

GRANTS MANAGEMENT GUIDE

AGENCY PROCEDURES



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APPLICABILITY – SCOPE –AUTHORITY

1.0 GENERAL

- 1.0.1 These Agency Procedures apply to the administration and implementation of the Vermont Community Development Program as established by the Vermont Community Development Act [the State Act; 10 VSA Ch. 29] and by Title I of the Housing and Community Development Act of 1974, as amended [the Federal Act; 42 USC 5201 et seq.] and by other laws which may from time to time affect this program.
- 1.0.2 These Agency Procedures shall also apply to the administration and implementation of provisions of other federal and state laws; insofar as they may apply on their own terms to the Vermont Community Development Program.
- 1.0.3 These Agency Procedures shall apply in all situations unless such application is clearly inconsistent with the intent of these laws.
- 1.0.4 To the extent there is any conflict between these Agency Procedures and other authorities and regulations or between provisions of these Agency Procedures, the more stringent provisions shall apply.

1.1 EFFECTIVE DATE

- 1.1.1 These Agency Procedures apply to all activities under VCDP grant agreements fully executed on or after July 1, 2018. Grantees may continue to apply the previous Agency Procedures grant agreements executed before July 1, 2018 or may elect to apply these Agency Procedures. Such an election must apply to all Agency Procedures.

1.2 PASS-THROUGH PROVISIONS

- 1.2.1 Contracts and agreements entered into by Grantees shall provide that the provisions of Federal and State laws, regulations and rules, insofar as they apply, shall be in full force and effect.

1.3 WAIVERS

- 1.3.1 The Secretary may waive any provision of these Agency Procedures not required by law whenever it is determined that undue hardship will result from applying the requirement and the best interests of the State are served by such waiver.

DEFINITIONS

2.0 GENERAL

2.0.1 This chapter sets forth the definitions that shall apply to the Agency Procedures for the Vermont Community Development Program, that unless the context clearly indicates otherwise, the following definitions shall apply.

<i>Acquisition</i>	The term used when a grantee or subgrantee gains possession of real property, including permanent easements, through the expenditure of VCDP grant funds (or other funds of federal derivation or non-federal funds).
<i>Activity(s)</i>	The tasks/actions the grantee agrees to undertake as detailed in the Grant Agreement. The list of activities can be found in Chapter 4, Financial Management, List of VCDP Codes for Program Areas and Activities.
<i>Agency of Commerce and Community Development</i>	The Vermont state agency responsible for the administration of the Vermont Community Development Program (VCDP) and is referred to as the Agency throughout the Grants Management Guide text.
<i>Applicant</i>	An eligible municipality which requests funds under these procedures.
<i>Application</i>	A request for program funds including the required forms, certifications, and attachments.
<i>Authorized Person(s)</i>	The person(s) designated by the legislative body to take legal action on behalf of the Grantee (municipality).
<i>Award Date</i>	The official date on which the grant was awarded as indicated in the Grant Award Letter and identified in Attachment A of the Grant Agreement.
<i>Beneficiary</i>	Any person, business, organization, or municipality that receives direct economic aid from VCDP grants, or receives services resulting from the expenditure of VCDP grant funds, for example, a person who has his or her home rehabilitated or a person who gains employment through a loan to a for-profit business. See Documenting Benefit Chapter of GMG.
<i>Board</i>	The Vermont Community Development Board.
<i>Bonding</i>	Requirement that a form of insurance is in place to guarantee payment if an individual or a firm fails to perform a contractual or statutory activity or function. For example, a construction contract may call for bid or performance bonds, or a person who handles money may be bonded to ensure the faithful expenditure of public funds. The latter is called a fidelity bond.
<i>CDBG</i>	Community Development Block Grant funds, in the form of grants, program income and loans guaranteed by the state under section 108 of the Federal Act.

<i>Certificate of Program Completion</i>	Letter from the Agency informing you that the Grant Agreement is closed with no outstanding issues to be resolved.
<i>Chief Executive Officer (CEO)</i>	The individual who is the elected or legally designated official, who has the primary responsibility for the conduct of the entity's governmental affairs. Examples are the president of the village trustees, the chair of the selectboard, the mayor, or the municipal manager.
<i>Code of Federal Regulations CFR</i>	The Code of Federal Regulations (See Federal Regulations). CDBG is pursuant to 24 CFR, Parts 500-699 and 2 CFR, Subtitle A, Chapter II, Part 215, 225 & 230.
<i>Closeout Agreement</i>	The agreement between the Agency and the Grantee for the management of Program Income or Unrestricted Revenue.
<i>Community Development Block Grant (CDBG)</i>	Community Development Block Grant funds, in the form of grants, program income and loans guaranteed by the state under section 108 of the Federal Act.
<i>Community Development Need</i>	A demonstrated deficiency in housing stock, public facilities, economic opportunities, or other services which are necessary for the developing or maintaining viable communities.
<i>Completion Date</i>	Date by which: <ol style="list-style-type: none"> 1) All activity costs other than General Administration have been obligated with the obligation(s) actually paid within the following thirty (30) days 2) a national objective has been met. The Agency and the Grantee must both agree completion has been achieved.
<i>Compliance</i>	Adherence to the requirements of all applicable federal, state and local laws and regulations.
<i>Consolidated Plan</i>	The Agency's document required by section 104 of the Federal Act sets forth the goals, objectives, resources, and priorities for use of HUD funds. The Consolidated Plan promotes a comprehensive approach to local programming to help identify the needs of the community and formulate strategies for addressing those needs.
<i>Consortium</i>	Two or more municipalities submitting a joint application with one municipality agreeing to serve as Lead Grantee.
<i>Cost Sharing and Matching</i>	Represents that portion of project costs not borne by the funds granted under these Procedures. Matching share requirements, if any, shall be included in the grant agreement.
<i>Deferred Loan</i>	A loan in which the payment of interest and/or principal are postponed for either a period of time or until some action is taken such as the sale of a piece of property.
<i>Department of Housing and Community Development (DHCD)</i>	Department within the Agency of Commerce and Community Development responsible for the day-to-day administration of the VCDP.

<i>Depository Account</i>	The bank account (non-interest bearing) into which the VCDP grant funds are deposited by the Grantee upon receipt from the State.
<i>Displaced</i>	Forced to move permanently and involuntarily from one location to another.
<i>Displacement</i>	The term used when a person, organization, business or farm is forced to move as the result of acquisition or rehabilitation of real property (owned, leased or rented) using funds made available through the VCDP, no matter who acquires the real property. See Relocation Chapter of GMG.
<i>Eligible Activities</i>	Those activities so designated in Section 105(a) of the Federal Act.
<i>Eligible Costs</i>	Costs allowed under the Agency Procedures, Chapter 5, and the terms and conditions of the Grant Agreement. A cost allowed under Agency Procedures, but not allowed by the Grant Agreement, would not be an eligible cost.
<i>Entitlement Municipality</i>	A municipality entitled because it meets HUD threshold for size by population to receive funds under Title I, Section 106(b) of the Federal Act. The State of Vermont has but one entitlement community, the City of Burlington.
<i>Environmental Notice of Release of Funds letter(s)</i>	The written response from the Agency approving the submitted Environmental Review for each and every activity to be funded under the VCDP which allows the municipality to obligate or extend funds for those activities. See Chapter 1 of GMG.
<i>Environmental Review</i>	The process of making a determination of the environmental classification for each grant activity and following the required procedures for each environmental classification relevant to the grant. See GMG – Environmental Review.
<i>Execute</i>	The dating and signing of a legal agreement or contract by all authorized parties.
<i>Expend</i>	To spend VCDP or Other Resources funds for services, supplies, materials, and/or construction.
<i>Federal Act</i>	Title I of the Housing and Community Development Act of 1974, as amended [42 USC 5301 et seq.].
<i>Federal Fiscal Year</i>	For the purposes of these Agency Procedures, the Federal Fiscal Year which begins on October 1 and ends on September 30 of the following calendar year.
<i>Fidelity Bonding</i>	See the definition of "Bonding".
<i>Funds Matching</i>	Funds that are required as a match for CD requests.
<i>General Administration</i>	The overall management activities of the grant, such as, attending startup and compliance workshops, hiring personnel, office management, environmental review, payment of bills, record keeping, supervision of program personnel, hiring an auditor, preparation of progress reports and closeout reports.

<i>General Purpose Unit of Local Government</i>	The generic term for a municipality used in the Federal Act.
<i>Grant</i>	Funds received under the provisions of the State Act for the VCDP.
<i>Grant Administrator</i>	The person(s) with the overall responsibility for the day-to-day activities of a grant for either or both general administration and program management.
<i>Grant Agreement</i>	The legal and binding contract between a Grantee and the State of Vermont which sets forth the legal responsibilities of both parties for the expenditure of VCDP grant funds by the Grantee.
<i>Grant Agreement Number</i>	The number assigned by the VCDP to a specific Grant Agreement between the Agency and the Grantee.
<i>Grant Agreement Execution</i>	The signing of the Grant Agreement documents by the Chief Executive Officer of the Grantee and the Secretary. The Grant Agreement shall be deemed "executed" on the date of signing by the Secretary of the Agency.
<i>Grant Closeout</i>	The process by which the Secretary determines that all applicable administrative and financial actions and all required work of the grant project has been completed.
<i>Grant Completion Date</i>	The date on which the Secretary certifies that all work under a grant is completed or the date of notification of termination for convenience or cause.
<i>Grantee</i>	Vermont municipality (city, town or incorporated village other than the City of Burlington) which has been awarded a grant under the VCDP.
<i>Grantor</i>	The State of Vermont.
<i>HUD</i>	The U.S. Department of Housing and Urban Development.
<i>Income, Family</i>	The combined income of all persons living in the same household who are related by birth, marriage or adoption. Income earned by children 14 years of age or younger does not have to be included in the calculation of family income.
<i>Income Household</i>	The combined income of all persons occupying a housing unit. The persons do not have to be related by birth, marriage or adoption. Income earned by children 14 years of age or younger does not have to be included in the calculation of household income.
<i>Incur</i>	See definition of "Obligate".
<i>Infrastructure</i>	The basic physical systems, structure, and facilities, such as roads, bridges, water and sewer lines, which are necessary to support a community.
<i>In-Kind Contributions</i>	Represent the value of non-cash contributions provided by the grantee and non-federal and state parties. Only when authorized by federal or State legislation may property purchased with federal or State funds be considered as the grantee in-kind contributions. In-kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services equivalent to

