

**SAMPLE SHARED SERVICES AGREEMENT**

***This sample shared services agreement was developed by Community Action Program Legal Services, Inc. (CAPLAW) and has not been approved by any outside authority, such as the U.S. Department of Health and Human Services (HHS). You should review this sample shared services agreement thoughtfully and modify it as necessary to meet the individual needs of your organization and to comply with any laws, regulations, and grants that apply to your organization. You should also discuss any prospective shared services arrangements with your funding sources. CAPLAW strongly recommends that when working with this sample shared services agreement, you consult with an attorney that is well-versed in the contract laws of your state.***

***This shared services agreement contains bracketed text and footnotes corresponding to specific provisions, both of which are intended to help you better understand the shared services agreement and how to adapt it to the needs of your organization. You should update this text and delete any brackets when finalizing the shared services agreement.***

***This publication is part of the Community Services Block Grant (CSBG) Legal Training and Technical Assistance (T/TA) Center. It was created by CAPLAW in the performance of the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Cooperative Agreement – Grant Award Number 90ET0467-02. Any opinion, findings, conclusions, or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Health and Human Services, Administration for Children and Families.***

***The contents of this publication are intended to convey general information only and do not constitute legal advice. This publication does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.***

**How to Use This Sample Shared Services Agreement**

This sample shared services agreement is intended to help Community Action Agencies (CAAs) seeking to enter into an arrangement to share administrative personnel and/or facilities and equipment with another organization. CAAs may also seek to share program services, although in some cases of program-sharing, a subaward agreement may be the better tool for reflecting the nature of the relationship between the parties. This sample agreement covers the major legal and financial issues that CAAs should consider and negotiate.

**Introduction to Shared Services Arrangements**

In the face of government funding cuts and increased competition for limited resources, many CAAs are entering into shared services agreements to improve their sustainability and enhance their efficiency and effectiveness. “Shared services” refers to various types of arrangements between a CAA and one or more other organizations to share administrative or programmatic functions or physical resources. A CAA may share services with another CAA or with another type of organization. For more information and resources, including case studies featuring CAAs that have entered into shared services arrangements, please see CAPLAW’s publication, [*Working Better Together*](https://caplaw.org/resources/PublicationDocuments/WorkingBetterTogether.html).

**Major Benefits and Drawbacks to Shared Services Arrangements**

**Benefits**:

* Achieves some operational efficiencies. Sharing services, whether administrative or programmatic, can result in cost savings for all organizations involved by reducing duplication of functions and infrastructure. Organizations can also access specialized services that they may not be able to afford or obtain on their own.
* Preserves individual organizational identity. Organizations for whom identity and autonomy are important may find that sharing services allows them to enjoy the benefits of partnering with another organization while retaining their own unique character. Since the organizations sharing services continue to exist as independent legal entities, they can preserve their local identities and retain the reputation and associated goodwill developed in their communities.
* Allows for incremental building of trust. For organizations that may not know each other well or have an established relationship, sharing services can be a way to “test the waters” for a longer-term collaboration through working together in a clearly delineated manner. The scope of the shared services arrangements can gradually expand over time, depending on organizational compatibility and needs.
* Fairly easy to amend or reverse. Unlike collaborations such as a statutory merger under the CAA’s state nonprofit corporation act, shared services arrangements are governed by contract (the shared services agreement) and thus can be terminated or renewed according to the terms of a contract. This makes sharing services much easier to unwind than a merger if the collaboration is not working out as the organizations had intended. Organizations can also adjust the terms of the arrangement to fit organizational needs (e.g., the scope of the arrangement and the services that are shared, supervision and oversight, reimbursement terms, etc.) by amending the shared services agreement.

