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**Closeout
Agreement,
Program Income
and Designating a
Nonprofit
Community
Development
Organization
(NCDO)**

Closeout Agreement, Program Income And Designating And Nonprofit Community Development Organization (NCDO)

Introduction

When a funded project involves a loan (or loans) to a nonprofit or for-profit entity and loan repayments are returned to the municipality, Attachment A of the Grant Agreement will include the requirement that the Grantee and the Agency execute a Closeout Agreement prior to receiving a Certificate of Program Completion. In the case where the funds are subgranted to a Nonprofit Community Development Organization (NCDO) to make a loan(s) and the loan repayments are returned to the NCDO, the NCDO is required to execute a Closeout Agreement prior to the municipality receiving a Certificate of Program Completion.

Program Income and Unrestricted Revenue

Whenever VCDP grant funds are loaned and repayments are made to the municipality, these repayments are referred to as "program income." Except as noted below, program income is considered to be all gross income received by a VCDP grantee or subgrantee (including loan principal, loan interest, bank account interest, and any funds resulting from the sale or lease of assets purchased with VCDP grant funds). Such funds are not considered program income, but rather are considered **unrestricted revenue** if:

- Any Program Income generated by VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$25,000 during a Grantee's fiscal year period;
- All gross income received from loans originated by an NCDO;
- Repayments from second-generation loans originated by a municipality, assigned to an NCDO, and re-loaned by the NCDO; or
- Unrestricted revenue that is re-loaned.

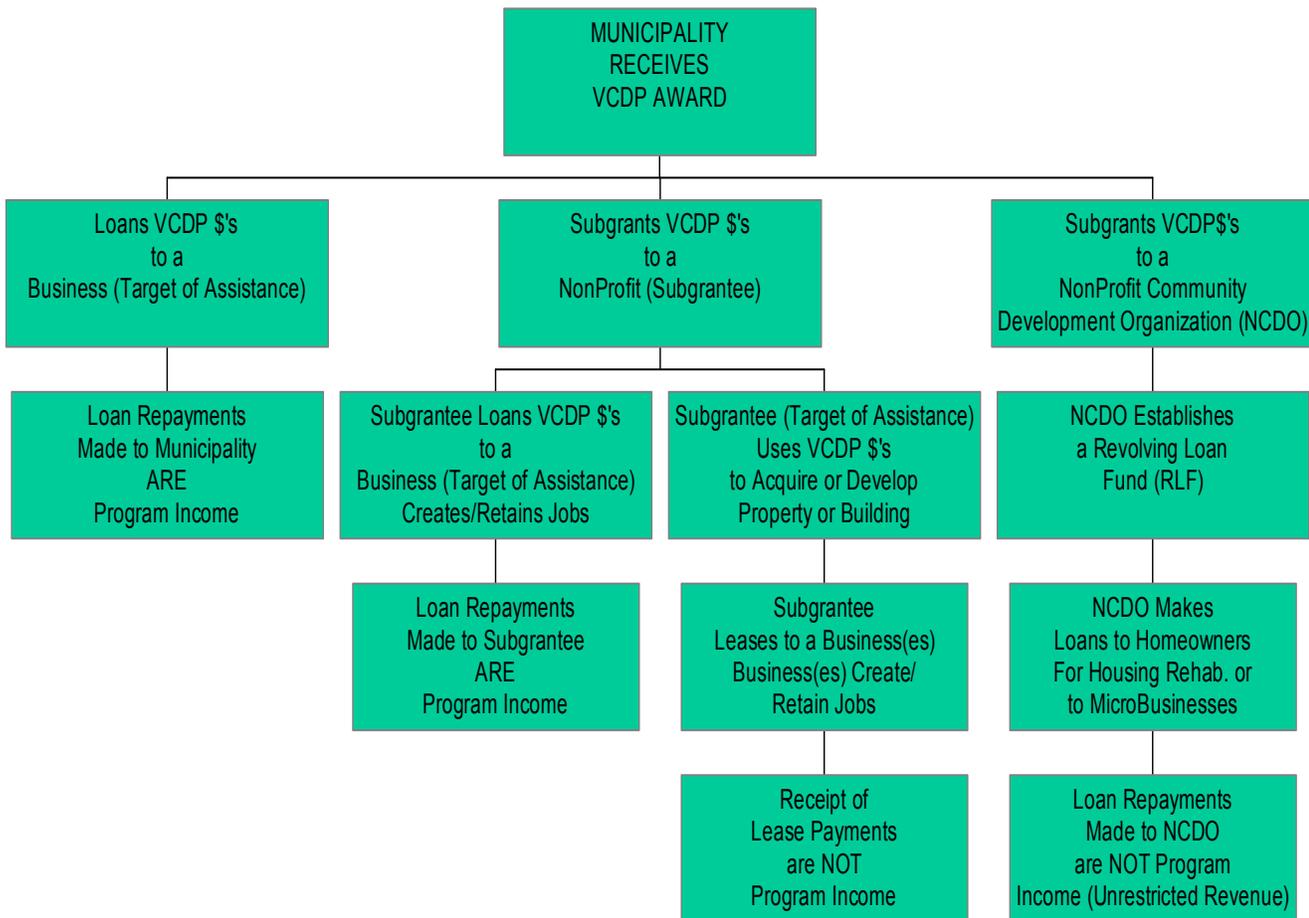
The use of Program Income and Unrestricted Revenue is linked to, and affected by, the Agency Procedures (See Appendix A, Chapter 22) governing the conveyance of VCDP funds by municipal grantees to subrecipients. The principal elements of this policy are as follows:

For-profit subrecipients. When VCDP funds are conveyed to a for-profit entity for economic development activities, VCDP funds must be **loaned** from the municipal grantee to the for-profit.

