

M.E. No./CONTRACT No.: 99-192-1397

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT**

CONTRACT FOR COMMUNITY REVITALIZATION ASSISTANCE PROGRAM

This Contract, entered into by and between the Commonwealth of Pennsylvania, hereinafter referred to as the "Commonwealth", acting through the Department of Community and Economic Development, hereinafter referred to as the "Department", and the

**LANCASTER CITY
REDEVELOPMENT AUTHORITY
28 Penn Square
Lancaster PA 17603**

hereinafter referred to as the "Contractor".

BACKGROUND:

Section 3 of the Act of May 10, 1939 (P.L. 111, No. 51), known as the Commerce Law authorizes the Department to undertake ways and means of promoting and encouraging the prosperous development of Pennsylvania business, industry and commerce, of expanding markets and promoting and developing new markets for Pennsylvania products, to encourage the location and development of new business, industry and commerce within the Commonwealth, to aid in restoring employment in communities affected by unemployment, and to assist persons, firms, associations, political subdivisions, corporations, cooperative associations and other organizations in the execution of its duties and functions under the Act; and

Section 670.101 of the Act of April 9, 1929 (P.L. 177, No. ___), as amended, known as the Administrative Code of 1929, authorizes the Department to make direct grants or provide other forms of technical assistance to various public safety, recreation, senior citizens or other community service organizations; and

The General Assembly of the Commonwealth has appropriated funds to the Department to carry out the provisions of the above referenced Acts.

NOW, THEREFORE, in consideration of the foregoing, and subject to the conditions contained herein, the parties hereto intending to be legally bound hereby, do covenant and agree for themselves, their respective successors and assignees as follows:

ARTICLE I AMOUNT OF THE CONTRACT

Subject to the terms of this Contract, the Department hereby makes available to the Contractor out of funds appropriated a grant in the sum of **TWO MILLION DOLLARS (\$2,000,000.00) AND NO CENTS-----** or such portion thereof as may be required by the Contractor and authorized by the Department, subject to the condition that it shall be used by the Contractor to carry out the activities described in the application submitted by the Contractor and as approved by the Department, and which is incorporated herein by reference. In addition, this Contract shall be subject to Appendix A, Project Description and Special Conditions, and Appendix B, Budget Summary, which are attached hereto and incorporated herein.

ARTICLE II EFFECTIVE DATES

Subject to the provisions of this Contract and the availability of state funds, the term of this Contract shall commence on **JULY 1, 1999** and end on **JUNE 30, 2001**.

This Contract is not binding in any way, nor will the Commonwealth be bound, until this document has been fully executed and authenticated by all required signatures, and any cost incurred by the Contractor prior thereto are incurred at the Contractor's risk.

ARTICLE III PAYMENT PROVISIONS AND FISCAL RESPONSIBILITIES

(a) The Department agrees to pay the Contractor for services rendered pursuant to this Contract as follows:

- (1) Subject to the availability of state funds and other terms and conditions of this Contract, the Department will reimburse the Contractor based upon the Department's determination of the Contractor's needs and in accordance with the proposed budget as set forth in Appendix B.

The Contractor may be reimbursed for the costs incurred in providing the services described in this Contract up to the total Contract cost. Under no circumstances shall the Commonwealth or the Department be liable for any expenditure exceeding the amount stated in this Contract or amendments hereto.

The Department shall have the right to disapprove any expenditure made by the Contractor which is not in accordance with the terms of this Contract and the Department may adjust payment to the Contractor accordingly.

- (2) Initial payments to the Contractor to effectuate services under this Contract and all other payments shall be made on invoice forms and in accordance with instructions provided by the Department.

To receive reimbursement under this Contract, the Contractor shall submit requests for payment based on the Contractor's estimate of expenditures, at intervals as determined by the Contractor to meet disbursement needs. Unless otherwise instructed by the Department, this estimate may not exceed the current disbursement needs of the Contractor in order that the amount of cash on hand and available to the Contractor is as close to daily needs as administratively feasible. The Department may, however, set a minimum payment level or amount for each request for payment.