	those of a qualified professional, directly benefiting and specifically identifiable to the project or program where an actual cash value can be determined.
<i>Joint Application</i>	An application from two or more eligible municipalities. (See “Consortium”)
<i>Lead Grantee</i>	The community in a consortium taking primary responsibility for executing the Grant Agreement and other key documents and for ensuring that the terms and conditions of the Grant Agreement are met.
<i>Legislative Body</i>	The governing body of a Vermont incorporated village, town or city, including but not limited to the city council, selectboard, or village trustees.
<i>Liquidate</i>	The full payment of any obligated funds.
<i>Low and Moderate Income</i>	80% or less of the median income for the State metro and non-metro, the county or the municipality, whichever is higher, with adjustment for family size. (See County Income Chart).
<i>Municipality</i>	A town, city or an incorporated village the charter of which enables it to function as a general-purpose unit of local government.
<i>National Objective</i>	The Housing and Community Development Act requires each grant activity to meet one of the three National Objectives described in the Act. The three National Objectives are: <ol style="list-style-type: none"> 1) Benefiting low and moderate-income persons 2) Aiding in the prevention or elimination of slums or blight 3) Meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.
<i>Obligate</i>	To make a legal commitment to expend or loan funds for the purchase of services, supplies, materials, construction work and/or any other purpose. There is no legal commitment until a contract is executed or a purchase order is issued.
<i>Period of Performance</i>	Time during which some activity must take place, for example, the Period of Performance for the Grant Agreement commences with the Award Date and finishes with the Completion Date.
<i>Personal Property</i>	Personal Property of any kind except Real Property, which is tangible, which has a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, such as a computer or a vehicle.
<i>Persons</i>	Individuals, families, businesses, nonprofit organizations, and farms.
<i>Procurement</i>	The process of purchasing supplies, material, equipment and hiring of personnel.
<i>Program</i>	The entire proposal made by a municipality when applying and contracting for VCDP grant funds. A program usually includes several activities which in turn, may consist of several projects.

<i>Program Management</i>	Administrative activities directly related to accomplishing the program tasks, for instance, clerk of the works on a construction project or a housing specialist on a housing rehabilitation project.
<i>Project</i>	An activity or activities funded with a grant received under these Procedures.
<i>Project Costs</i>	All allowable costs as set forth in Agency Procedures, Chapter 5, incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the project or program period.
<i>Public Services</i>	Service including but not limited to those concerned with employment, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if these services have not been provided by the units of general local government within the past twelve months.
<i>Real Property</i>	Land, including land improvements, structures including machinery or equipment permanently affixed to the structure.
<i>Recipient</i>	Any eligible applicant receiving funds under these Agency Procedures (See "Grantee").
<i>Relocation</i>	The term used when a person, business, organization, or farm is "permanently" moved to a new address (location) as a result of the acquisition of real property using VCDP funds.
<i>Revolving Fund</i>	A separate fund established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities on a revolving basis.
<i>Secretary</i>	The Secretary of the Agency of Commerce and Community Development.
<i>Subgrantee</i>	Any person or government department, agency or establishment that receives financial assistance from the Grantee to carry out a VCDP grant but does not include an individual that is a beneficiary of a grant program. A Subgrantee is responsible for helping the Grantee meet VCDP requirements. The most commonly found Subgrantee is a nonprofit organization.
<i>Subrecipient</i>	A person or entity that receives a grant or loan from a Subgrantee and that contributes to the achievement of the National Objective for the project.
<i>Vermont Community Development Program (VCDP)</i>	The name given the state-administered Small Cities Community Development Block Grant Program, transferred from federal administration by statute in 1983.

RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

3.0 GENERAL

- 3.0.1 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance (Code of Federal Regulations, Title 2 Part 200), Subpart D and HUD's Regulations for the Community Development Block Grant Program, 24 CFR Part 570.

3.1 RETENTION PERIOD

- 3.1.1 Financial records, supporting documents, statistical records, and all other records pertinent to a VCDP Grant shall be retained for a period of three years, with the following qualifications:
 - 3.1.2 If any litigation, claim, or audit is started before the expiration of the three-year period, all pertinent records shall be retained until all litigation, claims, and audit findings involving the records have been resolved and final actions taken.
 - 3.1.3 Records regarding the acquisition of real property and equipment acquired with VCDP funds shall be retained for three years after final disposition of the property.
 - 3.1.4 Records regarding any displaced person shall be retained for three years after that person has received final payment.
 - 3.1.5 Records pertaining to any real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with paragraph (3) above, whichever is later.

3.2 START OF RETENTION PERIOD

- 3.2.1 The retention period starts from the date of issuance of the Certificate of Program Completion.

3.3 STORAGE PROCEDURES

- 3.3.1 When original records are electronic and cannot be altered, there is no need to create and retain paper copies.
- 3.3.2 When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

3.4 TRANSFER OF RECORDS TO AGENCY

- 3.4.1 The Agency may request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, the Agency may make arrangements with grantees to retain any records that are continuously needed for joint use.
- 3.4.2 When records are transferred to or maintained by the Agency the three-year retention requirement is not applicable to the grantee.

3.5 ACCESS TO GRANTEE RECORDS

- 3.5.1 Authorized representatives or agents of the Secretary of the Agency, the Secretary of HUD, the Inspector General of the United States, or the U. S. General Accounting Office shall have access to all books, accounts, records, reports, files, papers, things, or property belonging to, or in use by, the grantee pertaining to the administration of these grants and the receipt of assistance under the Community Development Program as may be necessary to make audits, examinations, excerpts, and transcripts.
- 3.5.2 Any contract or agreement entered into by Grantees shall contain language comparable to Section 3.5.1 so as to assure access by authorized parties.

PRINCIPLES FOR DETERMINING COSTS ALLOCABLE TO GRANTS

4.0 GENERAL

- 4.0.1 This Chapter sets forth principles for determining the costs allowable under the Vermont Community Development Programs (VCDP). They are designed to ensure that these programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law.
- 4.0.2 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance (Code of Federal Regulations, Title 2 Part 200), Subpart E.

4.1 DEFINITIONS

For the purposes of these Agency Procedures, the term:

- 4.1.1 *Approval or Authorization of the Grantor* – documentation evidencing approval by the Secretary prior to incurring specific costs.
- 4.1.2 *Cost Allocation Plan* – the budget approved as part of the Grant Agreement or any amendment thereto, and the necessary documentation that identifies, accumulates, and distributes allowable costs together with the allocation methods used.
- 4.1.3 *Cost* – cost as determined on a cash, accrual, or other basis acceptable to the Agency as a discharge of the grantee's accountability for VCDP grant funds.
- 4.1.4 *Grantee's CD Department* – that entity established by the grantee for the purpose of administering a community development grant program, irrespective of what form the entity may take or what such entity may be called by a particular grantee.
- 4.1.5 *Services* – goods and facilities, as well as services.
- 4.1.6 *Supporting Services* – auxiliary functions necessary to sustain the direct effort involved in administering this program. These services may be centralized in the Grantee's CD Department or in some other entity and may include but are not limited to procurement, pay roll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, and mail service.

4.2 APPLICATION OF STANDARDS

- 4.2.1 These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable. Determination of allowability in each case should be based on the treatment of

standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in this Chapter.

4.2.2 No provision for profit or other increment above cost is intended.

4.3 ALLOWABLE COSTS

To be allowable under the VCDP, costs must:

- 4.3.1 Have been incurred within the Grant Period. It is the intent to assist work not yet undertaken, rather than to pay for work already underway or completed. Costs incurred prior to the execution of the Grant Agreement shall be allowable only to the extent specified in the Grant Agreement.
- 4.3.2 Be necessary and reasonable for proper and efficient administration of the grant programs, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of local governments.
- 4.3.3 Be authorized or not prohibited under state or local laws or regulations.
- 4.3.4 Conform to any limitations or exclusions set forth in these Procedures, federal and state laws, or other governing limitations as to types or amounts of cost items. See Chapter 5 of these Agency Procedures for allowability of specific categories of costs.
- 4.3.5 Be consistent with policies, regulations, and procedures that apply uniformly to other similar activities of the grantee.
- 4.3.6 Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.
- 4.3.7 Not be allocable to or included as a cost of any other federally or state financed program.
- 4.3.8 Be adequately documented.

4.4 ALLOCABLE COSTS

- 4.4.1 Costs must be allocable to the grant in accord with the Uniform Guidance, 2 CFR sec. 200.405.

4.5 APPLICABLE CREDITS

- 4.5.1 Applicable credits shall be determined in accord with the Uniform Guidance, 2 CFR sec. 200.406.

4.6 COMPOSITION OF COST

- 4.6.1 Total cost. The total cost is comprised of the allowable direct cost necessary and reasonable for its performance, plus its allocable portion of allowable indirect costs, less applicable credits.
- 4.6.2 Classification of Costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

4.7 DIRECT COSTS

- 4.7.1 General. Direct costs are those that can be identified specifically with a particular service or function. These costs may be charged directly to the VCDP.
- 4.7.2 Typical direct costs chargeable to VCDP are:
 - 4.7.2.1 Compensation of employees for time that is integral to a project or activity, can be specifically identified with the project or activity, provided that such costs are explicitly included in the budget and not also recovered as indirect costs.
 - 4.7.2.2 Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.
 - 4.7.2.3 Equipment and other approved capital expenditures
 - 4.7.2.4 Other items of expense incurred specifically to carry out the grant agreement.
 - 4.7.2.5 Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria out lined in Section 4.11.

4.8 INDIRECT COSTS

- 4.8.1 The term "indirect cost," as used in these Agency Procedures, means those costs that are incurred by more than one department or agency for services that benefit

common or joint purposes but where the effort required to identify the costs, so they may be treated as "direct costs" may be greater than the value of the benefits.

