

GOVERNANCE: DEVELOPING AND MANAGING COMMUNITY PARTNERHSIPS

CAPLAW 2009 National Training Conference

June 24, 2009
2:00 p.m. – 3:30 p.m.

Seattle, WA

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Handouts:

1. Ona Porter PowerPoint presentation – Creating High Value Community Partnerships
2. Anita Lichtblau PowerPoint presentation – Structuring Partnerships from a Legal Perspective
3. MOA Mobile Service Agreement
4. University Agreement
5. Homeless Services Subcontract
6. Sample Grant Agreement

**Creating High Value
Community Partnerships**

Community Action
New Mexico



Ona Porter, MA
Executive Director

**A Nationwide War On The Sources of
Poverty**

Lyndon B. Johnson's Special Message to Congress, March 16, 1964

The Act did not merely expand old programs or improve what was already being done. It charted a new course. It struck at the causes, not just the consequences of poverty.

**The Meaning Then and Now:
SOCIAL JUSTICE**

Working for **structural change** in order to increase the opportunity of those who are the least well off politically, economically and socially.

Social Justice Framework

- ◆ Focusing on root causes
- ◆ Striving for lasting systemic and institutional change
- ◆ Utilizing policy advocacy, **community engagement**, litigation and communication as tactics
- ◆ Strengthening and empowering vulnerable populations to advocate on their own behalf.

The Usual Suspects

- ◆ Other Community Organizations whose mission align with our own
- ◆ State Agencies
- ◆ Community Foundations
- ◆ Community Colleges

High Value Partners

- ◆ WHO: Any unlikely individual or organization
- ◆ RULES of ENGAGEMENT:
 - ◆ Don't ask them to join a group or write a check
 - ◆ Determine their purview of power
 - ◆ Develop the partnership within that purview of power

Advocates Role

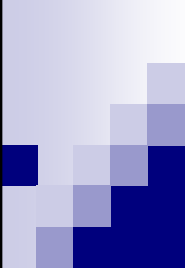
- ◆ Understand your audience's values and beliefs
- ◆ Learn whether they have a problem that your work helps address
- ◆ Show them their self interest in your objective or mission

***Opportunities
What Would YOU Do.***

- ◆ McDonald's Owner
- ◆ Oil and Gas Foundation
- ◆ Credit Union CEO
- ◆ Newly Elected State Senator
- ◆ All of the above

SOLIDARITY


***AN AGENDA
TO STRENGTHEN THE
MUTUAL EMPATHY AND
SHARED BONDS OF
COMMUNITY AMONG ALL
CITIZENS***



Structuring Partnerships from a Legal Perspective


2009 CAPLAW Training Conference

Anita Lichtblau, Esq
CAPLAW
www.caplaw.org.org



Examples of partnership structures

- Subgrant/subcontract
- Memorandum of Understanding/Agreement
- Fiscal sponsorship
- Joint venture
- Corporate sponsorship
- Commercial Co-venturer



How to determine proper structure?

- Relationship between parties
- Goals of partnership
- Requirements of funding source
- Non-Profit vs. For-Profit status
- Tax-exempt issues
 - Unrelated business income
 - Private benefit
 - Lobbying/political activity

Subgrant Issues

- What are requirements of grant that need to be passed down to subgrantee?
 - Incorporate in agreement
- Ensure that performance obligations imposed on grantee are appropriately allocated to subgrantee
- Clearly spell out responsibilities of each party
- Payment/costs

Collaborative Agreement

- Often no funds change hands
- Example: Agreement between Head Start and local dental school to perform pro bono dental exams or research
- Key provisions:
 - Confidentiality
 - Indemnification
 - Licensing/supervision

Fiscal Sponsorships

- Can you recognize one?
 - Sometimes called fiscal agent
- Not just a “pass through” of funds
 - If CAA is grantee, then it has obligations to funder to ensure proper expenditure of funds..
 - Tax implications
 - Sponsored activities should generally further your organization’s charitable goals, especially if significant amount of total organization activity
 - Sample agreement

Joint Ventures

- Between CAA and for-profit
 - Retain your own attorney familiar with nonprofit law, don't rely on for-profit's attorney
 - Must further CAA's charitable purposes
 - Or else will be considered unrelated business income
 - Could threaten tax-exempt status if private benefit
 - Through board structure, allocation of profits and liabilities, agreements, mgmt control
 - Limited partnerships
 - LLCs
 - Forming sub to enter into joint venture

