.
2. Energy Audits	June 1, 1980	June 1, 1981

AGREEMENT

This Agreement is between the CITY OF PORTLAND, OREGON (City), and PORTLAND ENERGY CONSERVATION, INC. (PECI).

RECITALS:

1. By Ordinance No. 148251, adopted August 15, 1979, the City Council adopted the Portland Energy Conservation Policy. Private sector implementation of the Policy is to be carried out by PEGI.

2. PEGI is a nonprofit corporation-organized under the laws of the State of Oregon, and was formed on December 17, 1979. The Articles of Incorporation for PEGI provide that the corporation is to carry out the private sector portions of the Portland Energy Conservation Policy.

3. City has available to it funds from the U.S. Department of Housing and Urban Development (HUD) under the Urban Development Action Grant (UDAG) program, created by Section 119 of the Housing and Community Development Act of 1974 (PL 93-383), as amended. The purpose of the grant is to assist implementation of the Portland Energy Conservation Policy.

4. In its grant application to HUD as amended by Council action April 30, 1980, City represented that certain funds allocated under the UDAG program would be disbursed to PEGI in order to carry out certain specified functions, all for the purpose of implementing the Portland Energy Conservation Policy.

5. In consideration of the mutual promises and covenants stated herein, the City and PEGI agree as follows:

1. City will disburse certain UDAG funds to PEGI according to a schedule to be developed later and agreed to in a formal written agreement, consistent with the terms of the UDAG Grant Agreement (UDAG Grant No. B-80-AA-41-0002) executed by the City and HUD.

2. PEGI will carry out only those activities and programs enumerated in said UDAG Grant Agreement, or such other activities and programs assigned to it by ordinance or other City Council directive consistent with said UDAG Grant Agreement, and specifically authorized in writing by the Secretary of HUD.

AGREEMENT:

3. PECI will comply with such terms and requirements as are applicable to all parties contracting with the City that are mandated by Federal, State, or municipal law.

4. This agreement does not authorize PECI to implement any of the mandatory provisions of the Portland Energy Conservation Policy.

5. PECI will provide the City with a monthly report detailing progress made on projects and activities. The reports shall be filed with the Office of Planning and Development in a format determined acceptable by the Office of Planning and Development and the Portland Energy Conservation, Inc.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1980

APPROVED AS TO FORM:

CITY OF PORTLAND

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Auditor

PORTLAND ENERGY CONSERVATION, INC.

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

## ORDINANCE NO. 149521

An Ordinance accepting an Urban Development Action Grant in the amount of \$3,000,000 and entering into an agreement with the United States Department of Housing and Urban Development; authorizing a contract between the City of Portland, Office of Planning and Development, and Portland Energy Conservation, Inc.; and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that:

1. By Ordinance No. 148693, adopted by Council on October 31, 1979, Council authorized the application for an Urban Development Action Grant (UDAG) to begin implementation of the adopted City Energy Policy.
2. On January 10, 1980, the Department of Housing and Urban Development announced an Urban Development Action Grant award of \$3,000,000 for the Energy Program.
3. On February 14, 1980, the City Energy Commission established six task forces and appointed more than sixty citizens to them to develop for Council approval standard energy audit and payback methods and techniques and to develop an overall marketing strategy.
4. On April 23, 1980, the City Energy Commission considered the task force and staff recommendations and adopted a strategy, standards, procedures, and related items which are recommended to the City Council for their consideration and approval for this UDAG Program.
5. It is necessary and appropriate that the City enter into a contract with the United States Department of Housing and Urban Development to accept an award of \$3,000,000, with no local match required.
6. It is further necessary and appropriate that the City enter into a contract with Portland Energy Conservation, Inc. for the administration and implementation of the UDAG Program. The UDAG Program will be administered and implemented according to those strategies, standards, and procedures which may be specifically approved by City Council.

NOW, THEREFORE, the Council directs that:

- a. The Mayor, on behalf of the City of Portland, accept an Urban Development Action Grant from the United States Department of Housing and Urban Development in the amount of \$3,000,000 and enter into a grant agreement with the Department for that purpose.
- b. The Mayor and Auditor are hereby authorized to enter into an agreement on behalf of the City with Portland Energy Conservation, Inc. to administer and implement the Urban Development Action Grant Program.

ORDINANCE No.

- c. The standards and procedures adopted as a part of this Urban Development Action Grant Program do not presume nor require any future regulations to require the City to enforce the mandatory energy efficiency standard as set forth in the adopted Energy Conservation Policy (Ordinance No. 148251). Further, if all cost-effective conservation actions identified using the procedures set forth under a Program to be approved by City Council are carried out prior to the adoption of any such regulation, those actions shall be considered to satisfy all requirements of that regulation.
- d. The acceptance of this grant in no way commits the City to put into effect a mandatory program and none of this grant shall be used for a mandatory program.

Section 2. The Council declares that an emergency exists because regulations governing the grant require immediate acceptance of the award and the authorization of contracts as described in Section 1 above, and delay may result in the loss of the opportunity to receive the grant; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

ORDINANCE NO. 149521

ORDINANCE NO. 149521

JMC

APR 29 1980

GEORGE ANTONIACH

Passed by the Council, APR 30 1980

Mayor Connie McCready  
 DEB:jt  
 April 25, 1980

*Michael J. Schwab*  
 PRESIDENT OF THE COUNCIL AND ACTING  
 Mayor of the City of Portland

Attest:

*Serge Gekowich*  
 Auditor of the City of Portland

Calendar No. 1472

**ORDINANCE No. 149521**

**Title**

An Ordinance accepting an Urban Development Action Grant in the amount of \$3,000,000 and entering into an agreement with the United States Department of Housing and Urban Development; authorizing a contract between the City of Portland, Office of Planning and Development, and Portland Energy Conservation, Inc.; and declaring an emergency.

*As amended  
149  
as amended*

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan	1	
Lindberg	1	
Schwab	1	
McCready		1

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

Filed APR 25 1980

**GEORGE YERKOVICH**  
Auditor of the CITY OF PORTLAND

By Jameson Brock  
Deputy

INTRODUCED BY
MAYOR MCCREADY

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration <i>Cma</i>
Safety
Utilities
Works

BUREAU APPROVAL	
Bureau: Office of Planning & Development	
Prepared By: DE Butler	Date: 4/25/80
Budget Impact Review:	
<input type="checkbox"/> Completed	<input type="checkbox"/> Not required
Bureau Head: <i>Debra E. Little</i>	
Cowles Malloy	

NOTED BY
City Attorney
City Auditor
City Engineer <i>GC</i>