(b) Conditions for Payment:

- (1) Grant payments under this Contract shall be conditioned upon the completion of any Special Conditions set forth in Appendix A or otherwise incorporated into this Contract.
- (2) Costs allocated to program administration shall be limited to those set forth in the project budget or as otherwise revised in accordance with the amendment provisions of this Contract set forth in the Article entitled Amendments and Modifications.
- (3) Payment by the Commonwealth and all other terms of this Contract are subject to the effect of any federal deficit reduction legislation upon the availability of funds awarded by this Contract.

(c) The Contractor shall charge to the project account all approved costs of the project. All such costs, including services contributed by the Contractor or others and charged to the project account, shall be supported by properly executed vouchers or other records indicating in proper detail the nature and propriety of the charge.

(d) Requirement to Invest Grant Funds:

The funds paid to the Contractor in accordance with this Contract shall be deposited by the Contractor in a bank or other financial institution in a separate and special expenditures account, to be maintained within its existing accounting system or set up independently; identifiable by reference to the Department, proposal name or contract number. Said account shall be insured by the FDIC.

Subject to applicable rules and regulations and to the provisions of this article, funds hereunder shall be continuously invested and reinvested and/or deposited and redeposited by the Contractor, in accordance with applicable state laws, with a view toward maximizing yield and minimizing the instances of uninvested funds.

Interest or any other income or accumulations earned on funds awarded pursuant to this Contract shall be repaid to the Department on a quarterly calendar year basis unless otherwise directed by the Department.

(e) **Conditions for Repayment of Grant Funds:**

The Contractor agrees that it will use the funds granted hereunder, or as much as may be necessary, to carry out the aforesaid project in accordance with the terms of this Contract. If after all or any part of the funds have been paid to the Contractor and the Contractor shall fail to carry out the activities, the Contractor shall repay the Department the funds theretofore paid.

If the Contractor does not use all or a portion of the funds paid under the terms of this Contract for purposes of and in accordance with this Contract, the Contractor shall be liable to the Department for the amount of funds unused or improperly used and shall return said funds to the Department.

In the event the Department shall be entitled to repayment of all or a portion of the funds granted herein, the repayment shall include all interest, income, accumulations and the monetary equivalent of any appreciation in value of any property (real, personal or mixed) purchased with the funds granted them. A check shall be written, payable to the Commonwealth of Pennsylvania, and forwarded to the Department for: (1) the principal and (2) the total of any such interest, income, accumulations or appreciation in value.

**ARTICLE IV
BONDING, INSURANCE AND TAX LIABILITY REQUIREMENTS**

(a) **Fidelity Bonding:**

Unless otherwise authorized by the Department, the Contractor shall procure fidelity bonding for anyone authorized to sign checks, certify vouchers and/or handle or control funds, checks, securities or property. If a check signing machine is used which is not operated under the direct supervision of the authorized signer or counter-signer, the machine operator shall be bonded in the same amount as the check-signer. The amount of the bond required shall be adequate to insure the security of all funds received under this Contract as determined by the Department and such bond must be maintained until the Contract is closed out by the Department.

(b) **Hold Harmless:**

The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all claims, demands and actions based or arising out of any activities performed by the Contractor and its employees and agents under this Contract; and shall defend any and all actions brought against the Commonwealth based upon any such claims or demands. It is understood and agreed that the Contractor's standard liability insurance policies shall protect, or shall be endorsed to protect, the Commonwealth from claims of bodily injury and/or property damage arising out of any services performed by the Contractor or its employees or agents under this Contract, including business and non-business invitees, and their property and all other property sustaining damage as a direct or indirect result of the execution of this project when validly present on Contractor's premises whether or not actually engaged in the project at the time the claim inures. Such policies shall not include any provision limiting then existing sovereign immunity of the Commonwealth or of its agents or employees. Upon request, the Contractor shall furnish to the Department proof of insurance as required by this paragraph.

(c) Other Liability Requirements:

The Contractor shall provide workmen's compensation insurance where the same is required and shall accept full responsibility for the payment of premiums for workmen's compensation and social security and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Contract.

ARTICLE V
COMPLIANCE WITH APPLICABLE STATUTES AND DEPARTMENT REGULATIONS

All activities authorized by this Contract shall be performed in accordance with applicable statutes, regulations, conditions, directives, guidelines and such additional requirements as may be attached hereto as Appendix C or are otherwise provided by the Department. The Contractor acknowledges that this Contract is subject to all requirements set forth herein and further agrees that it will comply with future requirements determined by the Department as necessary.