Perpetually affordable housing. When VCDP funds are invested in housing that is encumbered with a covenant to ensure the perpetual affordability of that housing, VCDP dollars are expected to be **granted** to the nonprofit, except in the case of affordable housing projects that are developed using Tax Credits, where a deferred loan must be established.

Municipal discretion. For all other projects sponsored, controlled, or owned by a nonprofit organization, or a for profit entity, the municipal grantee will choose to convey its VCDP funds *either* as a grant or as a loan. The decision to loan or grant will not be considered a competitive factor when awarding applications.

Vermont Community Development Program Program Income Determination Chart



Grants awarded in Federal Fiscal Year (FFY) 1993 and thereafter are governed by HUD regulations which require the Grantee to develop a plan for how the “program income” (PI) will be used for future projects. **See page 5 of this Chapter** for guidelines to consider when developing a plan for the use of program income.

Under the HUD regulations, loan repayments from grants awarded in FFY93 and thereafter are considered program income (PI) in perpetuity, so long as they exist. This means that all regulations

found in this guide for environmental review, procurement, etc. that the Grantee was required to comply with as part of the originally funded project must also be followed for any projects funded with program income. Program Income and Unrestricted Revenue generated by VCDP grants must be used for one or more eligible activities as defined in Section 105 of Title 1 of the Housing and Community Development Act (42USC §5305(a)). These activities may occur on a municipal or regional level. Funds determined to be Program Income shall be subject to all federal rules and regulations, and state policies that govern the use of VCDP funds. Specific uses for Program Income and/or Unrestricted Revenue shall be subject to the terms of a Closeout Agreement between the Agency and the grantee, or NCDO as mentioned above.

Recapture of PI and UR by the Agency

When a VCDP grant is initially used by a grantee or its subgrantee, including an NCDO, to make one or more loans, the Agency shall recapture 50% of the original loan principal. Second generation loan repayments may be retained by the grantee or subgrantee, and if so, must be tracked separately.

Exemption to Recapture Provision

Municipal grantees or NCDO's that have used VCDP funds to establish a micro-business revolving loan fund or a scattered-site housing rehabilitation program shall be exempt from this recapture requirement. This recapture exemption shall be acknowledged within the Grant Agreement and the Closeout Agreement.

The Agency's intent, in promulgating this policy, encompasses the following objectives:

- To increase the total percentage of Program Income and Unrestricted Revenue retained at the local (or regional) level;
- To increase the amount of Program Income and Unrestricted Revenue available for reuse by grantees and by the Agency;
- To encourage the active use and reuse of VCDP funds; and
- To set aside funds that may be used flexibly and expeditiously by the Agency to meet community development emergencies and to take advantage of economic development opportunities.

Nonprofit Community Development Organization (NCDO)

Municipal grantees may retain loan repayments from VCDP funds, grant or re-loan them to one or more eligible subrecipients, or return them to the Agency. Municipal grantees who originated loans may also assign those loans or the total loan portfolio to a Nonprofit Community Development Organization (NCDO). Assigning loan repayments or subgranted VCDP funds to an NCDO is the alternative to funds being categorized as program income in perpetuity. A NCDO

manages the Revolving Loan Fund (RLF) designed to revolve funds within a region. A region is defined as a county or the service area of one or more Regional Block Grant Partners, including Regional Planning Commissions, Regional Development Corporations, and Regional Marketing Organizations.

Repayments of loans originated by a NCDO are referred to as “unrestricted revenue” (UR). Unrestricted revenue is free of HUD regulations with the exception that the project be eligible under Title I of the Housing and Development Act of 1974.

A Nonprofit Community Development Organization (NCDO) is a public nonprofit organization that administers a VCDP-capitalized revolving loan fund (RLF) which is recognized by the Agency through a certification process. The form for municipalities to use to designate an NCDO appears in **Chapter 14, page 17**. **The process for VCDP-certification of an NCDO is outlined in Appendix A, Chapter 22.8-22.13.2 and the criteria for certification can be found in Chapter 14, page 18.**

Municipal grantees may choose to make use of one or more Nonprofit Community Development Organizations (NCDO) for managing and administering VCDP loan funds that have been repaid to the grantee. When a municipal grantee assigns a VCDP loan(s) to an NCDO, if the repayments are Program Income, the NCDO originates the loan as Program Income. The second-generation repayments received by the NCDO are Unrestricted Revenue.

Alternatively, a municipal grantee, upon receipt of a VCDP grant, may immediately subgrant those funds to an NCDO. Repayments of any loans **originated by the NCDO** are considered Unrestricted Revenue.

The use of Unrestricted Revenue must only meet the eligibility requirements of Title I (See Appendix B), and not all the rules and regulations that govern Program Income.

The assignment of loan repayments and the subgranting of VCDP funds by a grantee to a NCDO, in some cases, has an additional advantage beyond the designation as unrestricted revenue.