Corporate Sponsorships

- Not Unrelated Business Income under some circumstances:
 - Just acknowledgement of sponsorship
 - Think PBS or NPR stations
 - Not "advertising," i.e. qualitative description of product or comparison

Commercial Coventurers

- For example, supermarket advertises it will donate 1% of every sale on one day to your organization
- Both business and charity benefit financially from event or arrangement
- In some states, must be registered and/or bonded

More Examples

- Partnership with utility companies to do weatherization work
- Would require written agreement
- Spell out who's doing what and allocation of potential liability
- Additional resources: Insight (Center for Community and Economic Development):
 - <http://www.insightccd.org/index.php?page=legalpubs#sca>

Agreement between CAA and Commonwealth Mobile Oral Health Services, LLC

This is an agreement by and between Community Action Agency, Inc. (CAA), a charitable corporation having a usual place of business at _____ and Mobile Oral Health Services, LLC (“MOHS”), having a usual place of business at _____ (the “Agreement”).

Recitals

- A. Whereas, CAA has a grant from the U.S. Department of Health and Human Services to administer a Head Start program for eligible children in _____; and
- B. Whereas, as part of its Head Start program, CAA assists parents in obtaining appropriate oral health care for the children in its program; and
- C. Whereas, The Office of Oral Health of the State Department of Public Health collaborates with the Portable Oral Health Service, which provides Oral Health care to children with State Health Dental Insurance;
- D. Whereas, _____ is a Doctor of Dental Medicine (DMD), licensed to practice dentistry in the State (Dental License # 12345), holds a Master’s Degree in Public Health, is a Certified Correctional Health Professional (CCHP), and is experienced in and willing to provide Portable Oral Health Services to children in CAA’s Head Start program; and
- E. Whereas, _____ is the sole member and manager, and CEO/Chief Dental Officer, of Mobile Oral Health Services, LLC, a Limited Liability Corporation formed under state law to provide professional services in the nature of oral health and dentistry services;

Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree to the following:

TERMS AND CONDITIONS

1. Period of Performance. This agreement shall govern the performance of both parties for the period beginning April 1, 2008 and ending March 31, 2009. The Agreement shall be automatically renewed each year unless either party notifies the other party in writing at least thirty days prior to the expiration of the then-current Agreement term that it does not intend to renew the Agreement. Provided, however, that either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party, and with cause, for material breach of this agreement, as specified herein in Section 9 of this Agreement. CAA may also terminate in accordance with Section 9 of this Agreement, if funding used to pay for expenses related to this Agreement is terminated, suspended, or reduced in amount.

2. Services to be performed by MOHS. During the course of this Agreement, MOHS shall provide Portable Oral Health Services to children in CAA’s Head Start program, including but not limited to the following, in accordance with the ethical standards of treatment required by the State Board of Registration in Dentistry and any other applicable standards for provision of oral health care to children:

- A. Chart and Exam with Treatment Plan;
- B. Prophylaxis;
- C. Fluoride Treatment;
- D. Sealants;

- E. Restorative Dentistry;
- F. Emergency Treatment;
- G. Pulpotomies; and
- H. Referral Service.

MOHS shall provide these services to children at the Head Start sites identified by CAA. No children will be denied service due to their inability to pay, but priority will be given to children eligible for StateHealth.

MOHS shall provide to CAA Head Start with forms used to obtain parental permission for examination/ treatment, billing information, health histories, and HIPAA privacy notices and related documents. Only children for whom a parent or guardian has signed a consent form for oral health services may receive services. All examination and treatment shall take place in the presence of the child's parent or guardian and/or a CAA Head Start staff member.

2A. CAA Responsibilities. CAA shall have the following responsibilities:

- A. Distribute to parents and collect completed and signed consent forms, health histories, and billing information, including a copy of an active/valid MassHealth card;
- B. Assign the CAA Head Start Health Coordinator to coordinate the dental visits;
- C. Provide a patient list to MOHS's practice manager seven to ten days prior to the visit;
- D. Meet the dental team on the day of the visit and escort them to the space to be utilized for treatment;
- E. Bring the patients to the dentist on a timely basis in order for the dental team to maximize use of their team at the program to provide treatment.

3. Payment. MOHS shall seek payment for services provided under this Agreement from StateHealth or other insurance for which the children provided services are eligible. CAA shall provide information to MOHS necessary to seek such payments, as authorized by the child's parent or guardian, but shall not make nor be responsible for any payments to MOHS or to any other party for services provided under this Agreement.