**Drawbacks**:

* Administratively complex. Regardless of the scope of the shared services arrangement, organizational leaders must ensure that the entities operate separately. The boards of each organization must continue to exercise their fiduciary duties to, and act in the best interests of, their respective organizations. The organizations must maintain separate financial accounts, have separate audits and make their own Form 990 and state filings.
* Potential conflicts of interest. Since the organizations sharing services remain separate legal entities, the boards and staff must be aware of potential conflicts of interest that arise as a result of the close relationship between the organizations. For example, if both organizations apply for the same grant, any shared staff or overlapping board members should be sure to follow their organizations’ conflict of interest policies. This should include, at a minimum, keeping confidential any information learned while performing services for one organization, as well as recusing themselves from the discussion and vote on any decisions involving the other organization.
* Federal procurement rules apply. If a CAA provides administrative services to another CAA or federally-funded entity, the entity receiving the services must follow its procurement policy and ensure that it is in compliance with the procurement standards of the Uniform Guidance, [2 C.F.R. §§ 200.318-200.326](https://gov.ecfr.io/cgi-bin/text-idx?SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&node=sg2.1.200_1316.sg3&rgn=div7). Depending on the aggregate dollar amount of the shared services agreement, the entity receiving the services should use the appropriate method of procurement listed in the Uniform Guidance, [2 C.F.R. § 200.320](https://gov.ecfr.io/cgi-bin/text-idx?SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&node=se2.1.200_1320&rgn=div8). All procurement transactions must be conducted in a manner involving full and open competition, and the circumstances under which entities can use sole source procurement (i.e., procuring services without competition) is limited. See [2 C.F.R. § 200.320(f)](https://gov.ecfr.io/cgi-bin/text-idx?SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&node=se2.1.200_1320&rgn=div8).
* Unrelated business income tax issues. The income generated by a 501(c)(3) tax-exempt organization providing administrative services to another tax-exempt organization in a shared services arrangement is likely to be deemed “unrelated business taxable income” (UBTI) under IRS rules. The IRS does not consider the provision of administrative services to be an exempt function, even if the two nonprofit organizations have similar missions. A number of factors are relevant to the IRS’s determination, but unless a specific exception applies (namely, providing services to a legally related, exempt organization; or being reimbursed for an amount that is substantially below the organization’s cost of providing the services), a tax-exempt organization will likely need to report the amounts it receives for providing the services as UBTI on Form 990-T, if it generates $1,000 or more in such income in a year. If the organization provides the services at cost, it will be entitled to deduct its ordinary business expenses on Form 990-T and may not ultimately owe any taxes; however, because Form 990-T requires reporting all gross income, the organization is still required to file Form 990-T.

**[SAMPLE] SHARED SERVICES AGREEMENT**

THIS SHARED SERVICES AGREEMENT (this “Agreement”) is entered into as of [Date], by and between [Organization 1], a [State] nonprofit corporation with its principal office at [Address] (“[ORG1]”), and [Organization 2], a [State] nonprofit corporation with its principal office at [Address] (“[ORG2]” and, together with [ORG1], the “Parties” and each, a “Party”).[[1]](#footnote-1)

WHEREAS, the mission of each Party is to support services and activities for low-income individuals that alleviate the causes and conditions of poverty in their respective service areas; [and]

WHEREAS, the Parties have agreed that it is in their mutual best interest to collaborate by sharing certain Services (as defined below); [and

WHEREAS, the Parties have received approval from the U.S. Department of Health & Human Services, [Administration for Children & Families, Office of Head Start][[2]](#footnote-2) to enter into this Agreement;]

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, [ORG1] and [ORG2] hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall govern the performance of the Parties for the period from [Start Date] (the “Effective Date”) through [End Date] unless earlier terminated by either Party in accordance with the terms of this Agreement (such period of performance, the “Agreement Term”). All provisions of this Agreement shall apply to all Services (as defined below) and all periods of time in which [ORG1] provides the Services to [ORG2]. The Parties may mutually agree in writing to extend the Agreement Term.[[3]](#footnote-3)
2. **SERVICES.** [ORG2] hereby retains [ORG1] to provide the services set forth in this Section [2] (the “Services”).[[4]](#footnote-4)
	1. [Professional Services.
		1. For approximately ten (10) hours per week, the services of John Doe, Chief Financial Officer of [ORG1] (the “CFO”), which shall include, but are not limited to:
			1. Oversight of [ORG2]’s fiscal activities;
			2. Supervision of [ORG2]’s annual financial audits, including the federal Single Audit, its Form 990 filings, and other finance-related activities in compliance with [ORG2]’s funding source requirements; and
			3. Management of [ORG2]’s financial statements and presentation of such statements at [ORG2]’s board meetings.
		2. For approximately twenty (20) hours per week each, the services of one Senior Accountant and one Junior Accountant employed by [ORG1] (together with the CFO, the “Shared Staff”), which shall include, but are not limited to:
			1. Technical assistance related to [ORG2]’s fiscal processes and policies;
			2. Submission of all required grant reports;
			3. Budget development and oversight, to be performed in conjunction with [ORG2]’s fiscal and program staff; and
			4. Other services as determined and agreed upon by the Parties.][[5]](#footnote-5)
	2. [Facilities. Access to [ORG1]’s offices at 123 Main Street, including its conference rooms and kitchen space, for the purpose of collaboration in the performance of the Services, in accordance with the lease attached hereto as Exhibit A].[[6]](#footnote-6)
	3. [Equipment. Use of two (2) of [ORG1]’s minibuses for two (2) days per week from 8:00 a.m. Eastern Standard Time to 6:00 p.m. Eastern Standard Time for the sole purpose of supplementing [ORG2]’s rural transit program.][[7]](#footnote-7)
	4. [Other Services. Such other services as are agreed upon by the Parties in writing from time to time.]
3. **COSTS AND PAYMENTS.**
	1. Payment Terms. Except as set forth below, [ORG2] shall reimburse [ORG1] for the Services in an amount not exceeding the actual cost to [ORG1] of providing such Services.[[8]](#footnote-8) For goods or services purchased from third parties, [ORG1] shall pass through the cost to [ORG2]. [For Shared Staff time devoted to providing Services to [ORG2], [ORG1] shall keep time records showing the time worked for [ORG2] and calculate the reimbursement amount based on the time dedicated to providing Services to [ORG2] in accordance with the table below. [ORG1] shall use a similar labor- or usage-based methodology in determining any employee benefit, equipment, or shared or indirect costs expended in providing Services to [ORG2]. Reimbursement shall be at the following rates:]