- In the case of the NCDO operating a scattered-site revolving loan fund for housing or microbusiness there will be no assessment due the agency of the original loan principal.

Closeout Agreements

A closeout agreement will be negotiated to establish the plan for the use of program income and/or unrestricted revenue and a management plan to ensure compliance with all the applicable rules and regulations.

The Agency’s Policy (See Appendix A, Chapter 22) governing Program Income and Unrestricted Revenue generated by VCDP grants was put in place as of January 1, 2001.

The following types of closeout agreements will be executed between the Agency and the grantee or NCDO:

- When the municipal grantee chooses to originate the loan and receive the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the municipal grantee;
- When the municipal grantee chooses to subgrant VCDP funds to an NCDO and the NCDO originates the loan and receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO;
- When the municipal grantee chooses to originate the loan and then assign the loan to an NCDO prior to the Completion Date of the grant agreement, and the NCDO receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the NCDO; or
- When the municipal grantee chooses to originate the loan and receive loan repayments after the Completion Date, and has executed a closeout agreement with the Agency, and then assigns the loan to an NCDO, a closeout agreement will be negotiated and executed between the Agency and the NCDO. The existing Closeout Agreement with the municipality will then be terminated between the Agency and the municipal grantee.
- VCDP Grantees with a Completion Date prior to January 1, 2001 with loans deferred to some future date must execute a Closeout Agreement with the Agency at this time. Under Closeout Agreements for deferred loans, the grantee will be required to certify annually that said property cited in the loan agreement continues as intended.

Tracking, Reporting and Recapture of Program Income

In order to maintain funding for special or emergency community development projects around the state, the Agency shall recapture income that is generated by VCDP-funded activities. All Program Income and Unrestricted Revenue shall be tracked and reported annually to the Agency under the terms of the Closeout Agreement on forms provided by the Agency. When recapture provisions apply, the grantee or the NCDO shall ensure that payment is made to the Agency within 30 days from the last day of the reporting period specified in the Closeout Agreement (See Appendix A, Chapter 22 for further details).

Recapture of inactive funds

The Agency reserves the right to recapture, after giving a 60-day notice of intent to do so, up to one hundred percent (100%) of the funds governed by a Closeout

Agreement when the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty five percent (25%) of the total balance over a three-year period.

If at least twenty five percent (25%) of the cumulative balance is expended on eligible activities, excluding **Administrative and Management Costs**, within the 60-day notice period, the funds will be considered active. However, the fact that a notice of intent to recapture inactive funds was issued shall be consideration when awarding further grants.

Re-Use of Funds Prior to Grant Closeout

Program income may also be realized during the term of the grant agreement (i.e. prior to the Completion Date of the grant) when loans of various types made to individuals or businesses begin to be repaid (repayments of principal and/or interest, revenues from the sale of equipment or property purchased with VCDP grant funds, and/or any interest income earned on the above). Program Income and/or Unrestricted Revenue received by the grantee or NCDO prior to the completion date of a VCDP grant agreement must be placed in a separate interest-bearing account and held until after the execution of a Closeout Agreement with the Agency.

Ordinarily, the Lead Grantee in a consortium grant will execute a Consortium Closeout Agreement; however, it is recommended that the participating grantees be involved in the Closeout Agreement preparation process and that a Consortium contract between the lead grantee and the participating grantees be executed as well. An annual program and financial report will be required under the Closeout Agreement along with the yearly repayment of a portion of the net program income from the RLF.

GUIDELINES FOR DEVELOPING A REVOLVING LOAN FUND PLAN

Introduction

The guidelines in this section are intended to assist you in developing and implementing a Revolving Loan Fund Plan for the use of program income expected to be generated from repayments of business and housing rehabilitation loans provided under the VCDP.

These guidelines are derived from the experiences of other agencies which historically have been involved in providing funding opportunities to communities for the purpose of making loans to local businesses and housing rehabilitation projects. They are not to be construed as statements of regulations and are not intended to establish any additional legal obligations on any party directly or indirectly participating in a grant application or grant agreement beyond the terms of an executed grant agreement and related applicable laws, rules, and regulations.

Overview

Creation of a Revolving Loan Fund (RLF) program is the only possible use of program income generated by a Community Development Block Grant. Title I of the Housing and Community Development Act of 1974, as amended, permits a grantee to retain program income for the capitalization of a local RLF and the making of loans for projects otherwise eligible under Title I and rules and regulations issued to implement its provisions. As the loans are repaid by the borrowers, the money is returned to the Fund to make other loans.

Closeout Agreement Policy requires the community who wishes to recapture program income to prepare an RLF plan for approval by the Agency. The plan, prepared by the community, describes the eligible activities that are to be funded by program income and the benefit these activities will achieve. It includes the organizational policies and operational procedures that will govern local administration of the RLF. A plan for an RLF is executed to define specific objectives and operating procedures, including standards and criteria for future loans.

The Department of Housing and Community Affairs (DHCA) may review individual loans made from an established RLF. Additionally, DHCA monitors RLF project activities and administration for compatibility with these standards, other conditions of the closeout agreement, local conditions, and compliance with federal program regulations (**For further details, see page 5 for section entitled, "Tracking, Reporting and Recapture of Program Income"**).