(a) Compliance with State Statutes and Regulations:

The Contractor also agrees to comply with all applicable state statutes and regulations to which the Department is subject including, but not limited to, the Building Energy Conservation Act and the Pennsylvania Prevailing Wage Act or the Resident Labor Requirement Act, the Steel Products Procurement Act, the Trade Practices Act, the Public Works Contractor's Bond Act of 1967, and the Flood Plain Management Act.

(b) Nondiscrimination Provisions:

During the term of this Contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age or sex. The Contractor shall take affirmative action to insure that applicants are employed and that employees or agents are treated during employment without regard to their race, color, religious creed, handicap, ancestry, national origin, age or sex. Such affirmative action shall include but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training. The Contractor shall post in conspicuous places available to employees, agents, applicants for employment and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor shall state in advertisements or requests for employment placed by it or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.
- (3) The Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Contractor.

- (4) It shall be no defense to a finding of noncompliance with this nondiscrimination clause that the Contractor had delegated some of its employment practices to any union, training program or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.
 - (5) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons so that the Contractor will be unable to meet its obligations under this nondiscrimination clause, the Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.
 - (6) The Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of the Contractor's noncompliance with the nondiscrimination clause of this Contract or with any such laws, this Contract may be terminated or suspended, in whole or in part, and the Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.
 - (7) The Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If the Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.
 - (8) The Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.
 - (9) The Contractor shall include the provisions of this nondiscrimination clause in every subcontract so that such provisions will be binding upon each subcontractor.
 - (10) The Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the Contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.
- (c) Compliance with the State Contractor Responsibility Program:

The Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state or the federal government, and if the Contractor cannot so certify, then it agrees to submit along with the bid/proposal, a written explanation of why such certification cannot be made.

If, under this Contract, the Contractor employs or enters into any subcontracts with subcontractors/individuals who are currently suspended or debarred by the Commonwealth or the federal government, or who become suspended or debarred by the Commonwealth or federal government during the term of this Contract or any extensions or renewals thereof, the Department shall have the right to require the Contractor to terminate such subcontracts or employment.

The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the Inspector General for investigations of the Contractor's compliance with the terms of this Contract or any other Contract between the Contractor and the Commonwealth which result in the suspension or debarment of the Contractor. Such costs shall include, but not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations which do not result in the Contractor's suspension or debarment.

The Contractor may obtain the current list of suspended and debarred contractors by contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, Pennsylvania 17125
Telephone Number: (717) 783-6472
FAX Number: (717) 787-9138

(d) Compliance with the Offset Provision for Commonwealth Contracts:

The Contractor agrees that the Commonwealth may set off the amount of any state tax liability or other debt of the Contractor or its subsidiaries that is owed to the Commonwealth and is not being contested on appeal, against any payments due the Contractor under this or any other Contract with the Commonwealth.

(e) Compliance with The Americans with Disabilities Act:

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs and activities provided by the Commonwealth through contracts with outside contractors.

The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth from all losses, damages, expenses, claims, demands, suits and actions brought by any party against the Commonwealth as a result to the Contractor's failure to comply with the provisions of the above paragraph.

(f) Reimbursement for Travel and Per Diem:

Reimbursement to the Contractor for any travel, lodging or meals under this Contract shall be at or below state rates, unless the Contractor has higher rates which have been approved by its officers/officials, and published prior to entering into contract negotiations with the Commonwealth. Documentation in support of travel and per diem will be the same as required of state employees. Higher rates must be supported by a copy of the minutes or other official documents, and submitted to the Department.

(g) Prohibition of Sexual Harassment:

The Contractor must have a written sexual harassment policy which must be conspicuously posted.

(h) Compliance with Anti-Pollution Regulations:

The Contractor and its subcontractors agree that in the performance of their obligations under this Contract they shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations. The Contractor assumes responsibility for environmental review, decision-making and action under the National Environmental Policy Act of 1969 (NEPA), P.L. 91-190 (42 U.S.C. 54321 et seq.), and Housing and Urban Development regulations at 24 CFR, Part 58. The Contractor certifies that it has completed and will comply with 24 CFR, Part 58 and all other applicable statutes and guidelines.