- 4.8.2 Indirect costs should be distributed among the department or agencies benefiting from these services by a method that produces equity between the costs incurred and the benefits received.
- 4.8.3 Typical indirect costs chargeable to a community development program are:
 - 4.8.3.1 Heat, electricity, and other utility service to a building shared by several departments or agencies.
 - 4.8.3.2 Insurance coverage for buildings, vehicles, equipment, etc. that are shared by several departments or agencies.
- 4.8.4 Allocation of Indirect Costs. All indirect costs, including various levels of supervision, are eligible for allocation to the Community Development Program provided they meet the conditions set forth in these Agency Procedures. The following methods may be used to allocate indirect costs.
 - 4.8.4.1 Standard Indirect. An amount equal to ten percent of direct labor costs in providing the services performed (excluding overtime, shift or holiday premiums, and fringe benefits) may be used as the indirect cost of the services.
 - 4.8.4.2 Predetermined Fixed Rates. A predetermined fixed rate for computing indirect costs may be negotiated, prior to execution of the Grant Agreement, in accord with the Federal Uniform Guidance.
- 4.8.5 Limitation on Method Used. Any of the preceding methods may be used for determining indirect costs provided only one method may be used for a specific service during the Grant Period.

4.9 COST ALLOCATION

- 4.9.1 General. A plan for allocation of costs will be required to support the distribution of any joint costs related to the CD program in accord with Appendix V to the uniform Guidance. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.
- 4.9.2 Requirements. The allocation plan should cover all joint costs of the CD Department as well as costs to be allocated under plans of other departments or organizational units which are to be included in the costs of the VCDP. The cost allocation plans of all the agencies rendering services to the Grantee Department, to the extent feasible, should be presented in a single document. The allocation plan should

contain, but not necessarily be limited to (a) the nature and extent of services provided and their relevance to the VCDP; (b) the items of expense to be included; and (c) the method(s) to be used in distributing cost.

ALLOWABLE COSTS

5.0 GENERAL

- 5.0.1 This Chapter provides standards for determining the allowability of selected items of cost as they apply to the Vermont Community Development Program.
- 5.0.2 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance, 2 C.F.R. Part 200, Subpart E.

5.1 SPECIFIC COST ITEMS ALLOWED

The allowability of costs shall be as set forth in the Uniform Guidance, 2 CFR Part 200, as modified by the following:

- 5.1.1 **Payroll and Distribution of Time.** Amounts charged to the VCDP Program for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and provided in accordance with generally accepted practice of the local government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.
- 5.1.2 **Lease Management:** The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.
- 5.1.3 **Legal Expenses**
 - 5.1.3.1 The cost of legal expenses required in the administration of grant programs is allowable.
 - 5.1.3.2 Legal services furnished by the chief legal officer of a local government or his/her staff solely for the purpose of discharging his/her general responsibilities as legal officer are not allowable.
 - 5.1.3.3 Legal expenses for the prosecution of claims against the federal or state government are not allowable.
- 5.1.4 **Memberships:** The cost of membership in civic, business, technical and professional organizations is allowable provided:
 - 5.1.4.1 the benefit from the membership is related to the grant program;
 - 5.1.4.2 the expenditure is for Agency membership

- 5.1.4.3 the cost of the membership is reasonably related to the value of the services or benefits received
- 5.1.4.4 the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.
- 5.1.5 **Reference material.** The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.
- 5.1.6 **Meetings and conferences.** Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

5.2 APPROVAL REQUIRED

The following costs will only be allowed under the Grant with the written approval of the Secretary, which may be included in the Grant Agreement, an amendment thereto, or a separate document.

5.2.1 Automatic Data Processing

- 5.2.1.1 The acquisition of equipment, whether by outright purchase, rental purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Secretary.
- 5.2.1.2 The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee owned equipment.

5.2.2 **Building Space and Related Facilities.** The cost of space in privately or publicly owned buildings used for the benefit of the VCDP is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately-owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of non-occupancy without authorization.

- 5.2.2.1 Rental Cost. The rental cost of space in a privately-owned building is allowable. Similar costs for publicly owned buildings newly occupied on or after October 1, 1980, are allowable where "rental rate" systems or equivalent systems that adequately reflect actual costs are employed. Such charges must be determined on the basis of actual cost (including

depreciation based on the useful life of the building, interest paid or accrued, operation and maintenance, and other allowable costs). Where these costs are included in rental charges they may not be charged elsewhere. No costs will be included for purchases or construction that were originally financed by the federal or state government.

5.2.2.2 Maintenance and Operation. The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

5.2.2.3 Rearrangements and Alterations. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities are allowable when specifically approved by the Secretary.

5.2.2.4 Depreciation and Just Allowances on Publicly Owned Buildings. The costs are allowable as provided in the Uniform Guidance and when specifically approved by the Secretary.

5.2.2.5 Occupancy of Space under Rental Purchase or a Lease with Option to Purchase Agreement. The cost of space procured under such arrangements is allowable when specifically approved by the Secretary.

5.2.3 **Capital Expenditures.** The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved. When assets acquired with VCDP grant funds are (a) sold; (b) no longer available for use in a federally sponsored program; or (c) used for purposes not authorized by the Agency, the Agency's equity in the asset will be refunded in the same proportion as VCDP participated in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

5.2.4 Insurance and Indemnification

5.2.4.1 Costs of insurance required, or approved and maintained pursuant to the Grant Agreement, are allowable.

5.2.4.2 Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

5.2.4.2.1 Types and extent and cost of coverage will be in accordance with general state or local government policy and sound business practice.

- 5.2.4.2.2 Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, federal or state government property are unallowable except to the extent that the Agency has specifically required or approved such costs.
- 5.2.4.3 Contributions to a reserve for a self-insurance program approved by the Secretary are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.
- 5.2.4.4 Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are not allowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.
- 5.2.4.5 Indemnification includes securing the Grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The state is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement.
- 5.2.5 **Management Studies:** The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the Grantee or outside consultants is allowable only when authorized by the Secretary.
- 5.2.6 **Pre-agreement Costs:** Costs incurred prior to the effective date of the Grant Agreement whether or not they would have been allowable thereunder if incurred after such date, are allowable to the extent specifically provided for in the Grant Agreement.
- 5.2.7 **Professional Services:** Costs of professional services rendered by individuals or organizations not a part of the Grantee' CD department are allowable subject to such prior authorization as may be required by the Secretary.
- 5.2.8 **Proposal Costs:** Cost of preparing proposals on potential VCDP grants are reimbursable to the extent specifically provided for in the Grant Agreement.

6.0 [Reserved]

7.0 [Reserved]

GRANTEE MATCHING SHARE

8.0 GENERAL

- 8.0.1 This attachment sets forth criteria and procedures for cash and in-kind contributions made by grantees or subgrantees to satisfy cost sharing and matching requirements of the Vermont Community Development Program.
- 8.0.2 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance, 2 C.F.R. Part 200, Subparts D and E.

8.1 DEFINITIONS

The following definitions apply for the purpose of these Agency Procedures:

- 8.1.1 *Project costs* are all allowable costs as set forth in Chapter 4, Agency Procedures, incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the program period.
- 8.1.2 *Cost sharing and matching* represents that portion of project costs not borne by the funds granted under these Procedures. Matching share requirements, if any, shall be included in the grant agreement.
- 8.1.3 *Cash contributions* represent the grantee cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by federal legislation, federal funds received from other grants may be considered as grantee's cash contribution.
- 8.1.4 *In kind contributions* represent the value of non-cash contributions provided by the grantee and non-federal and state parties. Only when authorized by federal or State legislation may property purchased with federal or State funds be considered as the grantee in kind contributions. In kind contributions may be in the form of charges for real property and non-expendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program where an actual cash value can be determined.

8.2 GENERAL GUIDELINES FOR COMPUTING COST SHARING OR MATCHING

Cost sharing or matching share may consist of:

- 8.2.1 Charges incurred by the grantee as project costs where cash value can be readily determined. (Not all charges require cash outlays during the grant period by the grantee. Examples are depreciation and use charges for buildings and equipment.)
- 8.2.2 Project costs financed with cash contributed or donated to the grantee by other nonfederal or non-state public agencies and institutions, and private organizations and individuals.
- 8.2.3 Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.
- 8.2.4 All contributions, both cash and in kind, will be accepted as part of the grantee matching share when such contributions meet all of the following criteria:
 - 8.2.4.1 Are verifiable from the grantee records
 - 8.2.4.2 Are not included as contributions for any other federally assisted or state assisted program
 - 8.2.4.3 Are necessary and reasonable for proper and efficient accomplishment of project objectives
 - 8.2.4.4 Are types of charges that would be allowable under these Procedures and the Federal Uniform Guidance.
 - 8.2.4.5 Are not paid by the federal or state government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to;
 - 8.2.4.6 Are provided for in the approved budget
 - 8.2.4.7 Conform to other provisions of this Chapter.

8.3 GRANTEE IN-KIND CONTRIBUTIONS

- 8.3.1 Values for grantee in kind contributions will be established at the grantee actual cost in accordance with Chapter 4 and Chapter 5 of the Agency Procedures.

8.4 THIRD PARTY IN-KIND CONTRIBUTIONS

8.4.1 Valuation of volunteer services.

8.4.1.1 Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor.

8.4.1.2 Volunteered service will not be counted as cost sharing or matching unless the service is an integral and necessary part of an approved program and the value of such services is established in advance together with a method of accounting for the services as they are provided.

8.4.1.3 Rates for volunteers must be consistent with those paid for similar work in other activities of the state or local government. In those instances, in which the required skills are not found in the grantee organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

8.4.1.4 When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

8.4.2 Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and shall not exceed the fair market value of the property at the time of the donation.

8.4.3 Matching share for donated non-expendable property. The method used for charging matching share for donated non-expendable personal property, buildings, and land may differ depending on the purpose of the grant, as follows:

8.4.3.1 If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

8.4.3.2 If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that the Secretary has approved the charges.

8.4.4 Valuation of donated non-expendable property. The value of donated property will be determined in accordance with standard accounting policies with the following qualifications:

8.4.4.1 Land and buildings. The value of donated land and buildings may not exceed its fair market value at the time of donation to the grantee as established by an independent appraiser and certified by a responsible official of the grantee.