The Revolving Loan Fun (RLF) Program

While RLFs can make loans to any project that is eligible under Title I, they are usually used for housing rehabilitation projects and for job creation/retention. The major difference between an RLF program and conventional financing (such as a bank provides) is the lending goal. Unlike conventional financing institutions

where the goal is profit, the goal of the RLF is the development of affordable housing for low and moderate income people; private-sector job creation or retention which will be filled by or are made available to low and moderate income people; and, capital formation in the pursuit of established community development objectives.

RLF projects can achieve a variety of economic and affordable housing objectives depending on local needs and conditions, though the primary obstacle that all small business and affordable housing development encounter is the lack of credit availability. Even when available, the cost and terms of credit may prevent firms from expanding, continuing operations, or starting up and may also prevent the development of affordable housing. The result may be a community's loss of affordable housing, jobs, tax revenues, and private investment. The specific objectives of each project may vary, but the common objectives of community-based RLF's include making credit available for the purposes of:

- (1) Stimulating private sector capital formation;
- (2) Aiding small businesses and affordable housing development;
- (3) Redevelopment of blighted or vacant land or facilities to put it to productive use;
- (4) Stabilizing and diversifying an area's economy by providing employers with capital for start-up and/or expansion of locally-owned businesses;
- (5) Providing affordable housing for or aiding businesses owned and operated by minorities, women, or by persons who are economically disadvantaged;
- (6) Providing capital for manufacturing and service companies using new technologies with an emphasis on growth industries; and
- (7) Coordinating activities with other development agencies, loan programs, and private lenders in the community.

The RLF as a Development Tool

RLF's are not substitutes for conventional lending sources. Given the small size of most RLF programs and the limited resources of each project, RLF's are not intended to match or replace the capacity of banks, investment houses, credit unions or other lending organizations. RLF's are designed to fill gaps in existing local financial markets and /or to attract capital which otherwise would not be available to businesses or affordable housing projects in a community.

The effectiveness of an RLF project as a community development tool will depend on its lending policies and financing techniques. These may include, but are not limited to:

- Modifications in repayment terms, such as deferral of initial principal or interest payments;
- Taking greater risks than banks are traditionally prepared to take, when substantial affordable housing or economic development benefits will result if the borrower does succeed;
- Leveraging private capital by reducing risk for commercial lenders (by taking subordinate positions, etc.); and,
- Providing below market interest rates.

Sample Eligible Loan Activities

As stated above, RLF lending generally is for affordable housing development or industrial or commercial activities, which will result in increased housing and private sector job opportunities for low and moderate-income persons. In economic development projects, loan activities should emphasize direct job creation/retention by attracting capital for the start-up, expansion, or retention of businesses. Loans can also be used for public facility and public service activities that primarily benefit low and moderate-income persons.

The following types of loans are usually found in RLF programs:

- (1) Fixed asset loans for the acquisition and improvement of land, buildings, plants and equipment, including new construction or renovation of existing facilities, demolition, and site preparation; and,
- (2) Working capital loans for the start-up of new businesses, the conduct of current business, or acquisition and capital improvement loans for an affordable housing project. Because of the volatility and inherent risk frequently involved in working capital loans, it is suggested that the volume of such loans be limited to a fixed percentage of the amount available for lending.

RLF Administration and Management

Up to 20% of the program income in a given year may be set aside to cover the direct cost of RLF administration and management (provided there is adequate documentation for the level of administrative funds set aside). All principal and interest repayments of program income and RLF loans must be returned to the fund for relending. You may determine it necessary or desirable at some point -- in order to protect or further the interests of the RLF -- to sell, collect, liquidate, or otherwise recover on loans extended by the RLF in accordance with your legal rights, the legal rights of other lenders, and the RLF borrower. Proceeds from the sale, collection, or liquidation of loans should be returned to the RLF for relending. Any profit from loan sales must also be returned to the RLF for

relending or be used to cover the direct costs of administering the RLF. Funds returned to the RLF must be held in an interest earning account pending the closing of new loans. Interest earned on this account should either be returned to the RLF for relending or used to cover direct administrative costs as provided for in the approved plan. In either case, the earned income is program income and must be treated as such.

The Revolving Loan Fund Plan For Use Of Program Income

The Revolving Loan Fund Plan is a document describing how the Program Income funds will be used and administrated. It must provide adequate detail to assure the Agency that the RLF will be managed properly. Once approved, loans made must then be administered according to the Plan.

The Revolving Loan Fund Plan is intended to be a management tool for the use by the grant recipient and the Agency. Because RLF projects continue indefinitely, the Plan should include provisions to change policies or procedures to meet changing conditions or future needs in the community.

The RLF Plan is not a general housing or economic development plan. Its focus is on the procedures for reuse of grant funds and its relationship to the redevelopment of the community. The Plan is implemented through a set of guidelines which must contain several components including: a statement of RLF policy, priorities and goals; a detailed description of who will administer the fund and what procedures will be followed in selecting borrowers and making loans; and an explanation of how applicable CDBG Program grant requirements will be adhered to.

NOTE: When program income and/or unrestricted revenue exists, the failure to apply a portion of this funding source to VCDP applications for new projects has bearing on the competitiveness and success of an application.