(i) Contractor Integrity Provisions:

(1) Definitions:

Confidential Information means information that is not public knowledge or available to the public on request, disclosure of which would give an unfair, unethical or illegal advantage to another desiring to contract with the Commonwealth.

Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed in writing by pre-qualification, bid, proposal or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Contract.

Contractor means the individual or entity that has entered into this Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a 5% interest.

Financial Interest means:

Ownership of more than a 5% interest in any business; or

Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.

Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment or contracts of any kind.

- (2) The Contractor shall maintain the highest standards of integrity in the performance of this Contract and shall take no action in violation of state or federal laws, regulations or other requirements that govern contracting with the Commonwealth.
- (3) The Contractor shall not disclose to others any confidential information gained by virtue of this Contract.
- (4) The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion or violation of a known legal duty by any officer or employee of the Commonwealth.
- (5) The Contractor shall not, in connection with this or any other Contract with the Commonwealth, directly or indirectly offer, give, or agree or promise to give to anyone any gratuity for the benefit of, or at the direction or request of, any officer or employee of the Commonwealth.
- (6) Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Contract except as provided therein.
- (7) Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor or supplier providing services, labor or material on this project.
- (8) The Contractor upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- (9) The Contractor by execution of this Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he has not violated any of these provisions.
- (10) The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide or, if appropriate, make promptly available for inspection and copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility as those terms are defined by the Commonwealth's statutes, regulations or management directives. Such information may include, but shall not be limited to, the Contractor's business and financial records, documents or files of any type or form which refer to or concern this Contract. Such information shall be retained by the Contractor for a period of three (3) years beyond the termination of the Contract unless otherwise provided by law.

- (11) For violation of any of the above provisions, the Commonwealth may terminate this and any other Contract with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation or otherwise.

ARTICLE VI ASSIGNMENT, TRANSFER, COLLATERAL USE

This Contract shall be binding upon and inure to the benefit of the Department, the Contractor, and their respective successors and assigns, except that the Contractor may not assign or transfer its rights hereunder without the prior written consent of the Department. Approval of an assignment does not establish any legal relationship between the Commonwealth or the Department and any other third party, and under no circumstances shall the Commonwealth be held liable for any act or omission committed pursuant to such an assignment.

ARTICLE VII INDEPENDENT CONTRACTOR

Notwithstanding anything contained herein to the contrary, the rights and duties hereby granted to and assumed by the Contractor are those of an independent contractor only. Nothing contained herein shall be so construed as to create an employment, agency or partnership relationship between the Department and Contractor.

ARTICLE VIII INTEREST OF PARTIES AND OTHERS

No officer, member, employee, independent contractor or elected official of the Commonwealth and no member of its governing body who exercises any functions or responsibilities in the review or approval of services being performed under this Contract shall participate in any decision relating to this Contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested. Nor shall any such officer, member, elected official or employee of the Commonwealth or any member of its governing body have any interest direct or indirect in this Contract or the proceeds thereof.

The Contractor covenants that the Contractor (including directors, officers, members and employees of the Contractor) presently has no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The Contractor further covenants that no person having any such interest shall be employed in the performance of services for this Contract.

ARTICLE IX SUBCONTRACTS

The Contractor shall not execute or concur in any subcontract with any person or entity in any respect concerning the activities herein without prior written approval of the Department. Such prior written approval shall not be required for the purchase by the Contractor of articles, supplies, equipment and services which are both necessary for and merely incidental to the performance of the work required under this Contract. The Contractor shall not execute or concur in any subcontract declared disapproved by the Department. A subcontractor shall be automatically disapproved, without a declaration from the Department, if the subcontractor is currently or becomes suspended or debarred by the Commonwealth or the federal government. In any event, the Contractor shall be responsible for the quantity and quality of the performance of any of its subcontracts.

All subcontracts must contain provisions of nondiscrimination as specified in the Article entitled Compliance with Applicable Statutes and Department Regulations, subsection (b). In addition, all subcontracts involving the pass through of Contract funds to subrecipients must include the audit requirements contained in the Article entitled Contract Audit and Closeout Requirements. The Contractor is responsible for ensuring that all required audits of subcontractors are performed, and for resolving any findings contained in the audit reports. All costs deemed unallowable in the subcontract audit report are required to be returned to the Department, through the Contractor.