**[Shared Staff]**[[9]](#footnote-9)

|  |  |
| --- | --- |
| [Hourly Salary Amount | $ |
| Hourly Fringe Benefit Amount | $ |
| Hourly Salary + Benefit Subtotal | $ |
| [ ]% Shared or Indirect Costs[[10]](#footnote-10) | $ |
| Total Hourly Compensation | $ |

**[Facilities/Equipment]**

|  |  |
| --- | --- |
| [Rental Fee | $ |
| [ ]% Shared or Indirect Costs | $ |
| Total Hourly Rate | $ |

[Reimbursements by [ORG2] under this Agreement shall not exceed $[\_] per week unless [ORG2] provides prior approval in writing.][[11]](#footnote-11) Costs incurred shall only be necessary and allowable to carry out the Services and shall be incurred in accordance with 2 C.F.R. Part 200 (the “Uniform Guidance”) and other applicable laws, regulations, grant terms and conditions or policies.]

* 1. Invoices. On or before the [twentieth (20th)] day of each month[[12]](#footnote-12) and in any event no later than [thirty (30)] days after the earlier of the expiration or termination of this Agreement, [ORG1] shall submit invoices, [in a form supplied by [ORG2]][[13]](#footnote-13), for the most recent month ended, to [ORG2], setting forth actual expenditures of [ORG1] over such period in accordance with this Agreement. [ORG1] shall make available to [ORG2] sufficient information with each invoice to support the reimbursement computation. [If [ORG1] fails to submit an invoice within the periods set forth in the first sentence of this Section [3(b)], the failure to invoice will be deemed a waiver of the right to reimbursement and a donation to [ORG2] of the unreimbursed amount due to the late invoice.][[14]](#footnote-14)
	2. Taxes; Unrelated Business Income Tax. Each Party shall be solely responsible for all tax filings, returns and payments required by any federal, state or local tax authority in connection with such Party’s obligations under this Agreement. [ORG1] is solely responsible for reporting and paying any taxes, penalties and interest determined by the applicable taxing authority to be owed on the reimbursement payments made by [ORG2] to [ORG1] under this Agreement, including reporting any unrelated business taxable income and paying any unrelated business income tax.[[15]](#footnote-15)
1. **SUPERVISION; COMPLIANCE WITH POLICIES.**
	1. Oversight of Shared Staff. Each Shared Staff shall be supervised during the course of performing the Services as follows:
		1. The CFO will be supervised by and report to [ORG2]’s Executive Director.
		2. The Senior Accountant will be supervised by and report to the CFO.
		3. The Junior Accountant will be supervised by and report to the Senior Accountant and the CFO.

The Parties agree that any changes to the supervisory and reporting obligations above require prior written approval by the Parties.[[16]](#footnote-16)