4. Confidentiality. MOHS shall assure client confidentiality and provide safeguards for individuals against the invasion of personal privacy. No information obtained by MOHS about any individual receiving services may be disclosed without such individual's consent, except as required or authorized by law. Information may otherwise be disclosed only in summary, statistical, or other form that does not identify the individual.

5. Independent Contractors. The relationship of the parties shall be one of independent contractors and not employer and employee. Any individual rendering services pursuant to this Agreement on behalf of MOHS shall be deemed employee or independent contractor of MOHS and not of CAA

6. Indemnification and Insurance. MOHS shall defend and hold CAA and its officers, directors, employees, and agents harmless from any and all liability of every nature and description and expenses which CAA may suffer arising out of the performance of services by MOHS, its employees, contractors, or agents. MOHS, _____, and all dentists and other individuals providing services under this Agreement, including but not limited to dental assistants

and dental hygienists, shall be covered by appropriate insurance during the course of this agreement, including malpractice in the amount of \$ 1,000,000 per incident and \$3,000,000 in the aggregate and shall provide confirming certificates, or such greater amount as may be required by law. MOHS will not hold CAA liable for any damage or expenses MOHS suffers.

7. Compliance with Laws. MOHS shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws, including but not limited to federal laws and regulations governing the Head Start program (42 U.S.C. 9801 et seq. and 45 C.F.R. 1304.20) and the Office of Oral Health for the State Department of Public Health.

8. Assignment. Neither party shall assign, subcontract or transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, which the other party may withhold in its sole discretion.

9. Termination of Agreement.

- a. Either party may terminate this Agreement in whole or in part immediately, upon notice from the terminating party, under the following conditions, which shall constitute cause and material breach of this Agreement: (i) the other party's act or omission (including a default or breach of this Agreement) that poses an immediate threat to the life, health or safety of a client or any other person; (ii) the indictment of the other party or one of its principals or officers for an offense or offenses related to the provision of services under this Agreement; (iii) fraudulent activities related to this Agreement on the part of the other party; or (iv) the filing for receivership or bankruptcy by the other party.
- b. Either party may terminate this Agreement immediately in whole or in part, or reduce the amount of funds obligated under this Agreement, both upon notice from the terminating party, if the terminating party's funding for this Agreement is terminated, suspended, or reduced or if either party no longer has authority to perform the terms of this Agreement.
- c. Either party may, by giving the other party reasonable written notice specifying the effective date, terminate or temporarily suspend this Agreement in whole or in part for failure, for any reason, of the other party to fulfill in a timely and proper manner any of its obligations under this Agreement, which shall constitute cause and material breach of this Agreement. Prior to terminating or suspending the Agreement for such failure, the terminating party shall: (i) provide written notice to the other party of the deficiency; and (ii) allow the other party 30 days to correct the deficiency; if the other party does not correct the deficiency by the end of such 30-day period, then the terminating party may terminate or suspend the Agreement in accordance with this Subsection 9(c).
- d. Notwithstanding Subsections 9(b) and (c) above, the non-terminating party shall not be relieved of liability to the terminating party for damages sustained by the terminating party by virtue of any breach of the Agreement by the non-terminating party.

10. Survival. The rights and obligations of the parties under Sections 4 and 6 shall survive the termination of this Agreement.

11. Miscellaneous. This Agreement hereto, sets forth the entire agreement between the parties and may be amended only by a written instrument executed by both parties. Each party warrants and represents that it has the proper corporate authority to enter into this Agreement. This Agreement is to be construed as a ____ [state] contract and is to take effect as a sealed instrument.

Community Action Agency, Inc.

Mobile Oral Health Services, LLC

BY: _____

BY: _____
 , DMD

ITS: President/CEO

ITS: President/CEO

Dated: _____

Dated: _____

SERVICE-LEARNING AGREEMENT
University and Community-Based Organization

This Agreement entered into this ___ day of _____, between University, referred to as "UNIVERSITY," and _____, referred to as "COMMUNITY-BASED ORGANIZATION."

I. STATEMENT OF PURPOSE –

A. The University: University is a private, comprehensive, urban university located in _____, with three other [state] locations and international campuses in _____.

University's mission is to provide quality education at a reasonable cost for students of all ages and backgrounds with strong emphasis on diversity.

The University is committed to educating students to become lifelong learners, as well as professionals who lead and serve the communities in which they live and work.

The University seeks to prepare students to live in a diverse, global society, appreciating the richness of various cultures.

The University accomplishes its mission by providing educational opportunities through undergraduate study, graduate study, and professional training.