ARTICLE X BIDDING REQUIREMENTS

If the Contractor is a political subdivision or other entity for which open and competitive bidding procedures have been established by law, the Contractor shall comply with those procedures if they are applicable to the project being funded with the grant funds. Otherwise, the Contractor shall comply with open and competitive bidding procedures in awarding any and all grants, subgrants, contracts, subcontracts or other agreements in excess of \$10,000.00 for construction, reconstruction, demolition, alteration and/or repair, for acquisition of machinery and equipment, or for engagement of the services of a professional consultant, when said grants, subgrants, contracts, subcontracts or other agreements are funded in whole or at least 50% in part with funds made available under this Contract. The Department may require the Contractor to submit proof of compliance with said procedures, and failure to provide such proof to the satisfaction of the Department may result in termination of the Contract and repayment of all or a portion of the funds available under this Contract. Upon written request and for good cause shown, the Department may, at the Department's sole discretion, permit the Contractor to use an alternative procedure for solicitation of bids not inconsistent with law.

ARTICLE XI RECORDS

The Contractor, using accepted procedures, shall maintain at its principal office or place of business complete and accurate records and accounts including documents, correspondence and other evidence pertaining to costs and expenses of this Contract, and reflecting all matters and activities covered by this Contract.

At any time during normal business hours and as often as the Department deems necessary, the Contractor shall make available for inspection by the Department, the Commonwealth Auditor General, the Commonwealth Attorney General, or the Comptroller General of the United States, or their duly authorized representative, all of its records with respect to all matters covered by this Contract and will permit the Department to audit, examine and make copies of such records.

All required records shall be maintained by the Contractor for a period of three (3) years from the date of final audit or close out of this Contract by the Department, except in those cases where unresolved audit questions may require maintaining some or all records for a longer period. In such event, records shall be maintained until all pending matters are resolved.

ARTICLE XII PROGRESS REPORTS

The Contractor and its subcontractors shall furnish to the Department such progress reports in such form and quantity as the Department may from time to time require, including, but not limited to, status reports of the project, project account statements, certificates, approvals, proposed budgets, invoices, copies of all contracts executed and proposed, employment placements, follow-up reports and any and all other information relative to the Contract as may be requested.

The Department or its representative shall have the right to make reasonable inspections to monitor the Contractor's performance under this Contract.

In the event that the Department determines that the Contractor or its subcontractor(s) has not furnished such reports as required by the Department, the Department, by giving written notice to the Contractor, may suspend payments under this Contract until such time as the required reports are submitted.

ARTICLE XIII ACKNOWLEDGMENT OF COMMONWEALTH ASSISTANCE

Any publication concerning a project financed by the Department will acknowledge Commonwealth financial assistance as follows:

"This Project was financed *[in part]* by a grant
from the Commonwealth of Pennsylvania,
Department of Community and Economic Development"

Signs acknowledging said Commonwealth financial assistance or administrative participation will be erected in the project area as soon as possible after the effective date of this Contract. Acknowledgment of Commonwealth financial assistance may be combined with acknowledgment of other funding sources on project signs or in project publications.

ARTICLE XIV CONTRACT AUDIT AND CLOSEOUT REQUIREMENTS

This Contract is funded entirely with state funds. If the amount of the Contract is less than \$100,000.00 the Contractor is exempt from all audit requirements and should refer to the procedures issued by the Department for instructions on closeout of this Contract.

If the amount of the Contract is \$100,000.00 or more, a final audit of the entire Contract (Project Audit) is required by the Department within 120 days after the termination of project activities but no later than 120 days after the Contract termination date. This audit is the responsibility of the Contractor. Audits performed under the Single Audit Act of 1984 will not be accepted in lieu of a Project Audit required under this Contract.

The Project Audit must be performed by a certified public accountant. The Contractor is responsible for securing a qualified auditor, however, the Department reserves the right of selection or prior approval of the independent auditor to perform the audit. The Project Audit must be a financial audit conducted in accordance with the provisions of the U.S. General Accounting Office's Government Auditing Standards, current revision, and contain all the requirements detailed in the Department's "Procedures for Closeout of Contracts." Unless otherwise authorized by the Department, the audit must include those funds received under this Contract as well as any required private match funds and encompass the entire Contract period. Other grant periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors for state financial assistance programs.