* 1. Compliance With Policies.[[17]](#footnote-17) The Parties agree that each Shared Staff shall be subject to and comply with the policies and procedures of [ORG2] during the course of performing Services for [ORG2].
1. **INDEPENDENT CONTRACTOR RELATIONSHIP.**
	1. Independent Contractor Relationship; No Authority to Act for Other. The relationship of [ORG1] to [ORG2] is that of an independent contractor and not of an employee/employer, agent/principal, pass-through entity/subrecipient, joint venturer, or partner.[[18]](#footnote-18) Neither Party shall hold itself out as an agent or representative of, or purport to speak or act on behalf of, the other; nor shall either Party have the power or authority to act for the other, or to bind or obligate the other to a third party or commitment in any manner.[[19]](#footnote-19) The Parties shall hold themselves out as separate, independent entities.
	2. Contracting with Other Parties. [ORG1] may render services to third parties during the Agreement Term provided that such services do not violate its confidentiality obligations to [ORG2].
	3. Employment Matters. Neither [ORG1] nor any Shared Staff performing Services under this Agreement shall be deemed to be an employee of [ORG2]. All Shared Staff shall remain solely employees of [ORG1] at all times and subject to their employment terms and conditions with [ORG1]. [The Parties agree that this Agreement will not affect the at-will employment status of any Shared Staff]. [ORG1] shall have sole authority to hire and fire any Shared Staff providing Services to [ORG2] under this Agreement.
	4. No Employee Benefits. No Shared Staff shall be eligible to participate in any of [ORG2]’s employee benefit plans, fringe benefit programs, group insurance arrangements or similar programs. [ORG2] shall not provide workers’ compensation, disability insurance, Social Security, or unemployment compensation coverage or any other statutory benefits to Shared Staff. [ORG1] agrees that it is solely responsible for reporting, withholding and paying income, Social Security, Medicare and other employment taxes due to the proper taxing authorities with respect to Shared Staff. [ORG2] agrees not to withhold Social Security, Medicare or income taxes from its payments under this Agreement or to make Social Security or Medicare payments or unemployment compensation contributions on [ORG1]’s behalf.
2. **COMPLIANCE WITH LAWS**. [ORG1] shall perform all Services under this Agreement in accordance with all applicable federal, state and local laws, including, as applicable, the procurement requirements under the Uniform Guidance[[20]](#footnote-20), the contract provisions under Appendix II to the Uniform Guidance and attached as Exhibit [B] (the “Required Contract Provisions”), and federal award authorizing statutes and regulations. The term “federal, state and local laws” as used in this Agreement shall mean all applicable statutes, rules, regulations, executive orders, directives or other laws, including all laws as presently in effect and as may be amended or otherwise altered during the Agreement Term, as well as all such laws which may be enacted or otherwise become effective during the Agreement Term.
3. **SUSPENSION AND DEBARMENT**. [ORG1] represents that neither it nor any of its principals has been debarred, suspended or determined ineligible to participate in federal assistance awards or contracts as defined in regulations implementing Office of Management and Budget Guidelines on Governmentwide Debarment and Suspension (Nonprocurement) in Executive Order 12549. [ORG1] further agrees that it will notify [ORG2] immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at [www.sam.gov](http://www.sam.gov).
4. **CONFLICT OF INTEREST**. Each Party maintains its own written Conflict of Interest Policy that complies with federal and state requirements. To the best of its ability, [ORG1] shall direct each Shared Staff to comply with [ORG2]’s Conflict of Interest Policy and to act in the best interest of [ORG2] during the performance of the Services.
5. **INSURANCE**.
	1. [ORG1] Insurance Policies. [ORG1] shall, at all times during the Agreement Term, carry insurance in such form and in such amounts as [ORG2] may from time to time reasonably require against insurable hazards and casualties that are commonly insured against in the performance of similar services to those provided by [ORG1] under this Agreement, including comprehensive general liability insurance [and comprehensive automobile liability insurance]. Upon request of [ORG2], policies providing such coverage shall name [ORG2] as an additional insured with respect to [ORG1]’s performance of its obligations under this Agreement. [ORG1] shall provide evidence of such insurance to [ORG2] upon request.[[21]](#footnote-21)
	2. [ORG2] Insurance Policies. [ORG2] shall, at all times during the Agreement Term, carry insurance in such form and in such amounts as [ORG1] may from time to time reasonably require against insurable hazards and casualties that are commonly insured against in the performance of similar services to those provided by [ORG2] under this Agreement, including comprehensive general liability insurance [and comprehensive automobile liability insurance]. Upon request of [ORG1], policies providing such coverage shall name [ORG1] as an additional insured with respect to [ORG2]’s performance of its obligations under this Agreement. [ORG2] shall provide evidence of such insurance to [ORG1] upon request.
6. **RECORD RETENTION AND ACCESS.** [ORG1] shall maintain all records, books, and documents related to its performance of the Services under this Agreement (including without limitation personnel, property, financial and medical records) for a period of [three (3)][[22]](#footnote-22) years following the date that [ORG2] makes the last payment to [ORG1] under this Agreement, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Agreement. [ORG1] shall make all records, books, papers and other documents that relate to this Agreement available upon reasonable request for inspection, review and audit by the authorized representatives of [ORG2], [HHS], the U.S. Government Accountability Office and the Comptroller General of the United States.
7. **CONFIDENTIALITY.** Except with the prior written consent of the other Party or to the extent required by law, each Party will keep confidential, and will not disclose or use for its benefit or the benefit of any third party, any confidential information obtained from the other Party except in connection with its activities under this Agreement. Confidential information may include, without limitation, information about personnel, funders, clients, operating procedures, strategies, financial results, funding opportunities, and information the Parties may obtain through ordinary course interactions among their respective employees. Confidential information does not include information generally available to the public, independently developed information and information already known by the receiving Party before entering into this Agreement or that is rightfully obtained by the receiving Party from sources other than the other Party to this Agreement. All confidential information furnished under this Agreement will remain the property of the furnishing Party and shall be returned, upon request, to the furnishing Party to the extent possible upon the expiration or termination of this Agreement.