University is a teaching University, where research and scholarship are interrelated with the unique character of each academic discipline. It does so by means of courses that provide theoretical, experiential, and practical dimensions.

The University supports and encourages diversity in a challenging, supportive environment for motivated and capable students from various backgrounds and cultures.

B. The Community-Based Organization: (Community-Based Organization's mission)

C. COMMUNITY-BASED ORGANIZATION and UNIVERSITY recognize the opportunity for meaningful learning experiences for the UNIVERSITY, COMMUNITY-BASED ORGANIZATION and service-learning STUDENT. The UNIVERSITY supports the goals and objectives of the COMMUNITY-BASED ORGANIZATION program in which service learning students will participate.

I. PRIORITIES

A. Program Activities

Activities will be accomplished in accordance with the *Learning Plan*, reviewed and agreed upon by the STUDENT, UNIVERSITY AND COMMUNITY-BASED ORGANIZATION prior to the start of the experience.

The STUDENT will:

1. Participate in all relevant trainings required by the COMMUNITY-BASED ORGANIZATION.
2. Model professional and appropriate behavior when working with clients and when on COMMUNITY-BASED ORGANIZATION site.
3. Support COMMUNITY-BASED ORGANIZATION events that are a part of the service learning experience as required by faculty member.
4. Meet the goals of the COMMUNITY-BASED ORGANIZATION program and the service-learning course in which the STUDENT is enrolled.
5. Complete assigned tasks as described in the attached SERVICE LEARNING PROJECT DESCRIPTION.

B. Safe and productive environment –

1. COMMUNITY-BASED ORGANIZATION will:
 - a. Give STUDENT a complete tour of the site, and ensure that STUDENT is aware of all emergency procedures and is able to act responsibly in the case of an emergency.
 - b. Ensure that STUDENT is aware of the unique nature of the population of the program(s) he/she will be involved in and is prepared to work with this population.
 - c. State law may require the COMMUNITY-BASED ORGANIZATION to submit STUDENT information, for a criminal background check. It is the COMMUNITY-BASED ORGANIZATION's responsibility to: 1) determine whether such background check is required; 2) obtain the STUDENT's information; and 3) obtain criminal background clearance from the appropriate agency.
2. UNIVERSITY will ensure that STUDENT agrees to the following:
 - a. Abide by COMMUNITY-BASED ORGANIZATION rules and regulations while on site and working with COMMUNITY-BASED ORGANIZATION clients.
 - b. Ensure that his/her interactions with clients are safe, positive and productive.
 - c. Support the program and its objectives by providing support for clients or COMMUNITY-BASED ORGANIZATION staff as necessary and agreed upon in this document.
 - d. Complete assigned tasks as specified in the attached SERVICE LEARNING PROJECT DESCRIPTION.
 - e. Understand and acknowledge that STUDENT will not be paid for any activities he or she participates in at, or services provided to, the COMMUNITY-BASED ORGANIZATION.
 - f. Prior to beginning assignment, provide such information to COMMUNITY-BASED ORGANIZATION as may be required for background checks or other application procedures of the COMMUNITY-BASED ORGANIZATION.

II. STRUCTURE AND SUPPORT OF SERVICE-LEARNING STUDENT

A. COMMUNITY-BASED ORGANIZATION

1. Site Supervision – _____ (supervisor name)
Site Supervisor will meet with the STUDENT at least _____ time(s) per week/month/semester (circle one) to update him/her on projects and to provide support.

All program staff will support the STUDENT as they interact with him/her, and provide guidance and advice as necessary and appropriate. A secondary site supervisor _____(give the name of this person) will be responsible for the STUDENT in the absence of primary supervisor.

- a. The COMMUNITY-BASED ORGANIZATION director or his/her designee will meet and/or contact the collaborating faculty member(s) at the UNIVERSITY that has assigned the service-learning experience as needed throughout the semester.
 - b. The COMMUNITY-BASED ORGANIZATION Director and/or Site Supervisor and _____, Assistant Director of Service Learning, at UNIVERSITY shall meet as appropriate in order to facilitate the most mutually beneficial experience for all parties involved, or at the request of any of the parties involved.
2. Training & Orientation – _____, (site supervisor name) will provide specific training needed by the STUDENT prior to his/her working with clients or providing service to the COMMUNITY-BASED ORGANIZATION. Necessary training can be provided through collaboration between COMMUNITY-BASED ORGANIZATION, UNIVERSITY, and faculty member.
 3. Work Space – STUDENT will have an appropriate space at the COMMUNITY-BASED ORGANIZATION site in which to conduct his/her assigned work. COMMUNITY-BASED ORGANIZATION will provide access and training for any and all equipment necessary for STUDENT to fulfill his/her required service role.
 4. Evaluation – The COMMUNITY-BASED ORGANIZATION site supervisor will fill out survey(s) regarding quality of service that the STUDENT provided to the site, and as agreed upon in the *Learning Plan* document.