[Sample Language]

**PLAN FOR THE USE AND MANAGEMENT OF
PROGRAM INCOME and UNRESTRICTED REVENUE**

PLAN FOR THE USE OF PROGRAM INCOME and UNRESTRICTED
REVENUE

Grantee shall use Program Income generated under Grant Agreement [GA# XXXX/XXXX(X)], loan repayments from the [PROJECT NAME] Project, to establish the [PROJECT NAME] in the [MUNICIPALITY] of [NAME]. Specific uses of funds may include, but not be limited to, the implementation, management and administration of loan activities involving affordable housing, small business development, and infrastructure improvements to support community and economic development. Primary beneficiaries will continue to be low and moderate income residents of the [MUNICIPALITY] of [NAME].

MANAGEMENT PLAN

Grantee's Selectboard shall appoint a Community Development Review Committee (CDRC), which will provide oversight of the program and determine uses of the Program Income. The Town Administrator and the Town Treasurer shall assist the Committee. Administrative and management tasks performed by third parties shall be pursuant to written contract ratified by the Selectboard, or duly authorized agent. General Operating Procedures and Eligibility requirements shall be defined in the Policies and Procedures as developed by the Committee and ratified by the Selectboard. Grantee shall provide a copy of the adopted Policies and Procedures and any amendments or revisions to the Agency.

Closeout Agreement
between the
State of Vermont
Agency of Commerce and Community Development
and the «MunType» of «Municipality»

This Closeout Agreement is effective as of «commenceDate», by and between the State of Vermont, Agency of Commerce and Community Development (the “Agency”) and the «MunType» of «Municipality», Vermont, Grantee under Grant Agreement #«GANumber» (the “Grantee”). The Vermont Community Development Program (the “VCDP”) funds disbursed pursuant to said Grant Agreement have generated, are generating, or may in the future generate income to the Grantee. The Agency and the Grantee, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. Definitions

The following terms, as used in this Agreement, shall be defined as follows:

- (a) “**Federal Act**” shall mean Title I of the Housing and Community Development act of 1974, as amended from time to time.
- (b) “**Federal Regulations**” shall mean title 24, part 570 of the Code of Federal Regulations (24 CFR 570), as amended from time to time.
- (c) “**General Administration**” costs may include, among others, costs for overall administration, coordination, monitoring, evaluation, and similar costs associated with financial, legal and audit requirements.
- (d) “**Program Income**” or “**PI**” shall have the meaning set forth in the Federal Regulations at 24 CFR §570.489(e), including:
 - (i) Except as defined below as “Unrestricted Revenue,” income received by a VCDP grantee, or a subgrantee that is not a Target of Assistance, from activities supported by VCDP funds, including loan principal, loan interest, and funds resulting from the sale or lease of assets purchased with VCDP grant funds;

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IN WITNESS WHEREOF, the parties hereto have caused this Closeout Agreement to be executed and the signatures of the undersigned indicate that each has read this Closeout Agreement in its entirety and agrees to be bound by the provisions enumerated herein.

Dated at Montpelier, Vermont, this _____ day of _____, 2005.

AGENCY

GRANTEE

By: _____

By: _____

Noelle MacKay, Commissioner
Department of Housing and Community
Development for: Lawrence Miller, Secretary
Agency of Commerce and Community Development

«ceoFirst» «ceoLast»
«ceoTitle»
«MunType» of «Municipality»

- (ii) Income received by the Grantee and/or subgrantee from activities supported by VCDP funds during the Period of Performance of a VCDP grant agreement, without regard to the amount received.
- (e) **“Program Management”** costs may include, among others, costs for marketing, rehabilitation, counseling, inspections, preparation of loan specifications, loan processing, and other costs related to assisting owners, tenants, contractors, or other entities to participate in these activities.
- (f) **“Target of Assistance”** shall mean the person or entity that uses VCDP funds to perform VCDP-eligible activities where such activities provide the benefit that achieves the national objective required under the VCDP grant agreement.
- (g) **“Unrestricted Revenue”** or **“UR”** shall mean:
 - (i) Income received by a VCDP Grantee, or any subgrantee that is not a target of assistance, for VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$25,000 during the fiscal year period. Where the gross income exceeds \$25,000 during the fiscal year, the total amount of income becomes Program Income.
 - (ii) Income received from loans originated by an NCDO;
 - (iii) Repayments from second-generation loans originated by a municipality, assigned to an NCDO, and re-loaned by the NCDO;
 - (iv) Unrestricted revenue that is re-loaned.

2. **Plan for Use of Income**

To be provided by Grantee

3. **Management Plan**

To be provided by Grantee

4. **Income**

Income generated by VCDP funds and received by a VCDP grantee and any subgrantee that is not a Target of Assistance shall be governed by the provisions of the *Grants Management Guide*, Chapter 22, “Agency Procedures.”

5. **Program Income**

The use of Program Income shall be subject to all requirements governing the use of VCDP funds, including those set forth in the Federal Act and the Federal Regulations.

6. **Unrestricted Revenue**

Except as set forth in this Agreement, the requirements of the Federal Act and Federal Regulations need not apply to the use of Unrestricted Revenue. However, Unrestricted Revenue shall be used only for activities that are eligible under the Federal Act.