8. **INTELLECTUAL PROPERTY RIGHTS**. [ORG2] shall own all intellectual property created for [ORG2] by any Shared Staff providing Services during the Agreement Term (“Work Product”). All Work Product is work made for hire to the extent allowed by law. [ORG1] hereby makes all assignments necessary to accomplish the foregoing ownership. [ORG1] shall assist [ORG2] to further evidence, record and perfect such assignments and to perfect, obtain, maintain, enforce and defend any rights assigned. [ORG1] hereby irrevocably designates and appoints [ORG2] as its agents and attorneys-in-fact, coupled with an interest, to act for and on [ORG1]’s behalf to execute and file any document and to do all other lawfully permitted acts to further the foregoing with the same legal force and effect as if executed by [ORG1] and all other creators or owners of the applicable Work Product.
9. **INDEMNIFICATION.**
	1. Indemnification Obligations. Each Party (the “Indemnifying Party”) shall hold the other Party and its employees, officers, directors, agents and representatives (collectively, the “Indemnified Party”) harmless from any and all costs, claims, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney's fees, resulting from any claim, demand, suit, or other legal proceeding made by any third party arising from any breach by the Indemnifying Party, its employees, officers, directors, agents or representatives of its obligations under this Agreement. The Indemnifying Party will have no obligation to indemnify any Indemnified Party to the extent the liability is caused by such Indemnified Party’s gross negligence or willful misconduct or by any breach of such Indemnified Party of its obligations under this Agreement.
	2. Procedures. Each Party’s indemnification obligations under this Section [13] are subject to the Indemnified Party: (1) providing prompt written notice of any claim for which defense is sought; (2) allowing the Indemnifying Party to assume the exclusive defense and control of such claim and its settlement, provided that the Indemnifying Party will obtain the Indemnified Party’s consent to any compromise or settlement of a claim that does not fully discharge the Indemnified Party of all liabilities and obligations; and (3) cooperate with the Indemnifying Party (or its insurer) with all reasonable requests in assisting the defense of such claim.
10. **TERMINATION.**
	1. Termination for Convenience. Either Party may terminate this Agreement by providing written notice of such termination to the other Party, which notice shall take effect [ninety (90)] days after delivery of the notice by the terminating Party.
	2. Immediate Termination.[[23]](#footnote-23) Either Party may terminate this Agreement immediately upon providing written notice of such termination to other Party if: (i) the other Party materially breaches any of its obligations under this Agreement; or (ii) either Party experiences a termination, suspension, or reduction of funding that materially impacts its ability to perform any of its obligations under this Agreement.
	3. Termination for Shared Staff Performance. Upon providing [thirty (30)] days’ written notice to [ORG1], [ORG2] may terminate this Agreement if [ORG2] is dissatisfied with the performance of any Shared Staff in providing Services to [ORG2], provided that [ORG2] has provided prior written notice to [ORG1] of the performance deficiency and attempted in good faith to work with [ORG1] and such Shared Staff to improve performance. Any termination under this Section [14(c)] will apply only to the provision of Services by such Shared Staff, and the remainder of the Agreement will remain in full force and effect following such termination.
	4. Disposition of Property. Upon termination of this Agreement, [ORG1] shall return all property and Work Product associated with the Services to [ORG2], and [ORG2] shall pay [ORG1] any outstanding or unreimbursed fees and expenses incurred in performance of the Services according to the procedures set forth in Section [3(b)]. Each Party shall return to the other Party, at its own expense and as directed by the other Party, any confidential information belonging to the other Party. Both Parties shall cooperate in good faith to bring all activities under this Agreement to an orderly conclusion to minimize the adverse impact on the communities they each serve.
	5. Survival. The provisions of Sections [3(b), 3(c), 5, 10, 11, 12, 13, 14, 15, and 16] will survive termination of this Agreement regardless of the reason for such termination.
11. **DISPUTE RESOLUTION.** The Parties shall notify each other in writing of any intent to pursue a claim against the other for breach of any terms of this Agreement. No suit may be commenced for breach of this Agreement prior to the expiration of [ninety (90)] days from the date of such notification. Within such ninety-day period, the Executive Directors of each Party shall meet for the purpose of attempting resolution of the dispute, unless the Executive Director is a Shared Staff under this Agreement, in which case the Chairperson of each Party’s Board of Directors shall meet to attempt to resolve the dispute.
12. **GENERAL PROVISIONS.**
	1. Governing Law. This Agreement shall be governed by the laws of the State of [X], without giving effect to the conflicts of laws provisions thereof.
	2. Integration. This Agreement contains the entire agreement of the Parties and supersedes all oral agreements, negotiations and representations between the parties pertaining to the subject matter of this Agreement.
	3. No Third Party Beneficiaries. Nothing in this Agreement shall be construed as giving any person, corporation or other entity other than the Parties any right, remedy or claim under or in respect of this Agreement or any provision hereof.
	4. Severability. If any provision of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.
	5. Waiver of Breach. The waiver by either Party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach by the other Party of the same or of different provisions.
	6. Binding Effect; Assignment. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective and permitted successors, transferees and assigns. Neither Party may assign, subcontract or transfer any of its rights, responsibilities or obligations under this Agreement without the other Party’s prior written consent, which such Party may withhold in its sole discretion.
	7. Notices. Notices required by this Agreement shall be made in writing and delivered via U.S. mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means (provided that receipt is confirmed). Any notice delivered or sent as described above shall be effective on the date received. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