8.4.4.2 Non-expendable personal property. The value of non-expendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

8.4.4.3 Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

8.4.4.4 Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

8.5 SUPPORTING RECORDS

8.5.1 Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

8.5.2 The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.

CONFLICT OF INTEREST

9.0 GENERAL

- 9.0.1 These standards are intended to be equivalent to those set forth in the HUD Federal Regulations at 24 CFR sec. 570.489(h) Conflict of Interest.

9.1 APPLICABILITY

- 9.1.1 In the procurement of supplies, equipment, construction, and services under this program by a grantee or subrecipient, the conflict of interest provisions of Chapter 10, Procurement, of these Agency Procedures apply.
- 9.1.2 In all cases not covered by Chapter 10, this Chapter 9 shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with VCDP funds by a grantee, grant administrator or subrecipient to individuals, businesses and other private entities.
- 9.1.3 With respect to a loan or subgrant from a grantee to a subgrantee, borrower or subrecipient, section 9.2 of this Agency Procedure shall apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee, subgrantee or grant administrator.
- 9.1.4 With respect to a loan or subgrant from a subgrantee to a borrower or subrecipient, section 9.3 of this Agency Procedure shall apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of a subgrantee, borrower or subrecipient.
- 9.1.5 The potential for a conflict of interest shall exist for the longer of:
 - 9.1.5.1 the period such person is exercising such functions or responsibilities and for one year thereafter
 - 9.1.5.2 the life of an applicable loan; or
 - 9.1.5.3 until the Agency has determined that the subgrantee or the subrecipient has achieved the National Objective.
- 9.1.6 This Agency Procedure does not apply to approved and eligible administrative or personnel costs.

9.2 CONFLICTS PROHIBITED WITH RESPECT TO GRANTS OR LOANS FROM A GRANTEE TO A SUBGRANTEE, BORROWER OR SUBRECIPIENT

- 9.2.1 Except for eligible administrative costs, the general rule is that no persons described in subsection 9.1.3 of this chapter who exercise or have exercised any functions or responsibilities with respect to activities assisted under the VCDP project or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties.
- 9.2.2 In addition, in order to avoid both a conflict of interest and the appearance of undue influence, no officer, board member, or elected or appointed official of a grantee, subgrantee, subrecipient or grant administrator shall participate in any discussions with grantee decision makers or attend any public hearing concerning, vote upon or take any action with respect to any matter involving activities funded by VCDP in which such a person has an interest, or is or may become a beneficiary.
- 9.2.3 The conflict of interest shall continue for the applicable period of time as determined under section 9.1.5 of this Agency Procedure.

9.3 CONFLICTS PROHIBITED WITH RESPECT TO LOANS OR GRANTS FROM SUBGRANTEES TO SUBRECIPIENTS

- 9.3.1 With respect to subgrants where there are grants or loans from a subgrantee to subrecipients, an additional level of potential conflict of interest must be addressed. In addition to the potential conflict with respect to the subgrant from the grantee to the subgrantee addressed in section 9.2, there is a potential for conflict of interest in the award of grants or loans from the subgrantee to the subrecipients.
- 9.3.2 With respect to grants or loans between the subgrantee and subrecipients, the Agency recognizes the importance of the participation of various interests on the board of directors of many subgrantee public or private non-profit entities that frequently administer VCDP projects. Diverse representation is necessary to the vitality and relevance of such non-profit entities.
- 9.3.3 With respect to such grants or loans from subgrantees to subrecipients, the prohibitions set forth in section 9.2 shall not bar the participation of municipal, business and citizen board members and officers of a subgrantee from participating in determining who shall receive a grant or loan from a subgrantee to a subrecipient.

- 9.3.4 A loan may be made by a subgrantee to an officer, director or employee of a grantee, subgrantee, or subrecipient, but only if the prospective borrower is one of the low or moderate income persons intended to be the beneficiaries of the assisted activity, providing the loan will permit such prospective borrower to receive generally the same interest or benefit as are being made available or provided to the intended beneficiaries, and the prospective borrower engages in no activities prohibited by section 9.2 of this Chapter with respect to the prospective borrower's loan.
- 9.3.5 The conflict of interest shall continue for the applicable period of time as determined under section 9.1.5 of this Agency Procedure.

9.4 EXCEPTIONS

- 9.4.1 On written request of the State, an exception to the provisions of sections 9.2 and 9.3 of this chapter involving an employee, agent, consultant, officer or elected or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception on written request of a grantee provided the State shall fully document its determination in compliance with all requirements of subsections 9.4.1.1 and 9.4.1.2 of this subsection including the State's position with respect to each factor set forth in subsection 9.5 of this chapter and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or the project by the State or a grantee as appropriate. An exception may be considered only after the State or a grantee has provided the following:
- 9.4.1.1 a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- 9.4.1.2 an opinion of the attorney for the State or a grantee, as appropriate, that the interest for which the exception is sought would not violate state or local law.

9.5 FACTORS TO BE CONSIDERED FOR EXCEPTIONS

- 9.5.1 In determining whether to grant a requested exception after the requirements of section 9.4 of this Chapter have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:
- 9.5.2 whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available

- 9.5.3 whether an opportunity was provided for open competitive bidding or negotiation
- 9.5.4 whether the affected person is one of the low or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such a person to receive generally the same interests or benefits as are being made available or provided to the intended beneficiaries
- 9.5.5 whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question
- 9.5.6 whether the interest or benefit was present before the affected person was in a position described in section 9.4 or 9.5 of this Chapter
- 9.5.7 whether undue hardship will result either to the State or a grantee or the affected person when weighed against the public interests served by avoiding the prohibited conflict
- 9.5.8 any other relevant considerations.

PROCUREMENT STANDARDS

10.0 GENERAL

- 10.0.1 This chapter establishes standards and guidelines for the procurement of supplies, equipment, construction and services for VCDP. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable law and regulations.
- 10.0.2 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance, 2 C.F.R. Part 200, Subpart D.
- 10.0.3 Note: For-profit businesses and individuals are not required to comply with federal procurement regulations, but all costs incurred with Grant Funds must be reasonable.

10.1 CONFLICT OF INTEREST

- 10.1.1 For the period beginning with the execution of the Grant Agreement until the Completion Date, no employee, officer or agent of the grantee or subgrantee, shall participate in the selection of a contractor or in the award or administration of a contract supported by VCDP funds if a conflict of interest, real or apparent, would be involved.
- 10.1.2 Such a conflict would arise from, but not be limited to, circumstances where one of the following persons has a financial or other interest in the award:
 - 10.1.2.1 an employee, officer or agent of the grantee or subgrantee;
 - 10.1.2.2 any member of his or her immediate family;
 - 10.1.2.3 a person with whom the employee, officer or agent of the grantee or subgrantee has business ties; or
 - 10.1.2.4 an organization that employs or is about to employ any of the above.
- 10.1.3 The grantee's or subgrantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
- 10.1.4 Grantees and subgrantees may adopt procedures that set minimum standards of conduct where the financial interest is insubstantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law, regulation or procedure, such procedures shall provide for penalties, sanctions, or other

disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents.

10.2 PROCUREMENT PROCEDURES

- 10.2.1 Grantees or subgrantees may use their own procurement procedures that reflect applicable state and local laws and regulations, provided that these procedures conform to applicable Federal law and the standards set forth in this Chapter. Grantees must adopt the VCDP Municipal Policies and Codes (Form MP-1), including the Code of Ethics for Administration of Vermont Community Development Program or, if previously adopted, reaffirm that they are still in effect.
- 10.2.2 Grantees and subgrantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- 10.2.3 Grantee and subgrantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- 10.2.4 To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into state and local intergovernmental agreements for procurement or use of common goods and services.
- 10.2.5 Grantees and subgrantees are encouraged to use federal or state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- 10.2.6 Grantees and subgrantees are encouraged to include value-engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the lowest responsible cost, but it cannot be utilized unless there's provision for it in the bid specifications.
- 10.2.7 Grantees and subgrantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

10.2.8 Grantees and subgrantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

10.2.9 Grantees and subgrantees may use time and material type contracts only:

10.2.9.1 after they determine that no other type of contract is suitable; and

10.2.9.2 if the contract includes a ceiling price that the contractor exceeds at its own risk.

10.2.10 Grantees and subgrantees alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. The Agency will not substitute its judgment for that of the grantee or subgrantee unless the Agency determines the matter to be primarily a VCDP concern.

10.2.11 Grantees and subgrantees shall have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the Agency. A protestor shall exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Agency. The Agency will limit its review of protests to:

10.2.11.1 violation of Federal or State law, regulation or procedure, the Federal Uniform Guidance and this Chapter (violations of local law will be under the jurisdiction of local authorities); and

10.2.11.2 violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest.

10.2.11.3 The Agency will refer any other protests to the grantee or subgrantee for resolution.

10.2.12 Nothing in this Agency Procedure preempts state licensing laws.

10.3 COMPETITION

10.3.1 All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of the Federal Uniform Guidance and this Chapter. Circumstances considered to be restrictive of competition include but are not limited to:

- 10.3.1.1 placing unreasonable requirements on firms in order for them to qualify to do business
 - 10.3.1.2 requiring unnecessary experience and excessive bonding;
 - 10.3.1.3 noncompetitive pricing practices between firms or between affiliated companies
 - 10.3.1.4 noncompetitive awards to consultants that are on retainer contracts
 - 10.3.1.5 organizational conflicts of interest
 - 10.3.1.6 specifying only a “brand name” product instead of describing the performance required and allowing “an equivalent” product to be offered
 - 10.3.1.7 any arbitrary or capricious action in the procurement process.
- 10.3.2 In the evaluation of bids or proposals, grantees and subgrantees shall conduct procurements in a manner that prohibits the use of state or local geographical preferences that are imposed by state or local statute or regulation, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 10.3.3 Grantees shall have written selection procedures for procurement transactions. These Agency Procedures shall ensure that all solicitations:
- 10.3.3.1 incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which the material, product or service must conform to achieve its intended purpose
 - 10.3.3.2 avoid detailed descriptions of a specific product if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand that must be met by offerors shall be clearly described; and

- 10.3.3.3 identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 10.3.4 Grantees and subgrantees shall ensure that all prequalified lists of persons, firms, or products that are used in procuring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees shall not preclude potential bidders from qualifying during the solicitation period.
- 10.3.5 Whenever the lowest bidder is not awarded the contract, the grantee or subgrantee must maintain in their files for the project a written explanation of the reasons for the selection that is satisfactory to the Agency. The level of detail and documentation necessary depends on the method of procurement used and the amount of the contract.