UNIVERSITY will assign STUDENT to the COMMUNITY-BASED ORGANIZATION from collaborating service learning classes. STUDENT can provide service to the program(s) as agreed upon by the UNIVERSITY and the COMMUNITY-BASED ORGANIZATION.

1. Training and Reflection - UNIVERSITY will provide a training session for STUDENT regarding his/her responsibilities. The Service-Learning Director and Faculty Member will provide opportunities for STUDENT to reflect on his/her experience working at the COMMUNITY-BASED ORGANIZATION'S site.
2. Supervision and Accountability - _____, Assistant Director of Service Learning, the collaborating faculty and the service learning teaching assistant are responsible for ensuring that the work of service learning students is carried out effectively to meet the needs of the COMMUNITY-BASED ORGANIZATION and will work closely with the STUDENT and the COMMUNITY-BASED ORGANIZATION to meet the expectations and priorities of the COMMUNITY-BASED ORGANIZATION'S site.

IV. ***LENGTH OF AGREEMENT TERM***

- A. **Initial Term - The UNIVERSITY and COMMUNITY-BASED ORGANIZATION have reached this initial agreement for the term beginning 09/02/2008 and ending 12/13/08. This term represents a semester.**

This agreement shall become effective upon execution and shall continue until terminated by either party after giving the other party 30 days advance written notice of the intention to so terminate; provided further, however, that any such termination by

COMMUNITY-BASED ORGANIZATION shall not be effective against any STUDENT who at the date of mailing of said notice by COMMUNITY-BASED ORGANIZATION was participating in said program until such STUDENT has completed the program as mutually agreed upon.

B. **Renewal Process** – This agreement can be renewed each semester, and is based on STUDENT feedback, COMMUNITY-BASED ORGANIZATION evaluations and FACULTY desire to continue this relationship for the purpose of service-learning under the conditions that:

1. The UNIVERSITY and COMMUNITY-BASED ORGANIZATION continue to be committed to actively supporting the goals of the other.
2. The STUDENT work is meaningful and helps to provide essential support to the COMMUNITY-BASED ORGANIZATION.
3. The relationship is consistent with the goals of the COMMUNITY-BASED ORGANIZATION, UNIVERSITY, STUDENT and the service-learning course.

A. A renewal process is only applicable if the faculty member intends to continue placing service-learning students at this site for the foreseeable future, or if the service-learning director feels that this site can be used for other service-learning opportunities and that the partnership should be kept up to date with an ongoing Memorandum of Understanding.

The attached General Provisions, consisting of one page, is incorporation by reference and made a part of this agreement.

This document reflects my understanding of the relationship.

COMMUNITY-BASED ORGANIZATION

UNIVERSITY

Authorized Signatory

Authorized Signatory

Print Name

Print Name

Date

Date

SUBCONTRACT AGREEMENT

between

HOUSES, INC.

and

COMMUNITY ACTION AGENCY, INC.

This Agreement comprises a subcontract under which Houses (hereinafter referred to as "HOUSES") and Community Action Agencies, Inc.. (hereinafter referred to as the "Subcontractor") will participate in a program of temporary emergency shelter and services for homeless families, under a contract from the Department of Transitional Assistance (Grant No. 1234). The Subcontractor agrees to participate in this project as set forth in this Agreement for the consideration stated herein.

This Agreement sets forth the terms for the performance and administration of work under the prime grant and consists of:

- Subcontract Agreement herein
- Attachment I – Scope of Services
- Attachment II – RFR Billing Instructions

No other terms and conditions shall be binding upon the parties unless agreed upon by them in writing.

ARTICLE I – PERIOD OF PERFORMANCE

The period of performance shall be through June 30, 2009 unless extended by mutual written agreement, or terminated in accordance with the terms of this Agreement.

ARTICLE II – HOUSES CONTACTS

HOUSES Senior Program Director	Name:	Jan Smith
	Address:	99 Way Avenue, Suite 100 Anytown, USA 00000
	Phone:	555-324-9313
	Fax:	555- 576-2854
	E-mail	jsmith@houses.org

The HOUSES Senior Program Director shall be responsible for all programmatic and operational aspects of the Agreement.