If to [ORG1]:

[NAME]

[TITLE]

[AGENCY]

[STREET ADDRESS]

[CITY, STATE, ZIP]

[TELEPHONE #]

[FAX #]

[E-MAIL ADDRESS]

If to [ORG2]:

[NAME]

[TITLE]

[AGENCY]

[STREET ADDRESS]

[CITY, STATE, ZIP]

[TELEPHONE #]

[FAX #]

[E-MAIL ADDRESS]

* 1. Amendment. Any amendment to this Agreement shall be reduced to writing, signed by an authorized representative of each Party and attached to this Agreement.
	2. Counterpart Execution; Facsimile Execution. This Agreement may be executed in any number of counterparts with the same effect as if all of the Parties had signed the same document. Such executions may be transmitted to the other Parties by facsimile or other electronic transmission and such facsimile or other electronic execution shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile executions, electronic executions or a combination of the foregoing, shall be construed together and shall constitute one and the same agreement.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, each of the Parties has executed this Agreement by its duly authorized officer as of the day and year first written above.

**[NAME OF [ORG1]] [NAME OF [ORG2]]:**

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

Name: Name:

Title: Title:

**SHARED SERVICES AGREEMENT**

**List of Exhibits**

**[Exhibit A Facilities Lease]**

**Exhibit B Required Contract Provisions**

**[Exhibit A**

**Facilities Lease]**

**Exhibit B**

 **Required Contract Provisions**

**(Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)**[[24]](#footnote-24)

1. Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
3. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
4. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
5. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
8. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
10. See §200.322 Procurement of recovered materials.
1. This template assumes that ORG1 will be the provider and ORG2 will be the recipient of the shared services, but provisions may be repeated or added to reflect additional services flowing from ORG2 to ORG1. Consider replacing the defined terms ORG1 and ORG2 with the names or acronyms of the CAAs or organizations involved in the shared services arrangement. [↑](#footnote-ref-1)
2. Insert name of federal awarding agency if its prior approval is required for program or budget-related changes, such as a change in a key person specified in the application or the federal award, changes in approved cost-sharing or matching, or the disposal or encumbrance of title to real property or equipment acquired or improved with a federal award. See, for example, [2 C.F.R. § 200.308, Revision of Budget and Program Plans](https://ecfr.gov/cgi-bin/text-idx?SID=0220b57fe10e8db125249d7672790d41&mc=true&node=se2.1.200_1308&rgn=div8). [↑](#footnote-ref-2)
3. This template is written so that the Parties have to take affirmative action to renew the agreement. However, some organizations may want the agreement to automatically renew unless one party notifies the other party of its desire not to renew. In this case, this section could be rewritten as follows:

This Agreement shall govern the performance of the Parties for the period from [Start Date] (the “Effective Date”) through [End Date] unless earlier terminated by either Party in accordance with the terms of this Agreement (such period of performance, the “Initial Term”). Following the Initial Term, this Agreement will automatically renew for successive additional [1-year] terms (each, a “Renewal Term” and together with the Initial Term, the “Term”) unless either Party provides notice to the other Party of its intention not to renew this Agreement during the 30-day period immediately before the end of the then-current Term. All provisions of this Agreement shall apply to all Services (as defined below) and all periods of time in which [ORG1] provides the Services to [ORG2]. [↑](#footnote-ref-3)
4. This Agreement contemplates the sharing of employees, facilities, and equipment. While organizations can also jointly operate programs and direct services such as conducting a centralized client intake system or running a weatherization program together, these arrangements often resemble subaward relationships, which have very different characteristics and requirements under the Uniform Guidance. See the definition of “Subaward” at [2 C.F.R. § 200.92](https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_192) and the factors used to distinguish subrecipients and contractors at [2 C.F.R. § 200.330](https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1330). [↑](#footnote-ref-4)
5. This Agreement may also be used to share personnel such as administrative staff, HR staff, facilities management staff, weatherization teams, an Executive Director, data collection and analysis staff, or fundraising and development staff. The services described in this Agreement are provided as examples only and must be customized to reflect the agreement and expectations of the Parties. [↑](#footnote-ref-5)
6. Facilities to be shared may also include workspaces, libraries, or offsite storage. If facilities are the only services being shared, it may be preferable for the Parties to enter into a Lease or Sublease Agreement instead of a Shared Services Agreement. If ORG1’s facilities will be leased or subleased to ORG2, ORG1 should review the terms of its original lease to ensure that its arrangement to share the facilities does not violate any terms of the original lease, including any requirement to obtain the landlord’s prior approval to share the leased space. [↑](#footnote-ref-6)
7. CAAs may also share office equipment such as copiers, printers, phones, or video conferencing services, as well as server space or cloud applications. If the equipment to be shared is leased or licensed from a third party, ORG1 should review the terms of its lease or license to ensure that its arrangement to share the service does not violate any terms of the original lease or license. If the equipment was purchased or leased using federal funds, ORG1 must also comply with the requirements for using, managing, and disposing of equipment under the Uniform Guidance, [2 C.F.R. § 200.313](https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=7b265ee785eea7f02adbe1521b93c6a5&mc=true&n=pt2.1.200&r=PART&ty=HTML#se2.1.200_1313). [↑](#footnote-ref-7)
8. The Parties should discuss whether ORG1 will provide services to ORG2 at cost (i.e., it will only receive reimbursement for its actual costs of providing the services), or whether ORG1 will charge ORG2 a fee above its costs for providing the services. This template assumes that ORG1 will invoice ORG2 only for its actual costs, but this can be modified. [↑](#footnote-ref-8)
9. Replicate this table for each shared employee. [↑](#footnote-ref-9)
10. The Parties should discuss any indirect costs to be charged for the time that Shared Staff perform services for ORG2, and the basis for which those costs are determined. [↑](#footnote-ref-10)
11. The Parties can set expectations for the total cost of the shared services by estimating the maximum weekly reimbursement payments and stipulating that ORG2 has to agree in writing before exceeding this amount. [↑](#footnote-ref-11)
12. Consider how often ORG1 will invoice ORG2 for the Services. This agreement is set up for ORG1 to invoice (and ORG2 to pay) on a monthly basis, but this could be modified. [↑](#footnote-ref-12)
13. ORG2 may want to provide ORG1 with a form invoice that it must adhere to in order to receive payments. [↑](#footnote-ref-13)
14. Consider consequences if ORG1 fails to inform ORG2 of the amount of reimbursement owed for the Services. This option automatically makes the Services that would have been covered by the monthly invoice a donation to ORG2, so that ORG1 cannot later seek reimbursement for those services. [↑](#footnote-ref-14)