The Department will determine any overpayment or underpayment and any additional auditing deemed necessary and inform the Contractor of the settlement amount.

The Contractor agrees that if the final audit of the Contract as accepted by the Department or any duly authorized representative discloses that the full amount of the Contract was not required to complete the project or that funds were improperly used, then the funds unused, improperly used or expended but not required to complete the project, shall be repaid to the Department with interest unless otherwise directed in writing by the Department.

The Commonwealth reserves the right for state agencies or their authorized representative to perform additional audits of a financial or performance nature if deemed necessary. Any such additional audit work will rely on work already performed by the Contractor's auditor, and the costs for any additional work performed by the state or federal agencies will be borne by those agencies at no additional expense to the Contractor.

All terms and conditions of this Contract will remain in effect and be binding upon the parties thereto until a final audit is submitted and accepted by the Department.

None of the above provisions under this article exempts the Contractor from maintaining records of state financial assistance programs or providing upon request, access to such records to the Department or its authorized representatives.

The submission of a Single Audit in accordance with the Single Audit Act and related Circulars does not exempt the Contractor from complying with all Project Audit and any closeout procedures as may be issued by the Department, including, but not limited to, the submission of a financial statement of the project after termination of project activities.

For additional information on audit and general closeout requirements, the Contractor should refer to the procedures for closeout of contracts issued by the Department.

ARTICLE XV TEMPORARY SUSPENSION OF THE CONTRACT

Upon written notice and at any time during the period covered under this Contract, the Department may suspend payments and/or request suspension of all or any part of the Contract activities. The Department may give such notice to suspend for the following reasons:

- (a) Violations of laws and regulations, audit exceptions, misuse of funds, failure to submit required reports or when responsible public officials or private citizens make allegations of mismanagement, malfeasance or criminal activity.
- (b) When, in the opinion of the Department, the activities cannot be continued in such manner as to adequately fulfill the intent of statute or regulations due to act of God, strike or disaster.

During the term of suspension, the Department and Contractor shall retain and hold available any and all funds previously approved for application to the activities. During this period all such funds held by the Contractor shall be placed in an interest bearing program expenditures account. The Contractor may not expend any such funds during the period that the Contract is suspended except pursuant to order of a court of competent jurisdiction. The Contractor shall have the right to cure any default or other circumstance that is the basis for suspension of this Contract within a reasonable period of time.

This Contract is also conditioned upon complete performance by the Contractor of past agreements or Contracts between the Department and the Contractor. Complete performance includes the Contractor's timely submission of the required final audit of past agreements or Contracts to the Department. In the event that the Department determines that there has been incomplete performance of past agreements or Contracts by the Contractor, the Department, by giving written notice to the Contractor, will suspend payments under this Contract until such time as the Contractor has fulfilled its obligations under past agreements or Contracts to the satisfaction of the Department. When the Contractor has fulfilled its obligation under past agreements or Contracts to Department's satisfaction, the Department will resume payments under this Contract.

ARTICLE XVI TERMINATION OF THE CONTRACT

The Department may terminate this Contract at any time for its convenience or for any other reason if it determines that termination is in its best interests, or is otherwise appropriate, by giving written notice to the Contractor of such termination and specifying the effective date thereof. Termination pursuant to this section shall not be applicable to funds that the Contractor is legally or contractually obligated to pay as a result of project activities entered into prior to the date that it receives written notice of termination. All grant monies not legally or contractually obligated, plus accrued interest, shall be returned to the Department on or before the effective date of termination and all project records shall be made available to the Department.

ARTICLE XVII ENTIRE AGREEMENT

This Contract, when signed by all the parties hereto, constitutes the full and complete understanding and agreement of the parties of its express terms as provided above.

No provision of this Contract shall be construed in any manner so as to create any rights in third parties not party to this Contract. It shall be interpreted solely to define specific duties and responsibilities between the Department and the Contractor and shall not provide any basis for claims of any other individual, partnership, corporation, organization or municipal entity.