7. Obligation of Grantee.

Grantee shall remain fully liable and obligated under this Closeout Agreement, notwithstanding any contract with any third party. Any contracts between the Grantee and any third party which is related to the expenditure of funds governed by this Closeout Agreement shall be in writing, and shall contain provisions which:

- (a) Bar conflicts of interest, as the term is defined in the *VCDP Grants Management Guide*, Agency Procedures;
- (b) Require compliance with 21 V.S.A. chapter 5, subchapter 6, the Fair Employment Practices Act;
- (c) Require that records related to performance pursuant to the contract be maintained for a period of three (3) years from completion of performance under the contract, and be made available upon request of this Agency; and
- (d) That the contract be performed in a manner consistent with this Agreement and all laws governing the VCDP.

8. Assessment of Program Income and Unrestricted Revenue

Based on executed loan agreement between Grantee and Borrower, 50% of original loan principle will be repaid to Agency.

9. Recapture of Inactive Funds

The Agency reserves the right to recapture, after giving a 60-day notice of intent to do so, up to one hundred percent (100%) of the funds governed by this Closeout Agreement when the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty five percent (25%) of the total balance over a three-year period.

If at least twenty five percent (25%) of the cumulative balance is expended on eligible activities, excluding **Administrative and Management Costs**, within the 60-day notice period, the funds will be considered active. However, the fact a notice of intent to recapture inactive funds was issued shall be a consideration when awarding further grants.

10. Administrative and Management Costs

The Grantee may accumulate up to 20% of the gross income generated in each fiscal year by the funds governed by the provisions of this Closeout Agreement, to use to defray the costs of administering the **Plan for the Use of Income** and Program Management costs and General Administration costs.

11. Financial Management

Grantee shall establish and maintain a financial management system that assures adequate control over and accountability for all funds and property subject to this Closeout Agreement. Unrestricted Revenue and Program Income governed by the provisions of this Closeout Agreement shall be maintained and administered separately, unless all income is administered by the stricter policies which apply to the use of Program Income.

All such funds shall be fully maintained in interest-bearing accounts, insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. Any balance exceeding such coverage must be collaterally secured by U.S. Government obligations. Failure to properly maintain and administer

Unrestricted Revenue may require the Agency to deem such Unrestricted Revenue as Program Income, subject to all the requirements of Program Income.

12. Limitations

The Agency may review any costs incurred and disbursements made from funds governed by the provisions of this Closeout Agreement. Through such review, the Agency may determine that items of expense are unallowable. In such event, the Agency shall notify the Grantee in writing of such disallowance, and may require the Grantee to reimburse such expense with funds other than Program Income or Unrestricted Revenue.

13. Annual Reporting

The Grantee shall report at least annually to the Agency within 30 days of the end of its fiscal year in a format prescribed by the Agency, and otherwise as may be requested by the Agency, on the use of funds governed by this Closeout Agreement. Such report shall include the fund balance carried forward and all receipts and expenditures for each fiscal year or portion thereof, from the effective date of this Closeout Agreement continuing for so long as funds governed hereunder exists. The Legislative Body of the Grantee shall cause to be included in the municipality's Annual Report a report containing substantially the same information.

14. Access to Records

The Agency shall have access to all books, accounts, records, files and information in all forms, in the possession or control of the Grantee pertaining to performance under this Closeout Agreement, and as may be reasonably necessary for the Agency to perform audits, examinations, or both.

15. Indemnification

The Grantee shall indemnify, defend and save harmless the State and its officers and employees from any and all actions, suits, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising as a result of the performance of the obligations of this Closeout Agreement by, or use of Program Income or Unrestricted Revenue by, or occasioned wholly or in part by any act or omission of, the Grantee, its agents, contractors, subcontractors, employees, servants, invitees, licensees, or concessionaires. The liability of the Grantee under this Closeout Agreement shall continue after the termination or completion of this Agreement.

16. Suspension or Termination

- (a) The Secretary of the Agency may suspend this Closeout Agreement, in whole or in part, at any time and prohibit the Grantee from incurring additional obligations with respect to the funds governed by the provisions hereof, should the Secretary determine that the Grantee has failed to substantially comply with the terms of this Closeout Agreement. In such event, the Secretary shall allow all necessary and proper costs which cannot reasonably be avoided during the period of suspension.
- (b) The Secretary, after reasonable notice and opportunity for hearing, may terminate this Closeout Agreement should the Secretary determine that the Grantee has failed to substantially comply with the terms hereof. The Secretary shall promptly notify the Grantee, in writing, of the determination and reasons for the termination, together with the effective date.

- (c) Recoveries by the Secretary pursuant to suspension or termination shall be in accordance with the legal rights and liabilities of the parties.

17. No Waiver

Any forbearance by the Agency in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

18. Entire Agreement

This Closeout Agreement and the references set forth herein constitute the entire understanding between the parties with respect to the use of funds governed hereunder, there being no terms, conditions, warranties or representations other than those contained herein, and no amendments hereto shall be valid unless made in writing, approved by the Agency, and signed by the parties hereto. Notwithstanding the foregoing, nothing in this Closeout Agreement shall affect any continuing rights or unperformed obligations under Grant Agreement #«GANumber».

- END OF PROVISIONS -

NCDO Agreement
between the
State of Vermont
Agency of Commerce and Community Development
and the Lake Champlain Housing Development Corp.