ARTICLE V – STATEMENT OF WORK

The Subcontractor agrees to provide the necessary personnel, supplies, equipment and facilities to perform the Reimbursable Sustainable Housing Placement Services outlined in the Statement of Work attached hereto as Attachment I. The HOUSES Senior Program Director must approve any change in the statement of work in writing.

ARTICLE VI – FISCAL CONSIDERATIONS

a. Financial

HOUSES agrees to reimburse the Subcontractor for documented performance of this Agreement up to \$30,000.00 unless amended by written mutual agreement. For payment amounts, see Attachment I.

b. Payment

The Subcontractor shall submit invoices (no more frequently than monthly) to HOUSES. Invoices for the agreed rate of service must be sent to HOUSES by the 5th of each month. The Subcontractor will conform to the billing instructions as outlined in Attachment II, RFR billing instructions. Two (2) copies of all invoices detailing achieved performance (see Attachment II for format), should be sent to:

Finance Department
Houses, Inc.
99 Way Avenue, Suite 100
Anytown, USA 00000

The following statement of certification shall be incorporated and attested to on each invoice:

“I hereby certify, to the best of my knowledge and belief, the above properly summarizes the Agreement’s expenditures and are supported by adequate documentation.”

The final invoice, clearly marked final, must be submitted within sixty (60) days after the expiration date of this Agreement.

The Subcontractor shall maintain on file copies of documentation to support performance claimed on invoices.

c. Allowable Costs

The amount authorized will cover performance of Reimbursable Sustainable Housing Placement Services as summarized in Attachment I. The allowability of costs will be determined in accordance with applicable Department of Transitional Assistance principles. No costs incurred prior or subsequent to the period of performance shall be allowable unless approved in writing by HOUSES’ Authorized Official.

d. **Records**

The Subcontractor shall maintain accounts, records, documents and other evidence relating to performance of and reimbursement for Reimbursable Sustainable Housing Placement Services in keeping with this Agreement.

Subcontractor will allow HOUSES, the Department of Transitional Assistance, the State of ____, or any of their duly authorized representatives access to any Subcontractor books, documents, papers and records which are directly pertinent to the performance of this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

All pertinent records and books of accounts related to this Agreement shall be retained for a period of three (3) years after the conclusion of the Agreement. Records relating a litigation or claim arising out of the performance of this Agreement, or performance of this Agreement to which exception has been taken as a result of audit and/or inspection, shall be retained by the Subcontractor until such litigation, claim or exception has been resolved.

e. **Audit**

The Subcontractor agrees to maintain performance and financial records as required by Department of Transitional Assistance and to provide HOUSES with such records as requested for financial reporting and Department of Transitional Assistance audit.

Subcontractor correspondence required by this article shall be delivered to the HOUSES Official identified in Article VI.b.

f. **Subcontracts**

Subcontractor shall not assign, transfer or subcontract its interests or obligations hereunder without the prior written consent of HOUSES. The Subcontractor further agrees that if consent is granted, the same audit requirement as stated above in Section VI.e. and the required institutional assurances (Article VIII) will be incorporated into the Subrecipient's agreement. All documentation received from the Subrecipient will be copied to HOUSES.

ARTICLE VII – ADMINISTRATIVE CONSIDERATIONS

1. **Rebudgeting and Other Prior Approvals**

The administrative requirements for approval of rebudgeting and other prior approvals will be governed by the policies indicated in the guidelines identified in Article IV above. Approvals not permitted to be made internally by the Subcontractor should be signed by both the Subcontractor's Project Director and the Authorized Representative and be delivered to HOUSES, who will initiate the appropriate action required of the situation.

2. **Technical Reporting Requirements**

The Subcontractor shall submit monthly progress reports on each family and at the request of the HOUSES Senior Program Director with appropriate institutional approvals in sufficient time to permit inclusion in HOUSES's required reports.

ARTICLE VIII – INSTITUTIONAL ASSURANCES

1. Drug Free Workplace

Upon execution of this Agreement, the Subcontractor certifies it will comply with the Drug-Free Workplace Act of 1988 and any regulations of the Prime Sponsor implementing the Act.