ARTICLE XVIII AMENDMENTS AND MODIFICATIONS

A properly executed Contract amendment is required to change the effective dates of this Contract, to amend the grant amount or to make major changes in the approved program scope, objectives or methods. Such an amendment must be executed if there is a significant change in the activities or services to be conducted under this Contract. Other revisions to the project or Contract budget may be made upon written approval from the Department after prior written request of the Contractor.

ARTICLE XIX SEVERABILITY

Should any section or any part of any section of this Contract be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or part of any section of this Contract.

ARTICLE XX CONSTRUCTION

This Contract shall be interpreted and construed in accordance with federal law, where applicable, and with the laws of the Commonwealth. All of the terms and conditions of this Contract are expressly intended to be construed as covenants as well as conditions. The titles of the sections and subsections herein have been inserted as a matter of convenience and reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein.

ARTICLE XXI
NONWAIVER OF REMEDIES

No delay or failure on the part of the Department in exercising any right, power or privilege hereunder shall affect such right, power or privilege; nor shall any single or partial exercise thereof or any abandonment, waiver, or discontinuance of steps to enforce such a right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

The rights and remedies of the Department hereunder are cumulative and concurrent and not exclusive of any rights or remedies which it might otherwise have. The Department shall have the right at all times to enforce the provisions of this Contract in accordance with the terms hereof notwithstanding any conduct or custom on the part of the Department in refraining from so doing at any time or times. The failure of the Department at any time or times to enforce its rights under such provisions, in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Contract or as having in any way or manner modified or waived the same.

IN WITNESS WHEREOF the parties hereunto have set their hands and seals on:

WITNESS:

LANCASTER CITY REDEVELOPMENT
AUTHORITY

Legal Name of Applicant

Federal Identification Number 232327953

GRANTEE: Please sign & complete at "X's" only

X By Thomas H. Whit (Seal)

X Title Chairman

X Date 2/16/2000

X By Charles H. SSO (Seal)

X Title Treasurer

X Date 2-24-00

For Commonwealth signatures only

Approved as to Legality and Form

Office of Chief Counsel

Date

Donna L. Lerner
Deputy General Counsel

3-2-00
Date

For Commonwealth signatures only

Commonwealth of Pennsylvania
Acting through the
Department of Community and
Economic Development

Secretary/Deputy Secretary

Date

Approved:

I hereby certify that funds in the amount of
\$2,000,000 are available under Appropriations
Symbol:

001-024-192-99-1-0020-00000-642-\$2,000,000

Program CRP
M.E. # 99-192-1397
OAG # 4-K-2101
OAG Approved 9-17-97

Comptroller approved as to fiscal responsibility,
budgetary appropriateness and availability of funds

Department of Community & Economic Development Comptroller Date



Introduction

The Redevelopment Authority of the City of Lancaster and Penn Square Partners is pleased to submit the Penn Square Center project for consideration for funding assistance by the Pennsylvania Department of Community and Economic Development (DCED) under the Community Revitalization and the Infrastructure Development Programs.

As identified in the Lancaster Campaign's revitalization study completed in 1998 by LDR International, the Watt & Shand building at the southeastern corner of Penn Square is:

"the heart and soul of downtown Lancaster, Lancaster City and the County. It is already a special place and one of great beauty, charm, interest and vitality. The challenge is to further reinforce this special place and to bring about the meaningful redevelopment of the Watt & Shand building."

Our job, as a public/private partnership, and as a community, is to insure a successful and sustainable implementation strategy that will become a visible symbol to area and Pennsylvania residents and to other entrepreneurs that our downtown is a viable location to work, live and play. With this project, we have an opportunity to create a rich and vibrant mix of uses that would generate jobs, encourage visitors to our City and ensure future revenues for our community.

How do we make this process work in Lancaster? As in other cities across the United States, downtowns are beginning to make a comeback. Local governments, public agencies and private developers are forming public/private partnerships to revitalize and redevelop their downtowns. They are strategically joining their forces and, through the efforts sponsored in part by the Commonwealth of Pennsylvania and DCED, foster projects that would otherwise not be taken on because of the higher financial and market risks involved.

With State funding assistance available, State governmental agencies have the unique opportunity to enhance projects for the greater community benefit, such as job creation, neighborhood improvement, adaptive reuse, historical renovation, historic and cultural tourism, all with secondary and tertiary economic benefits.