This Nonprofit Community Development Organization Agreement (“NCDO Agreement”) is effective as of _____, by and between the State of Vermont, Agency of Commerce and Community Development (the “Agency”) and the <Name of NCDO Entity>, the entity designated to receive Program Income and Unrestricted Revenue generated by certain VCDP Grants, which are described in the List of Grants, which is attached hereto and incorporated herein (“NCDO”).

The Vermont Community Development Program (the “VCDP”) funds disbursed pursuant to the Grants included in the List of Grants have generated, are generating, or may in the future generate income to the NCDO. The Agency and the NCDO, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. Definitions

The following terms, as used in this Agreement, shall be defined as follows:

- (a) **“Federal Act”** shall mean Title I of the Housing and Community Development act of 1974, as amended from time to time.
- (b) **“Federal Regulations”** shall mean title 24, part 570 of the Code of Federal Regulations (24 CFR 570), as amended from time to time.
- (c) **“General Administration”** costs may include, among others, costs for overall administration, coordination, monitoring, evaluation, and similar costs associated with financial, legal and audit requirements.
- (d) **“Program Income” or “PI”** shall have the meaning set forth in the Federal Regulations at 24 CFR §570.489(e), including:

- (i) Except as defined below as “Unrestricted Revenue,” income received by a VCDP

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IN WITNESS WHEREOF, the parties hereto have caused this NCDO Agreement to be executed and the signatures of the undersigned indicate that each has read this NCDO Agreement in its entirety and agrees to be bound by the provisions enumerated herein.

Dated at Montpelier, Vermont, this _____ day of _____, 2005.

AGENCY

NCDO

By: _____

By: _____

Noelle MacKay, Commissioner
Department of Housing and Community
Development for: Lawrence Miller, Secretary
Agency of Commerce and Community Development

grantee, or a subgrantee that is not a Target of Assistance, from activities supported by VCDP funds, including loan principal, loan interest, and funds resulting from the sale or lease of assets purchased with VCDP grant funds;

- (ii) Income received by the Grantee and/or subgrantee from activities supported by VCDP funds during the Period of Performance of a VCDP grant agreement, without regard to the amount received.
- (e) **“Program Management”** costs may include, among others, costs for marketing, rehabilitation, counseling, inspections, preparation of loan specifications, loan processing, and other costs related to assisting owners, tenants, contractors, or other entities to participate in these activities.
- (f) **“Target of Assistance”** shall mean the person or entity that uses VCDP funds to perform VCDP-eligible activities where such activities provide the benefit that achieves the national objective required under the VCDP grant agreement.

(g) **“Unrestricted Revenue”** or **“UR”** shall mean:

- (i) Income received by a VCDP Grantee, or any subgrantee that is not a target of assistance, for VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$25,000 during the fiscal year period. Where the gross income exceeds \$25,000 during the fiscal year, the total amount of income becomes Program Income.
- (ii) Income received from loans originated by an NCDO;
- (iii) Repayments from second-generation loans originated by a municipality, assigned to an NCDO, and re-loaned by the NCDO;
- (iv) Unrestricted revenue that is re-loaned.

2. Plan for Use of Income

The NCDO shall use Program Income and/or Loan repayments (Unrestricted Revenue) for loans made under the original Grant Agreement, and/or made under the terms of this Closeout Agreement, and will continue to be deposited in the NCDO. As a first priority, Unrestricted Revenue will be used to continue housing rehabilitation loan activities in the Consortium member municipalities contained in the List of Grants to benefit low and moderate-income residents of the Consortium. In addition, Unrestricted Revenue may be used for other Title I eligible activities.

3. Management Plan

The NCDO is a revolving loan fund, which will be managed by the **<NCDO Entity>** on behalf of the Consortium members in the List of Grants. Working with the Consortium Loan Committee, **<NCDO Entity>** staff will recommend loans and appropriate sources of funding. Loan approvals will require action of the Consortium Loan Committee. Loan portfolio servicing will be provided monthly by a bank. **<NCDO Entity>** shall manage the NCDO in accordance with the Rehab Loan Fund **Policies and Procedures Manual**. An updated copy of the **Policies and Procedures Manual**, as adopted or amended, shall be on file with the Agency during the term of this Agreement.

4. List of Grants

A List of Grants, itemizing the Grantee, Grant Agreement number and date, and the subject of the Grant from which Program Income or Unrestricted Revenue governed by this NCDO Agreement is generated, is attached hereto and incorporated herein. The parties acknowledge that the NCDO may be further designated to receive Program Income and Unrestricted Revenue generated by VCDP Grants. In such event, the List of Grants shall be revised to accurately reflect all sources of VCDP funds managed by NCDO, and such revised List shall be dated and signed by the parties hereto, and shall be attached hereto and incorporated herein.

5. Income

Income generated by VCDP funds and received by NCDO shall be governed by the provisions of the Grants Management Guide, Chapter 22, "Agency Procedures."

6. Program Income

The use of Program Income shall be subject to all requirements governing the use of VCDP funds, including those set forth in the Federal Act and the Federal Regulations.

7. Unrestricted Revenue

Except as set forth in this Agreement, the requirements of the Federal Act and Federal Regulations need not apply to the use of Unrestricted Revenue. However, Unrestricted Revenue shall be used only for activities that are eligible under the Federal Act.