2. Organizational Conflict of Interest

- a. The Subcontractor will comply with all the requirements of the Standards of Conduct as cited in the applicable Federal guidelines. The Subcontractor certifies that it has in effect written and enforced policy guidelines on conflict of interest and the avoidance thereof.
- b. The Subcontractor warrants that, to the best of the Subcontractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as defined in applicable federal guidelines, or that the Subcontractor has disclosed all such relevant information.
- c. The Subcontractor agrees that if an actual or potential organizational conflict of interest is discovered after award, the Subcontractor will make a full disclosure in writing to the HOUSES Authorized Official. This disclosure shall include a description of actions which the Subcontractor has taken or proposes to take, after consultation with the HOUSES Authorized Official, to avoid, mitigate or neutralize the actual or potential conflict.
- d. Remedies - In the event HOUSES determines such organizational conflict of interest exists and the Subcontractor was aware but did not disclose a potential organizational conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose or misrepresented relevant information to the HOUSES Authorized Official, HOUSES may terminate the Agreement, in whole or in part, or pursue such other remedies as may be permitted by law or this Agreement.
- e. The Subcontractor further agrees to insert in any lower-tier subcontract or consultant agreement hereunder, provisions which shall conform substantially to the language of this clause, including this paragraph (e).

3. Civil Rights, Equal Employment Opportunity, and Non-Discrimination

The Subcontractor must comply with Title VI of the Civil Rights Acts of 1964, Executive Order 11246, and Section 504 of the Rehabilitation Act of 1973, as amended (Handicapped Individuals). The Subcontractor should have on file with the HHS Office of Civil Rights, valid Assurances of Compliance with the Civil Rights Act of 1964 (Form

HHS 441) and Section 504 of the Rehabilitation Act of 1973, as amended (form HHS 641).

ARTICLE IX – OTHER CONSIDERATIONS

1. Independent Contractor

Subcontractor hereby acknowledges that all employees hired by it under or as a result of this Agreement shall during the term of this Agreement be deemed to be employees of Subcontractor and at no time be considered employees of HOUSES. Additionally, this Agreement shall not be construed so as to create a joint venture or partnership.

Neither party shall have the authority to make statements, representations or commitments of any kind, or to take action which shall be binding on the other party, except as may be explicitly provided for herein or otherwise authorized in writing.

2. Compliance with Law

The parties shall comply with all applicable federal, state, local laws and regulations and nothing in this Agreement shall be construed to require either party to violate such provisions of law or subject either party to liability for adhering to such provisions of law.

3. Termination

- a. This Agreement may be suspended or terminated by HOUSES upon thirty (30) days written notification to the Subcontractor's Authorized Representative if DTA suspends funding to HOUSES.
- b. This Agreement may be suspended or terminated by Subcontractor upon thirty (30) days written notification to the HOUSES Authorized Official, if circumstances beyond its control preclude continuation of the research.
- c. In the event that either party shall be in breach, violation or default of any of its obligations under this Agreement and shall fail to remedy such default within thirty (30) days after receipt of written notice thereof, the party not in default (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity) shall have the option of terminating this Agreement upon written notice thereof.
- d. Upon any termination thereof, Subcontractor shall within sixty (60) days of the termination date, submit to HOUSES a final invoice, a final report that summarizes the progress made hereunder, and all other required final reports noted hereunder. HOUSES shall reimburse the Subcontractor for all allowable non-cancelable costs and commitments incurred in the performance of this Agreement prior to the date of notice of termination, provided such costs do not exceed the total amount authorized under this Agreement.

- e. Subcontractor agrees that acceptance of final payment from HOUSES hereby releases and forever discharges HOUSES of and from all claims, demands, and liabilities whatsoever of every name and nature both at law and in equity.
- f. Termination or suspension of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination.

4. Indemnification

Subcontractor shall defend, indemnify, and hold HOUSES, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Subcontractor, its officers, agents, or employees.

HOUSES shall defend, indemnify, and hold Subcontractor, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of HOUSES, its officers, agents, or employees.

ARTICLE X – GOVERNING LAW

This Agreement shall be governed by the laws of the State of _____, regardless of the choice of law rules of any jurisdiction.

ARTICLE XI– ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between HOUSES and the Subcontractor. Any changes or modifications shall be accomplished by amendment to this Agreement fully-executed by the duly authorized representatives of the parties.

In witness WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Houses, Inc.

Community Action Agency, Inc.

Patrick B. McDowell
Executive Director

Name:
Title:

SAMPLE/ February 2009

GRANT AGREEMENT BETWEEN THE ASSOCIATION FOR COMMUNITY ACTION AND ENERGY, Inc. (CHARITABLE DONATIONS)

On _____, 200_, The Association for Community Action, Inc. (“ACA”), a charitable 501(c)(3) corporation located at _____, decided that financial support of the project described in the cover letter attached to this Agreement as Exhibit A will further ACA’s tax-exempt purposes. Therefore, ACA has created a restricted fund designated for such project and has decided to grant, for the period January 1, 200_ through March 31, 200___, an amount not to exceed \$90,000 from a donation it has received from _____ to Energy, Inc., a nonprofit 501(c)(4) organization located at _____, subject to the following terms and conditions.