10.4 METHODS OF PROCUREMENT TO BE FOLLOWED

- 10.4.1 Micro-Purchase Procedures. Purchases of supplies or services that do not cost more than \$10,000 may be awarded without soliciting competitive quotations provided that the Grantee considers the price to be reasonable and such purchases are distributed equitably among qualified suppliers.
 - 10.4.1.1 For construction contracts subject to Davis Bacon wage rate requirements, the Micro-Purchase Procedures threshold is \$2,000.
- 10.4.2 Small purchase procurement procedures are used for securing goods and services that do not cost more than \$250,000 in the aggregate. They are relatively simple and informal procurement methods. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- 10.4.3 Sealed bids
 - 10.4.3.1 A request for proposal may be issued, bids are solicited by public notice (see section 10.6.2.5) and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, offers the lowest responsible price.
 - 10.4.3.2 The sealed bid method is the preferred method for procuring construction, if the following conditions are present:
 - 10.4.3.2.1 a complete, adequate, and realistic specification or purchase description is available

- 10.4.3.2.2 two or more responsible bidders are willing and able to compete effectively for the business; and
- 10.4.3.2.3 the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- 10.4.3.3 If sealed bids are used, the following requirements apply:
 - 10.4.3.3.1 the invitation for bids shall be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
 - 10.4.3.3.2 the invitation for bids, which will include any specifications and pertinent attachments, shall define the goods or services in sufficient detail for the bidder to be able to properly respond; and indicate that in the event all bids received are over the amount budgeted the Grantee and/or Subgrantee/Borrower (Developer) reserves the right to conduct value engineering with the lowest most qualified bidder .
 - 10.4.3.3.3 all bids shall be publicly opened by at least two staff persons of the contracting grantee or subgrantee at the time and place prescribed in the invitation for bids;
 - 10.4.3.3.4 a firm fixed price contract award shall be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining the lowest responsible bid. Payment discounts shall be considered only when prior experience indicates that such discounts are realistically able to be used.
- 10.4.3.4 Any or all bids may be rejected, in which case a written explanation must be maintained in grantee or subgrantee's project file.
- 10.4.3.5 Public notice regarding the solicitation of bids. The opportunity to bid for the proposed work must be broadly publicized. At a minimum, such solicitation should include advertising in a local newspaper of record broadly circulated throughout Vermont at least 15 days before the bid due date. Other methods of solicitation include but are not limited to electronic bulletin boards, direct mailings to potential vendors or vendors on a prequalified list, or publication in trade journals.

10.4.4 Procurement by competitive proposals is encouraged in appropriate cases for procurements of goods, services and construction activities, including construction management services.

10.4.4.1 Reasons for selecting procurement by competitive proposals rather than by sealed bids include but are not limited to:

10.4.4.1.1 the level of expertise of potential contractors must be evaluated

10.4.4.1.2 it is anticipated that there may be more than one method to fulfill the contract.

10.4.4.2 If procurement by competitive proposals is used, the following requirements apply:

10.4.4.2.1 requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any clarifications concerning a publicized request for proposal shall be promptly communicated to all known potential bidders;

10.4.4.2.2 proposals shall be solicited from an adequate number of qualified sources;

10.4.4.2.3 grantees and subgrantees shall have a written method for conducting technical evaluations of the proposals received and for selecting awardees;

10.4.4.2.4 an award shall be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

10.4.5 Sole source procurement, also known as procurement by noncompetitive proposals, is procurement through solicitation of only one source, or, after soliciting a number of sources, competition is determined inadequate.

10.4.5.1 Sole source procurement may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances is present:

10.4.5.1.1 the item or service is available only from a single source

10.4.5.1.2 the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

10.4.5.1.3 the Agency authorizes the use of procurement by noncompetitive proposals; or

10.4.5.1.4 after solicitation of a number of sources, competition is determined inadequate.

10.4.5.2 Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required and is especially important for sole source contracts.

10.4.5.3 Grantees and subgrantees may be required to submit the proposed procurement to the Agency for pre-award review in accordance with section 10.7 of these Agency Procedures.

10.4.6 Procurement of architectural and engineering (A/E) and other professional services. The competitive proposal procedures found in section 10.4.4 of this Agency Procedure apply to the procurement of professional services costing \$10,000 or more, and where expertise, experience or unique characteristics are relevant.

10.4.6.1 Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) and other professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price may not be the primary selection factor, may be used only for the procurement of professional services. It cannot be used to purchase other types of services even if A/E firms may provide those non-professional, non-A/E services.

10.4.6.2 Use of same architect, engineer or other professional during construction. If the grantee is satisfied with the qualifications and performance of the architect, engineer or other professional who provided professional services for the project and wishes to retain that firm or individual to provide additional professional services during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

10.4.6.2.1 the initial request for proposal clearly stated the possibility that the firm or individual selected might be awarded an agreement to provide professional services during construction

10.4.6.2.2 the grantee attests that the firm or individual was selected to perform the professional services in accordance with the provisions set out in these Agency Procedures.

10.5 CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS

10.5.1 The grantee and subgrantee shall take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

10.5.2 Affirmative steps shall include:

10.5.2.1 placing qualified small and minority businesses and women's business enterprises on solicitation lists;

10.5.2.2 assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

10.5.2.3 dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

10.5.2.4 establishing delivery schedules, where the requirement permits, that encourage participation by small and minority business, and women's business enterprises;

10.5.2.5 using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

10.5.2.6 requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in 10.5.2.1 through 10.5.2.5.

10.6 CONTRACT COST AND PRICE ANALYSIS

10.6.1 Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on

prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

- 10.6.2 Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- 10.6.3 Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are consistent with VCDP cost principles. Grantees may reference their own cost principles that comply with the applicable VCDP cost principles.
- 10.6.4 The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

10.7 AGENCY REVIEW

- 10.7.1 Grantees and subgrantees must make available, upon request of the Agency, technical specifications on proposed procurements where the Agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the Agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- 10.7.2 Grantees and subgrantees must on request make available for Agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
 - 10.7.2.1 a grantee's or subgrantee's procurement procedures or operation fail to comply with the procurement standards in this section
 - 10.7.2.2 the procurement is expected to exceed the small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation
 - 10.7.2.3 the procurement, which is expected to exceed the small purchase threshold (\$150,000), specifies a "brand name" product

- 10.7.2.4 the proposed award is more than the small purchase threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement
- 10.7.2.5 a proposed contract modification changes the scope of a contract or increases the contract amount to more than the small purchase threshold.
- 10.7.3 A grantee or subgrantee will be exempt from the pre-award review in Agency Procedure 10.7 if the Agency determines that grantee or subgrantee's procurement systems comply with the standards of this section.
 - 10.7.3.1 A grantee or subgrantee may request that its procurement system be reviewed by the Agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there are multiple outstanding or successive high dollar VCDP grants, and third-party contracts are awarded on a regular basis.
 - 10.7.3.2 A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the Agency's right to review and approve or disapprove the system. Under a self-certification procedure, the Agency may rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and make its system available for review.

BONDING FOR CONSTRUCTION AND SECURITY

11.0 GENERAL

- 11.0.1 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance, 2 C.F.R. Part 200, Subpart D.
- 11.0.2 For VCDP projects which require contracting (or subcontracting) for construction or facility improvement where the contract is for less than \$150,000, Grantees may follow their own established requirements. If none in place, then at a minimum, the Agency shall require bid guarantees, performance bonds, and payment bonds the same as for projects over \$150,000.
- 11.0.3 For those contracts or subcontracts exceeding \$150,000, the minimum requirements shall be as follows:
- 11.0.3.1 Bid Guarantee. Each bidder shall put up a bid guarantee equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified and according to the stipulations contained in the bid document.
- 11.0.3.2 Performance Bond. The contractor shall put up a performance bond for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- 11.0.3.3 Payment Bond. The contractors shall put up a payment bond for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

11.1 FORM OF BOND

- 11.1.1 Where bonds are required by these procedures, they shall be in such form and amount as determined by the Secretary. Bonds shall be procured from a surety company registered and licensed to do business in the State of Vermont and countersigned by its Vermont registered agent.

11.1.2 An Irrevocable letter of Credit in the proper amount may be substituted for any required bond.

UNIFORM RELOCATION ACT

12.0 GENERAL

- 12.0.1 This Chapter sets forth the requirements which must be met by any grantee undertaking relocation activities using VCDP funds.
- 12.0.2 The Federal Act mandates compliance with the Uniform Relocation and Real Property Acquisition Policies Act (referred to as the “Uniform Act”) and the implementing regulations issued by the U.S. Department of Transportation [49 CFR Part 24]. (See HUD implementing regulations at 24 CFR Part 42.)

12.1 DEFINITIONS

- 12.1.1 *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information
- 12.1.2 *State Agency* means any department, agency, or instrumentality of the state, a municipality, or any person who has the authority under state law to acquire property by eminent domain.

12.2 RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

- 12.2.1 Each grantee receiving VCDP funds must adopt, make public, and certify to the Agency that it is has in effect and is following a residential anti-displacement and relocation assistance plan.
- 12.2.2 Each grantee must certify to the Agency that it will minimize displacement of persons as a result of assisted activities.
- 12.2.3 The plan shall indicate the steps that will be taken to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities. The plan shall provide for relocation assistance as required by federal regulation, and for one-for-one replacement units to the extent required by federal regulation.

12.3 ACQUISITION POLICY

- 12.3.1 All real-property acquisition by a state agency, as defined by 49 CFR sec. 24.2(a)(1)(iv)) shall be governed by the requirements of the Uniform Act.
- 12.3.2 All real-property acquisition funded by the VCDP undertaken by other than a state agency must have documentation that a reasonable basis for the purchase price was established. As a part of this process, the purchaser must have at least one appraisal of the real property performed no more than three (3) months prior to the date of acquisition. The purchaser must clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and must inform the owner in writing of what it believes to be the market value of the property.