8. Obligation of NCDO. NCDO shall remain fully liable and obligated under this NCDO

Agreement, notwithstanding any contract with any third party. Any contract between the NCDO and any third party which is related to the expenditure of funds governed by this NCDO Agreement shall be in writing, and shall contain provisions which:

- (a) Bar conflicts of interest, as the term is defined in the VCDP Grants Management Guide, Agency Procedures;
- (b) Require compliance with 21 V.S.A. chapter 5, subchapter 6, the Fair Employment Practices Act;
- (c) Require that records related to performance pursuant to the contract be maintained for a period of three (3) years from completion of performance under the contract, and be made available upon request of this Agency; and
- (d) That the contract be performed in a manner consistent with this Agreement and all laws governing the VCDP.

9. Recapture of Inactive Funds

The Agency reserves the right to recapture, after giving a 60-day notice of intent to do so, up to one hundred percent (100%) of the funds governed by this NCDO Agreement when the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty five percent (25%) of the total balance over a three-year period.

If at least twenty five percent (25%) of the cumulative balance, excluding **Administrative and Management Costs**, is expended on eligible activities within the 60-day notice period the funds shall be considered active. However, the fact that a notice of intent to recapture inactive funds was issued shall be a consideration when awarding further grants.

10. Administrative and Management Costs

The NCDO may accumulate up to 20% of the gross income generated in each fiscal year by the funds governed by the provisions of this NCDO Agreement, to use to defray the costs of administering the **Plan for the Use of Income** and Program Management costs and General Administration costs.

11. Financial Management

NCDO shall establish and maintain a financial management system that assures adequate control over and accountability for all funds and property subject to this NCDO Agreement. Unrestricted Revenue and Program Income governed by the provisions of this NCDO Agreement shall be maintained and administered separately, unless all income is administered by the stricter policies which apply to the use of Program Income.

All such funds shall be fully maintained in interest-bearing accounts, insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. Any balance exceeding such coverage must be collaterally secured by U.S. Government obligations. Failure to properly maintain and administer Unrestricted Revenue may require the Agency to deem such Unrestricted Revenue as Program Income, subject to all the requirements of Program Income.

12. Limitations

The Agency may review any costs incurred and disbursements made from funds governed by the provisions of this NCDO Agreement. Through such review, the Agency may determine that items of expense are unallowable. In such event, the Agency shall notify the NCDO in writing of such disallowance, and may require the NCDO to reimburse such expense with funds other than Program Income or Unrestricted Revenue.

13. Annual Reporting

The NCDO shall report at least annually to the Agency within 30 days of the end of its fiscal year in a format prescribed by the Agency, and otherwise as may be requested by the Agency, on the use of funds governed by this NCDO Agreement. Such report shall include the fund balance carried forward and all receipts and expenditures for each fiscal year or portion thereof, from the effective date of this NCDO Agreement continuing for so long as funds governed hereunder exist.

The NCDO shall report annually to each Grantee listed in the List of Grants pursuant to Paragraph 4 hereof.

14. Access to Records

The Agency shall have access to all books, accounts, records, files and information in all forms, in the possession or control of the NCDO pertaining to performance under this NCDO Agreement, and as may be reasonably necessary for the Agency to perform audits, examinations, or both.

15. Indemnification

The NCDO shall indemnify, defend and save harmless the State and its officers and employees from any and all actions, suits, damages, liability and expense in connection with loss of life, bodily or

personal injury or property damage arising as a result of the performance of the obligations of this NCDO Agreement by, or use of Program Income or Unrestricted Revenue by, or occasioned wholly or in part by any act or omission of, the NCDO, its agents, contractors, subcontractors, employees, servants, invitees, licensees, or concessionaires. The liability of the NCDO under this NCDO Agreement shall continue after the termination or completion of this Agreement.

16. Suspension or Termination

- (a) The Secretary of the Agency may suspend this NCDO Agreement, in whole or in part, at any time and prohibit the NCDO from incurring additional obligations with respect to the funds governed by the provisions hereof, should the Secretary determine that the NCDO has failed to substantially comply with the terms of this NCDO Agreement. In such event, the Secretary shall allow all necessary and proper costs which cannot reasonably be avoided during the period of suspension.
- (b) The Secretary, after reasonable notice and opportunity for hearing, may terminate this NCDO Agreement should the Secretary determine that the NCDO has failed to substantially comply with the terms hereof. The Secretary shall promptly notify the NCDO, in writing, of the determination and reasons for the termination, together with the effective date.
- (c) Recoveries by the Secretary pursuant to suspension or termination shall be in accordance with the legal rights and liabilities of the parties.

17. No Waiver

Any forbearance by the Agency in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

18. Entire Agreement

This NCDO Agreement and the references set forth herein constitute the entire understanding between the parties with respect to the use of funds governed hereunder, there being no terms, conditions, warranties or representations other than those contained herein, and no amendments hereto shall be valid unless made in writing, approved by the Agency, and signed by the parties hereto.

- END OF PROVISIONS-

LIST OF GRANTS

<u>GRANTEE</u>	<u>GA#</u>	<u>EXECUTION DATE</u>	<u>FUNDED PROJECT</u>
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As of _____, 2005.

AGENCY

NCDO

By: _____

By: _____

_____, Director
Grants Management
DHCA