With this revitalization effort, the State, Lancaster City, Lancaster County and private investors will collectively position downtown Lancaster for the enjoyment by local residents and out-of-town visitors.

THE VISION FOR PENN SQUARE CENTER

Throughout its history, the Watt & Shand building has been at the center of community activity within both Lancaster City and Lancaster County. It has historically served as one of the major magnets to the City. It is therefore appropriate that any proposed re-use of the building return the structure to that purpose within the community.

The overall concept for Penn Square Center is to create a mixed-use facility that would house the following uses:

- Hotel (privately owned) in a renovated Watt & Shand building & new construction
- Retail (stores, shops and restaurants within the hotel complex)
- Conference Center (publicly owned) newly constructed on lands south of the hotel property
- Visitor destination activities such as a visitor's center in the Conference Center

In the recent Lancaster Campaign study, many people referred to this building and location as a project of the highest priority for Lancaster City and Lancaster County. If we are to foster that position within the community, we need to promote a heartbeat *and* a sustained metabolism for this building that will both promote the other uses in the building, as well as contribute to the overall revitalization of Lancaster City. We believe that these uses need to speak to both our local residents and our visitors.

We envision working hand-in-hand with the City of Lancaster, Lancaster County, the Lancaster County Convention Center Authority, and the Commonwealth of Pennsylvania, DCED and other public and private organizations to accomplish the above mission. Only through this combined effort will we make this project successful.

Our goal would be to create a meaningful and sustainable development that will redeploy the beauty of the Watt & Shand building and enhance the surrounding quadrant around Penn Square within the context of the overall revitalization efforts of our community.

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11/3/00

Narrative section:

1. Architectural costs will focus on a design program under a contract with Ehrenkrantz, Eckstut & Kuhn, Architects. The firm is headquartered in New York City with offices in Washington, D.C. and Los Angeles. The preliminary conceptual design will move forward into full schematics and construction documents in the project's later phases. Present work will also concentrate on the cost-estimating component in coordination with our general contractor, High Construction, Inc.
AMOUNT: \$149,200.00
2. Greenbaum Associates of Lancaster, Pennsylvania will perform the preliminary structural design for the project. This effort focuses on the structural integrity and usability of the existing structures. Future structural work for the new construction will be part of the overall design budget.
AMOUNT: \$20,217.00
3. The preliminary interior demolition will be performed to accomplish two objectives. First, to support the efforts of the preliminary structural investigation (above) and; secondly, to remove interior display walls from the department store.
AMOUNT: \$18,406.00
4. The demolition of an adjacent building is required due to extensive fire damage prior to our ownership. The property has been inspected by the City of Lancaster, the City Fire Marshall and the local historic organization and determined that it cannot be economically rehabilitated.
AMOUNT: \$213,316.00
5. Ernst & Young LLP will perform the hotel and convention center market and feasibility study. Penn Square Partners' contribution to the overall study is itemized.
AMOUNT: \$53,349.00
6. Financing costs and taxes are itemized.
AMOUNT: \$82,377.00

Appendix B
99-192-1397

7. Stevens & Lee, Lancaster, Pennsylvania will perform legal consultation for the formation of the ownership, acquisition of the property and other business negotiations.
AMOUNT: \$65,156.00
8. It is anticipated that the overall design fees will be in excess of 5% of the hard costs for the project. This line item includes the beginning of the schematic design drawings, site/civil design and a portion of the structural design for the new construction.
AMOUNT: \$314,479.00
9. An environmental remediation plan has been formulated and preliminarily bid to abatement subcontractors. The remediation is limited primarily to asbestos floor tile, lead paint and a fuel oil tank closure plan.
AMOUNT: \$800,000.00
10. Demolition of portions of the existing structure will be necessary to implement the architectural plans. Our general contractor will manage the performance of this work.
AMOUNT: \$283,500.00

I trust this will satisfy the program requirements and we look forward to an approval this month. If there is anything further you need please advise. Thanks for your continued cooperation on this important project for Lancaster.

Sincerely,

Thomas D. Smithgall

Cc: Mr. Thomas Weber, RACL; Ms. Elizabeth Hambrick-Stowe (RACL Counsel)
Mr. Oliver Bartlett, DCED (by fax)
Mr. Nevin Cooley, High Real Estate Group

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11/13/00