15. ORG1 should consider how the income it generates by providing the Services will be treated for tax purposes. Income earned by a 501(c)(3) tax-exempt organization is subject to unrelated business income tax (“UBIT”) if it results from an activity that (1) constitutes a trade or a business, (2) is regularly carried on and (3) is not substantially related to the furtherance of the organization’s tax exempt purposes. The IRS has held that providing administrative services, even if it is to another 501(c)(3) tax-exempt organization, is generally not a charitable activity. Thus, fees paid by one tax-exempt organization to another as reimbursement at cost for services provided are subject to UBIT, but services provided substantially below cost or services provided to a legally related tax-exempt organization may not be subject to tax. A 501(c)(3) tax-exempt organization providing administrative services at cost (i.e., not charging a fee that exceeds the organization’s actual cost to provide the services) will likely have to report the reimbursement payments as unrelated business taxable income, but may not actually owe any UBIT after deducting its actual costs. See [*CAPLAW's Working Better Together* resource](https://www.caplaw.org/resources/PublicationDocuments/mergersandsharedservices/SharedServices.html) for more information. Note that certain unrelated activities may also be subject to UBIT at the state level, so please consult with an attorney licensed in your state to address additional tax consequences. [↑](#footnote-ref-15)
16. The supervisory structure for Shared Staff performing Services for the organization that does not employ them is an important issue to discuss in advance and to address in the Agreement. If the Agreement contemplates sharing an Executive Director’s services, the board of directors of the organization receiving the Services must supervise the Executive Director when performing Services solely for that organization. Other Shared Staff should be supervised by the appropriate individual at the organization receiving the Services, or by another supervisor. [↑](#footnote-ref-16)
17. The Parties should discuss whether ORG1 or ORG2’s personnel policies will govern the Shared Staff while they are performing the Services, and what will happen if they violate them. The Parties should work with a local employment law attorney to ensure that whatever arrangement is decided upon does not affect the at-will status of the Shared Staff or create a joint employment relationship. [↑](#footnote-ref-17)
18. Under the Uniform Guidance, ORG2 must determine whether ORG1 is a functioning as a subrecipient or a contractor under this Agreement. See [2 C.F.R. § 200.330(c)](https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1330&rgn=div8). Generally, an agreement to share administrative staff and/or facilities and equipment is likely to be a contractor relationship, as ORG1 is providing services for ORG2’s own use and purpose. However, ORG2 should evaluate the substantive aspects of the relationship to make that determination. The Uniform Guidance states, “Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor: (1) Provides the goods and services within normal business operations; (2) Provides similar goods or services to many different purchasers; (3) Normally operates in a competitive environment; (4) Provides goods and services that are ancillary to the operation of the Federal program; and (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons” ([2 C.F.R. § 200.330(b)](https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1330&rgn=div8)). See [2 C.F.R. § 200.330(a)](https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1330&rgn=div8) for the characteristics indicative of a subrecipient relationship. If ORG1 is a subrecipient, the federal funds it receives from providing the Services will be subject to the audit provisions of the Uniform Guidance, and ORG2’s federal award compliance requirements will pass through to ORG1. If ORG1 is a contractor, ORG2 must follow its procurement procedures and policy before selecting ORG1 to be the contractor providing the Services. [↑](#footnote-ref-18)
19. Note that this provision does not preclude a shared Executive Director from signing on behalf of the organization that is contracting for the Executive Director’s services (but does not actually employ him or her). This provision merely says that one organization cannot act on behalf or create binding obligations for the other organization. [↑](#footnote-ref-19)
20. ORG2 must follow its procurement procedures and policy before selecting ORG1 to be the contractor providing the Services. [↑](#footnote-ref-20)
21. Each Party should discuss this Agreement’s impact on their insurance coverage with their insurance broker. Issues to cover include: having sufficient commercial general liability insurance coverage insuring the Services, covering the Services of Shared Staff under error and omissions and professional liability insurance, and covering use of any shared equipment and facilities (e.g., having commercial automobile liability insurance for shared vehicles). ORG2 may want ORG1 to name ORG2 as an additional insured party on ORG1’s insurance policies to cover any claims arising from the Shared Staff’s provision of the Services. [↑](#footnote-ref-21)
22. [2 C.F.R. § 200.333](https://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1333&rgn=div8) requires that all non-federal entity records pertinent to a federal award be retained for a period of three years from the date of submission of the final expenditure report, except in certain circumstances such as litigation or audits that began prior to the expiration of the three-year period. Funds passed through a state may be subject to longer record retention requirements, so use the longest retention period applicable here. [↑](#footnote-ref-22)
23. Parties should discuss additional triggers for immediate termination, if any. [↑](#footnote-ref-23)
24. These contract provisions are taken from the Uniform Guidance as codified at 2 C.F.R. Part 200. Be sure to check whether your federal awarding agency has adopted its own version of the Uniform Guidance and use the contract provisions required by that version. [↑](#footnote-ref-24)