12.4 RELOCATION POLICY

- 12.4.1 All persons displaced as a direct result of rehabilitation, demolition, or acquisition funded in whole or in part by VCDP funds, whether undertaken by a public or private entity, are entitled to relocation payment and other assistance under the Uniform Act.

HOUSING QUALITY STANDARDS

13.0 GENERAL

13.0.1 For the purpose of this Chapter, the definitions set forth in HUD Regulations found at 24 CFR 982.401 shall apply.

13.1 STANDARDS

13.1.1 Projects shall comply with state and local laws, codes, ordinances, and regulations, insofar as they are applicable.

13.1.2 Projects shall meet the minimum housing quality standards set forth in HUD Regulations found at 24 CFR 982.401, which shall apply to all housing projects.

14.0 [RESERVED]

REPLACEMENT HOUSING FOR REHABILITATION PROGRAMS

15.0 GENERAL

15.0.1 This Chapter provides guidance for the replacement of both mobile homes (including modular homes) and stick-built housing in scattered-site or neighborhood housing rehabilitation programs funded under the VCDP where replacement of the unit may be more viable than its rehabilitation.

15.1 DEFINITIONS

15.1.1 *Comparable unit* means a unit that meets the requirements of the URA Handbook 1378, which generally requires that the unit be similar in size and function, decent, safe and sanitary, and within the financial means of the client.

15.1.2 *Section 8 Housing Quality Standards or HQS* means those housing quality standards promulgated under HUD's Section 8 Program, under which HUD provides assistance to income-eligible families to assist with paying for rental housing in the private market. HQS units must be "decent, safe, and sanitary".

15.1.3 *Rehabilitation cost* means the specific costs associated with bringing the unit into compliance with Section 8 HQS, and which includes both program management soft costs and construction hard costs.

15.1.4 *Replacement cost* means the costs associated with the replacement of the home and which include, but are not limited to:

15.1.4.1 Cost of the rehabilitation to Section 8 standards, including necessary lead paint and asbestos abatement

15.1.4.2 Cost of replacing the home, and all the associated costs including demolition or disposal of the existing home, disposal of the debris, and construction of the new home in accordance with Section 8 standards and one considered comparable according to URA requirements, costs associated with installing new utility service connections, and program management costs; and,

15.1.4.3 Temporary relocation costs.

15.1.5 *Replacement cost factors* means the various factors that should be taken into consideration by the Grantee when making the decision to replace a home rather than rehabilitate it. These factors include, but are not limited to:

- 15.1.5.1 Post-construction value and life-expectancy of the old home verses the value and life-expectancy of the replacement home;
- 15.1.5.2 Health and safety considerations;
- 15.1.5.3 Comparison of projected maintenance costs for both the rehabilitated home and the replacement home post-construction
- 15.1.5.4 Historic value of the home if it is 50 years old or older (an Historic Preservation Specialist would need to document why rehabilitation is not feasible)
- 15.1.5.5 Impact on the state's downtown preservation and revitalization goals.

15.2 EVALUATION OF NEED FOR REPLACEMENT

- 15.2.1 The Grantee's Program Manager will determine through the Section 8 pre-construction inspection and after considering both the replacement cost and replacement cost factors whether (a) replacement is more cost-effective than rehabilitation (Rehabilitation cost should not exceed 75% of the reappraised value of the rehabilitated home); and (b) the replacement cost will not impact negatively on completing the targeted number of units by impacting the overall per-unit budget parameters of the program, based on the total VCDP rehab budget in the Grant Agreement. When considering replacement costs, Program Managers are advised that they may be within the same range as the rehabilitation costs and do not necessarily have to be lower.
- 15.2.2 Where replacement is considered cost effective, but cannot be done without additional resources, the replacement will only be allowed if it can be done without enhancing the amount of VCDP funds, reducing the targeted Benefit number (i.e., the cost difference must be made up with Other Resources), or extending the Grant Agreement period.

15.3 PROCUREMENT

- 15.3.1 VCDP procurement requirements must be followed for the purchase of the replacement mobile or modular home, which is considered personal property (as opposed to real property).
- 15.3.2 The Grantee must document in detail, and keep on file, the cost/benefit factors that formed the basis of their decision and make this documentation available to VCDP staff. The VCDP reserves the right to require of a grantee, at any time, that proposed home replacements be approved by VCDP staff prior to implementation.

15.4 WAIVER

- 15.4.1 Where the replacement unit is not comparable, e.g., a stick-built home being replaced by a mobile home; or, a change in the number of bedrooms, the Grantee must apply to the Agency for a waiver.

SHARED-LIVING PROGRAM AREA DETERMINATION

16.0 GENERAL

- 16.0.1 This Chapter provides guidance for determining the eligibility and program area for assisted living residences.
- 16.0.2 These Agency Procedures have been promulgated in conformance with 24 CFR 570.483(b) and 570.483(b)(2) with additional restrictions imposed by the Agency.

16.1 DEFINITIONS

- 16.1.1 *Assisted living residence* means an assisted living unit that provides, at a minimum, a private bedroom, private bath, living space, kitchen capacity and a lockable door in combination with health and supportive services that promote self-direction and active participation in decision-making while emphasizing individuality, privacy and dignity for elderly and disabled persons as defined by the Vermont Agency of Human Services, Department of Disabilities, Aging and Independent Living.
- 16.1.2 *Limited clientele* means elderly persons, at least 51% of whom are LMI as defined by 24 CFR 570.483(b)(2)(A)
- 16.1.3 *Program Area* means the four program areas (Housing, Economic Development, Public Facilities, and Public Services) under which VCDP projects are funded

16.2 GENERAL REQUIREMENTS

- 16.2.1 Applications to fund assisted living residences through the VCDP will be subject to the standard program requirements. For the purpose of categorizing assisted living residences under a VCDP Program Area, they will be considered a Public Facility. For the purpose of the CDBG National Objective, persons assisted will be considered limited clientele.

16.3 ADDITIONAL REQUIREMENTS FOR ASSISTED LIVING RESIDENCES

- 16.3.1 In addition to the general requirements, assisted living residences must meet these additional requirements:
 - 16.3.1.1 At least 51% shall be occupied by LMI persons as documented by income verification.

- 16.3.1.2 The developer must demonstrate that the cost for housing and required services are affordable, compared to other assisted living housing units in the state.
- 16.3.1.3 The amount of VCDP funds loaned to the project will be in proportion to the percentage of units to be occupied by LMI persons.
- 16.3.1.4 The units will be maintained as affordable for a period of 15 years from the Completion Date.

17.0 [RESERVED]

APPEALS

18.0 GENERAL

18.0.1 This Chapter sets forth the Appeals Procedure for the Vermont Community Development Program.

18.1 APPEALS PROCEDURES

18.1.1 Any party who is dissatisfied with a decision rendered by a Grantee or any party who feels aggrieved by actions taken by Agency staff relative to the VCDP may appeal in writing to the Secretary.

18.1.2 Unless an appeal is withdrawn or otherwise resolved, the Secretary shall hold a hearing within 30 days of the receipt of the appeal. The aggrieved has the right to appear at the hearing in person, have witnesses appear (at his own expense) and to be represented by counsel (at his own expense).

18.1.3 The Secretary shall issue a decision within 15 days of the hearing.

18.1.4 If the aggrieved is dissatisfied with the Secretary's decision relative to said grievance, the aggrieved may seek redress through the judicial system.

MONITORING AND REPORTING OF PROGRAM PERFORMANCE

19.0 GENERAL

19.0.1 This Chapter sets forth the procedures for monitoring and reporting program performance under VCDP. These procedures are designed to place reliance on grantees to manage the day to day operations of the program activities.

19.0.2 These standards are intended to be equivalent to those set forth in the Federal Uniform Guidance (Code of Federal Regulations, Title 2 Part 200), Subpart D.

19.1 GRANTEE RESPONSIBILITY

19.1.1 Grantees shall monitor the activities of the VCDP, including those of contractors and subcontractors, to assure that all the program requirements are being met.

19.2 REFERENCE TO GRANT AGREEMENTS

19.2.1 All documents required to be filed with the Agency shall incorporate by reference the Grant Agreement for a specific grant, as if fully set forth, and shall further include such language or provisions as may be required by federal or state law, regulation, or procedure.

19.3 LIMITATIONS OF AGENCY'S RESPONSIBILITIES

19.3.1 Filing of documents with the Agency does not require that the Agency undertake to review and comment upon such documents.

19.3.2 It is the Grantee's responsibility to take appropriate steps through the execution of legally binding documents and enforcement of their provisions to ensure that the obligations set forth in the documents are met.

19.3.3 This responsibility is in no way reduced on the part of the Grantee or assumed by the Agency.

19.4 MUNICIPAL POLICIES

19.4.1 Except as set forth in the paragraph below, the Grantee shall file or cause to be filed with the Agency the following municipal policy documents prior to requisition of any VCDP funds for a specific grant.

- 19.4.1.1 Equal Employment Opportunity
- 19.4.1.2 Fair Housing
- 19.4.1.3 Use of Excessive Force
- 19.4.1.4 Use of VCDP Funds for Federal Lobbying
- 19.4.1.5 Code of Ethics
- 19.4.1.6 Drug-Free Workplace
- 19.4.1.7 Subrecipient Oversight Monitoring
- 19.4.1.8 Whistleblower Protection Policy

19.4.2 Where the Grantee certifies that it has previously adopted municipal policies that are in conformance with the requirements of the pertinent federal regulations and has filed copies with the Agency, such shall be considered sufficient for a 10-year period.

19.5 RESOLUTION TO ACCEPT A GRANT AGREEMENT

- 19.5.1 Acceptance of the award of a specific grant shall include adoption by the Legislative Body of the Awardee of resolution set out in Form PM 1 Resolution to Accept the Grant Agreement.
- 19.5.2 Said Resolution shall be filed with the Agency concurrent with the return to the Agency of the signed Grant Agreement and is a prerequisite to execution of the Grant Agreement by the Secretary on behalf of the State.

19.6 FINANCIAL MANAGEMENT AUTHORIZATION

- 19.6.1 The Grantee shall designate its Depository Institution through the Agency's online application and grants management system.
- 19.6.2. The Municipal/Authorizing Official ("MAO") shall designate the individuals who are authorized to requisition VCDP Funds through the Agency's online application and grants management system.
- 19.6.3 The Grantee shall provide new documentation when there is a change in the depository or authorized personnel named on these forms.