1. Energy, Inc. shall provide ACA with its 501(c)(4) exempt status determination letter from the IRS and any other documentation deemed necessary by ACA to ensure compliance with this Agreement.

2. Energy, Inc. shall use the grant funds solely for the project described in the accompanying cover letter (Exhibit A) (“the Project”), and Energy, Inc. shall repay to ACA any portion of the amount granted which is not used for that project. Any changes in the purposes for which grant funds are spent must be approved in writing by ACA before implementation. ACA retains the right, if: Energy, Inc. breaches this Agreement or loses its 501(c)(4) status or if the conduct of the Project jeopardizes ACA’s legal or tax status, to withhold, withdraw, or demand immediate return of grant funds, and to spend such funds so as to accomplish the purposes of the project as nearly as possible within ACA’s sole judgment. Any tangible or intangible property, including copyrights, obtained or created by Energy, Inc. as part of this project shall remain the property of Energy, Inc.

3. The amount of funds paid by ACA to Energy, Inc. pursuant to this Grant Agreement shall not exceed \$90,000 and shall not exceed the amount of moneys paid by Energy, Inc. for oil payments to eligible households, as defined in the proposal attached hereto as Exhibit A.

4. Nothing in this Agreement shall constitute the naming of Energy, Inc. as an agent or legal representative of ACA for any purpose whatsoever except as specifically and to the extent set forth herein. This Agreement shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and Energy, Inc. shall make no such representation to anyone.

5. ACA shall, within a reasonable period of time after receiving a report and payment request from Energy, Inc. as described below, reimburse Energy, Inc. for actual costs incurred for the Project in accordance with the cover letter attached hereto as

Exhibit A. Energy, Inc. shall submit a full and complete report to ACA with each request for payment of grant funds. The report shall contain the information listed in the grant proposal, attached as Exhibit A. Energy, Inc. shall also submit to ACA and/or permit ACA to inspect such other reports and information as ACA may reasonably require in order to ensure compliance with the terms of this Agreement.

6. Energy, Inc. shall not use any portion of the funds granted herein in any attempt to influence legislation within the meaning of Internal Revenue Code (IRC) Section 501(c)(3).

7. Energy, Inc. shall not engage in any activity on behalf of ACA, and/or in furtherance of the Project, that jeopardizes ACA's status as a nonprofit charity qualified to receive tax-deductible contributions under Section 501(c)(3) of the Internal Revenue Code. Without limiting the generality of the preceding sentence, Energy, Inc. shall not use any portion of the funds granted herein to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, nor to take any other action inconsistent with IRC Section 501(c)(3).

8. Energy, Inc. shall notify ACA immediately of any change in (a) Energy, Inc.'s legal or tax status, or (b) the principal person on Energy, Inc.'s staff responsible for the Project, who is currently Claudia Stewart

9. In addition to any other rights granted to ACA to terminate or cancel this Agreement, ACA may terminate this Agreement without cause upon sixty days written notice to Energy, Inc.. ACA may also terminate this Agreement immediately if: Energy, Inc. breaches this Agreement; b) Energy, Inc. loses its 501(c)(4) status; c) Energy, Inc. submits any reports or other information that is incorrect or incomplete in any material respect; d) Energy, Inc. engages in any fraudulent activities; e) a bankruptcy filing is made by or in connection with Energy, Inc.; f) any of the principals of Energy, Inc. is indicted; or f) if the conduct of the project described in this Agreement jeopardizes ACA's legal or tax status

10. Energy, Inc. hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless ACA, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of Energy, Inc., its employees or agents, in applying for or accepting the grant, in expending or applying the funds furnished pursuant to the grant or in carrying out the program or project to be funded or financed by the grant, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any act or omission of ACA, its officers, directors, trustees, employees or agents.

11. This Agreement shall be governed by and construed in accordance with the laws of _____ applicable to agreements made and to be performed entirely within _____.

12. This Agreement shall supersede any prior oral or written understandings or communications between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both parties hereto.

In WITNESS WHEREOF, the parties have executed this Grant Agreement as a sealed instrument effective on the _____ day of _____, 200____.

_____, ACA

By: _____ Dated: _____

_____, Energy, Inc.

By: _____ Dated: _____