19.7 PROGRESS REPORTS

- 19.7.1 The Grantee shall monitor the activities covered by the Grant Agreement for the specific grant, including those of contractors and subcontractors, to assure that all program requirements are being met.
- 19.7.2 The Grantee shall submit or cause the submission of Progress and Financial Reports to the Agency in a format prescribed by the Agency and according to the schedule set out below.
- 19.7.2.1 For the first reporting period, submission to the Agency is due in accordance with the schedule set out in the Grant Agreement.
- 19.7.2.2 For each reporting period thereafter, to and including the Completion Date, submission to the Agency is due no later than 30 days following the last day of said period.
- 19.7.2.3 The Final Program Report shall be submitted as the report for the period which ends with the Completion Date and the Benefit has been met.
- 19.7.3 In the event the Completion Date is extended, a report may be submitted at any time but will be due no later than fifteen (15) days following the end of any subsequent reporting period; except that where the Final Program Report is submitted, it shall be due no later than thirty (30) days following the end of said period.

19.8 FINAL PROGRAM REPORT

- 19.8.1 The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date of the Grant Agreement for the specific grant.
- 19.8.2 Evidence, at a minimum consisting of the hearing notice and minutes taken thereat, of a public hearing held in conformance with the Standard Provisions of the Grant Agreement for the specific grant, shall be filed as part of the Final Program Report.

19.9 SPECIAL REPORTS

- 19.9.1 From time to time, as requested in writing by the Agency, the Grantee shall submit such data and other information as the Agency may require.

CLOSEOUT PROCEDURES

20.0 GENERAL

20.0.1 This Rule prescribes closeout procedures for grantees.

20.1 DEFINITIONS

The following definitions shall apply for the purpose of these Rules:

20.1.1 "Grant closeout." The closeout of a grant is the process by which the Secretary determines that all applicable administrative and financial actions and all required work of the grant project have been completed or that no additional benefits are likely to occur by continuation of program activities or costs. There are four major activities involved in closing out a grant. These activities include:

20.1.1.1 preparing a final progress report

20.1.1.2 clearing all monitoring findings or recommendations

20.1.1.3 securing an independent audit and responding to any audit findings

20.1.1.4 settlement of any outstanding obligations.

20.1.2 "Grant Completion Date." The date when all work under a grant is completed; the date specified in the Grant Agreement, any supplement or amendment thereto, on which grant assistance ends; or the date in which the grant is suspended or terminated.

20.1.3 "Disallowed costs." Disallowed costs are those charges to a grant which the Secretary determines to be unallowable.

20.2 FINAL PROGRAM REPORT

20.2.1 Grantees are required to submit a Final Report covering the entire program within 90 days after the grant completion date.

20.2.2 The report shall cover all financial, performance, and other reports required as a condition of the grant. The Agency may grant extensions when requested by the grantee. The following general guidelines should be kept in mind:

- 20.2.2.1 The report should be concise and brief. Matrices and other schematic presentations should be used whenever possible to minimize the length of narratives. Clarity and succinctness are appreciated.
 - 20.2.2.2 Activities should be identified on the Grant Closeout Report exactly as they are identified in the Grant Agreement; name, number, and order of appearance, if applicable.
 - 20.2.2.3 Information provided in the Grant Closeout Report should be consistent with that provided in the Application or an explanation of the discrepancy provided. Normally any changes in the program should have been approved by the Agency as they occurred.
 - 20.2.2.4 A discussion on the actual benefits the program has had in meeting the program objective(s) originally stated, especially the extent of impact on low/moderate income persons, should be included.
 - 20.2.2.5 The most current data possible should be provided on obligated and expended amounts, including the disposition of any program income.
 - 20.2.2.6 Information sources should be identified.
 - 20.2.2.7 The report shall be completed and submitted online through the Agency's online application and grants management system. Copies shall be made available to the public on request.
- 20.2.3 The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date. Evidence, at a minimum consisting of the hearing notice and minutes taken thereat, of a public hearing held in conformance with 'VII of the Grant Agreement, shall be filed with the Agency as part of the Final Program Report.
- 20.2.4 The Grantee shall submit to the Agency a Final Program Report and an Interim Audit Report(s) and/or Final Audit Report covering the Period of Performance under the Grant Agreement. Additionally, one copy of all reports must be placed where other program documents are available for public review, and at least one copy must remain in the Grantee's files.

20.3 CERTIFICATE OF PROGRAM COMPLETION

- 20.3.1 A Certificate of Program Completion shall be issued to the Grantee when the Agency determines that all required work under the Grant Agreement has been satisfactorily completed, including the submission of the Final Program Report, the Interim Audit Report(s), and/or the Final Audit Report.

20.3.2 The Agency must determine that all program and financial compliance issues have been addressed and that the findings and/or concerns, if any, of monitoring reports, program reports, and audit reports have been resolved and cleared in writing.

20.4 CLEARING FINDINGS FROM STATE MONITORING VISITS

20.4.1 All findings from Agency monitoring visits must be cleared prior to closeout.

20.5 INDEPENDENT AUDIT FOR CLOSEOUT

20.5.1 An independent audit must be undertaken in accordance with the chapter on Audit Requirements, of the Grants Management Guide.

20.6 SETTLEMENT OF OUTSTANDING OBLIGATIONS

20.6.1 Together with the submission of the final report, the grantee shall immediately refund to the Agency any balance of unobligated (unencumbered) cash advanced to the grantee that is not authorized by the Secretary to be retained by the grantee for use on other grants or to pay costs required as part of the closeout process.

20.6.2 When authorized by the Grant Agreement the Agency shall make a settlement for any Community Development Grant share of costs after the final reports are received.

20.6.3 The grantee shall account for any property acquired with grant funds or received from the federal or state government in accordance with the provisions of Chapter 17 of these Agency Procedures.

20.6.4 The Agency retains the right to recover any disallowed costs resulting from the final audit.

20.7 EFFECT OF DELAYS IN CLOSEOUT

20.7.1 Prompt closeout of the grant is most desirable, since the State views it as an indicator of local capacity to administer a Community Development Grant. Delays in program closeout can influence the State's rating of subsequent applications.

AUDIT REQUIREMENTS

21.0 GENERAL

21.0.1 This Chapter establishes audit requirements for local governments that receive federal financial assistance under the federal Community Development Block Grant States' Program through the VCDP. The requirements relate to audits made on an entity wide basis (single audit).

21.1 DEFINITIONS

21.1.1 *Final Audit:* Covers all VCDP grant funds, or, if there was an interim audit, covers the balance of any remaining unaudited VCDP grant funds through the Completion Date (or beyond when necessary).

21.1.2 *Interim Audit:* Covers only a portion of the VCDP grant funds and is not the final audit done on the program.

21.1.3 *Limited-scope Audit:* An independent review of eligibility determinations made by sub-recipients (Federal awards for expenditures of less than \$750,000 annually).

21.1.4 *Program-specific Audit:* A Program-specific audit may be used by a Grantee that expends all of its federal financial assistance under only one program, provided that program does not require an audit of the auditee's financial statements (must meet \$750,000 threshold for expenditures).

21.1.5 *Single Audit:* A financial and compliance audit that covers the entire financial operations (schools usually excluded) of the municipality, Grantee or Lead Grantee, and/or subrecipient, including VCDP grant funds.

21.2 STANDARDS FOR AUDITS

21.2.1 Audits shall be conducted in accordance with the Federal Uniform Guidance (Code of Federal Regulations, Title 2 Part 200), Subpart F.

21.3 RETENTION OF AUDIT DOCUMENTATION

21.3.1 Work papers and audit reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the Agency of the need to extend the retention period.

21.3.2 The audit work papers shall be made available upon request to the Secretary of the Agency, the Secretary of HUD, the Comptroller General of the U.S. General Accounting Office or any authorized representative.

21.4 AGENCY RESPONSIBILITY

21.4.1 The Agency shall have the following responsibilities:

21.4.1.1 Assure that financial and compliance audits are conducted as required the provisions of this Chapter and that satisfactory audit report(s) are provided in a timely manner.

21.4.1.2 Provide technical assistance and act as a liaison between federal agencies, independent auditors, the grantee, and grant administrators.

21.4.1.3 Whenever significant inadequacies in the audit report are disclosed, advise the grantee thereof and that the auditor will be required to take corrective action. If corrective action is not taken, the Agency shall notify the grantee and HUD of the facts and its recommendation.

21.4.1.4 Maintain a tracking system to ensure that audit findings and internal control weaknesses are resolved.

21.4.1.5 Resolve audit report findings, conditions, material weaknesses, and/or reportable conditions that are VCDP related. This may require the grantee or auditor to submit additional information to the Agency.

21.4.1.6 Conduct a review of expenditure documentation in lieu of an independent audit during a site visit or by desk-review of expenditures of VCDP funds where the expenditure of federal funds during the grantee's fiscal year is less than \$750,000.

21.5 GRANTEE RESPONSIBILITY

21.5.1 Upon receipt of notice from the Agency that a single audit is required, the grantee shall arrange for an independent financial and compliance audit (or audits) of all expenditures related to each grant received under the VCDP.

21.5.2 The audit report shall be completed and submitted to the Agency no later than nine months after the end of the grantee's fiscal year.

21.5.3 The grantee shall submit an audit report within thirty days of its completion.

- 21.5.4 VCDP funds may only be used to pay a proportional share of the total cost of the audit. The proportional amount is based upon the percentage of VCDP grant expenditures to the total audited expenditures or the percentage of VCDP grant auditor hours to the total auditor hours.
- 21.5.5 The grantee shall respond to all audit findings, conditions, material weaknesses, and/or reportable conditions contained in the audit report and submit the response to the Agency.
- 21.5.6 The grantee will be required to submit additional information if the initial response is not adequate to allow the Agency to resolve the issue raised in the audit report.
- 21.5.7 An Agency audit finding is defined as an audit-related issue that cannot be resolved without a satisfactory response by the grantee or the auditor.

21.6 GRANTEE RESPONSIBILITY FOR SUBRECIPIENTS

- 21.6.1 Any contract or agreement entered into by the grantee and a subgrantee shall contain language requiring the subgrantee to comply with the standards for audits set forth in this Chapter.
- 21.6.2 If the subgrantee expends \$750,000 or more of its federal financial assistance during the grantee's fiscal year the grantee must:
 - 21.6.2.1 determine if the subgrantee (subrecipient) has complied with applicable laws and regulations.
 - 21.6.2.2 require in an executed contract that the subgrantee (subrecipient) comply with the provisions of this Chapter.

21.7 PROCUREMENT OF AUDIT SERVICES

- 21.7.1 The grantee shall follow procurement requirements set forth in Agency Procedures – Chapter 10.
- 21.7.2 When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and grantee must request a copy of the audit organization's peer review report, which the auditor is required to provide.
- 21.7.3 Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price.

21.7.4 Whenever possible, Grantee shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises in procuring audit services.

21.7.5 Any auditor hired under this Chapter shall not be for a period of longer than three (3) years.

21.8 DISALLOWED COSTS

21.8.1 If any expenditures are disallowed as a result of any Interim Audit report, Final Audit report and/or Review-in-Lieu of audit, the obligation for reimbursement to the Agency shall rest with the grantee.

PROGRAM INCOME AND UNRESTRICTED REVENUE

22.0 GENERAL

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

- 22.0.1 To increase the total percentage of Program Income and Unrestricted Revenue retained at the local (or regional) level
- 22.0.2 To increase the amount of Unrestricted Revenue available for reuse by grantees and by the Agency
- 22.0.3 To encourage the active use and reuse of VCDP funds; and
- 22.0.4 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.

22.1 DEFINITIONS

- 22.1.1 *Annual Reporting Period* will be defined as the Grantee's or NCDO's fiscal year period for purposes of reporting as required under the terms of the Closeout Agreement.
- 22.1.2 *Assignment* is the legal transference of ownership from a municipality to an NCDO of loan(s) or loan portfolio(s) made with VCDP funds. The assignment shall consist of the entire loan or loan portfolio and shall include transferal of all rights and obligations as set forth in all security interests, mortgages and guarantees.
- 22.1.3 *Inactive Funds* refer to repayments and/or income generated by VCDP grant funds in a revolving loan fund where 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.
- 22.1.4 *Nonprofit Community Development Organization (NCDO)* is a public or private nonprofit organization that provides community development services that are available to all the municipalities in one or more counties or regions, as defined below. The NCDO will manage at least one regional Revolving Loan Fund (RLF). Program Income and Unrestricted Revenue will be managed by the NCDO to provide funding for one or more Title I eligible activities, as defined in Section 105 of Title 1 of the Housing and Community Development Act, 42 USC § 5305(a). In the case of Program Income, all federal and state rules and regulations of the VCDP will apply.

- 22.1.5 *Program Income (PI)* is defined in the Code of Federal Regulations at 24 CFR §570.489(e). Except for “Unrestricted Revenue” as defined below, 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) is considered Program Income.
- 22.1.6 *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.
- 22.1.7 *Subgranted* is the transfer of VCDP grant funds from a municipality to an NCDO, or to any other type of entity, to carry out the activities defined in a subgrant agreement. The municipality remains responsible to the Agency under the terms of the Grant Agreement.
- 22.1.8 *Target of Assistance* is a 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.
- 22.1.9 *Unrestricted Revenue (UR)* is defined as the following:
- 22.1.9.1 Any funds generated by VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$35,000 during a Grantee’s fiscal year period
 - 22.1.9.2 All gross income received from loans originated by an NCDO
 - 22.1.9.3 Repayments from second-generation loans originated by a municipality, assigned to an NCDO, and re-loaned by the NCDO; or
 - 22.1.9.4 Repayments from unrestricted revenue that is re-loaned.

22.2 GRANTING VS. LOANING VCDP FUNDS TO SUBRECIPIENTS

- 22.2.1 The use of Program Income and Unrestricted Revenue is linked to, and affected by, the Agency Procedures governing the conveyance of VCDP funds by municipal grantees to subrecipients. The principal elements of this policy are as follows:
- 22.2.1.1 For-profit subrecipients. When VCDP funds are to be conveyed to a for-profit entity, VCDP funds must be loaned by the municipal grantee to the for-profit entity.
 - 22.2.1.2 Perpetually affordable housing. When VCDP funds are invested in nonprofit housing that is encumbered with a covenant to ensure the perpetual affordability of that housing, VCDP dollars will be granted to the nonprofit,

except in the case of affordable housing projects that are developed using Tax Credits, where a deferred loan may be established.

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

22.3 USE OF PROGRAM INCOME AND UNRESTRICTED REVENUE BY GRANTEES AND NONPROFIT COMMUNITY DEVELOPMENT ORGANIZATIONS (NCDO)

22.3.1 All grantees shall meet the federal requirements pertaining to Program Income and Unrestricted Revenue. Program Income and Unrestricted Revenue generated by VCDP grants must be used for one or more eligible activities as defined in Section 105 of the Housing and Community Development Act (42USC §5305(a)). These activities may occur on a municipal or regional level. 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.

Net Program Income (Net PI) - Up to 20% of the program income (PI) received can be expended on Program Management and General Administration. The balance of the PI (80% minimum) is the Net PI.

Net Unrestricted Revenue (Net UR) - Up to 20 % of the UR received can be expended on Program Management and General Administration. The balance of the remaining UR (80% minimum) is the Net UR.

22.4 RECAPTURE OF PI AND UR BY THE AGENCY

22.4.1 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.

22.4.2 Recapture of Program Income and/or Unrestricted Revenue.

22.4.2.1 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.

22.4.2.2 The recapture amount to be paid to the Agency may be paid using the total loan repayments received on an annual basis to accelerate payment of the 50% of the original loan principal to the Agency or may be repaid as 50% of the loan repayments annually, until such time as 50% of the original loan principal amount has been paid to the Agency. If there is early pay-off of all or a portion of the loan principal, the proportional share of the recapture amount is due immediately.

22.4.3 Recapture of Inactive funds. When the VCDP funds managed by a grantee, subgrantee, or assignee (NCDO) become inactive, as per the definition above, the Agency shall recapture 100% of these funds (Program Income and/or Unrestricted Revenue) 60 days after official notification of inactive funds. If at least 25 % of the cumulative balance is expended on eligible activities within the 60-day notification period, the funds will be considered active. However, the fact a notification of inactive funds was issued shall be a consideration when awarding applications.

22.4.4 Exemption. 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.

22.5 USE OF RECAPTURED FUNDS BY THE AGENCY

22.5.1 Recaptured funds shall retain their identity as either Program Income or Unrestricted Revenue and must be managed accordingly by the Agency.

22.5.2 Program Income that is recaptured by the Agency shall be added to the general pool of VCDP funds and shall be awarded through the VCDP normal cycle of application and selection of municipal grantees.

22.5.3 Unrestricted Revenue that is recaptured by the Agency shall be deposited into two accounts and shall be used for eligible activities as defined in Section 105 of the Housing and Community Development Act (42USC §5305(a)):

22.5.3.1 At least 50% of recaptured UR shall be placed in an Economic Development Fund. The Department of Economic Development shall make recommendations to the Commissioner of DHCD as to the specific use of these funds. This Fund shall be used to take advantage of unique economic development opportunities that are unable to obtain a state funding appropriation.

22.5.3.2 The remaining UR, recaptured by the Agency, shall be placed in an Emergency Fund administered by the Department of Housing and Community Development. This Fund shall be used to respond to crisis situations in local communities, where VCDP funding would take too long to secure or would carry too many restrictions to address the urgent need.

22.6 NONPROFIT COMMUNITY DEVELOPMENT ORGANIZATIONS (NCDOS)

22.6.1 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.

22.6.2 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.

22.6.3 Unrestricted Revenue may only be used for eligible activities as defined in Section 105 of the Housing and Community Development Act (42USC §5305(a)) but is not subject to the other rules and regulations that govern Program Income.

22.7 THRESHOLD QUALIFICATIONS FOR NCDO DESIGNATION

22.7.1 To qualify as an NCDO, an organization must meet all of the following requirements:

22.7.1.1 Establish and manage at least one regional (region defined under Definitions) Revolving Loan Fund (RLF) used for eligible activities as defined in Section 105 of the Housing and Community Development Act (42USC §5305(a))

22.7.1.2 Maintain nonprofit designation from both the U.S. Internal Revenue Service and the State of Vermont;

22.7.1.3 Serve any town, that chooses to participate, within the designated county or region

22.7.1.4 Secure resolutions designating the NCDO from all participating towns in the region served.

22.7.2 The organization must provide the following to secure certification of an NCDO from the Agency:

- 22.7.2.1 Mission Statement, Articles of Incorporation, and Bylaws;
- 22.7.2.2 Personnel policies and organizational chart;
- 22.7.2.3 Financial audit conducted within the most recent two-year period of the organization's operation to demonstrate management capacity and financial soundness;
- 22.7.2.4 Loan guidelines and requirements for all RLF's administered by the NCDO.

22.8 NCDO MANAGEMENT AND ADMINISTRATION

22.8.1 Conveyance of Funds: A municipal grantee may convey its VCDP funds to an NCDO in the following ways:

- 22.8.1.1 Option One: At the time of the grant award, the municipal grantee may subgrant VCDP funds directly to the NCDO, so that the NCDO may originate loans. All repayments flow directly to the NCDO. Although the municipal grantee remains ultimately responsible for the performance of any activities supported by these loans, the NCDO may have responsibility for fulfilling all conditions and requirements of the grant agreement on behalf of the municipality.
- 22.8.1.2 Option Two: At or before the Completion Date of the grant agreement, and before any loan repayments have been received, the municipal grantee may assign all notes and security instruments to the NCDO. The grantee must ensure that its loan documents allow this transfer. As in Option One, all repayments flow directly to the NCDO. The repayments will be program income, since the loan was originated by the municipality. At the point when the NCDO originates loan(s) from the repayments of the assigned loan(s), those loan repayments will be Unrestricted Revenue.
- 22.8.1.3 Option Three: At any time after the Completion Date of the grant agreement, the grantee may elect to assign all notes and security agreements to the NCDO. The grantee must ensure that its loan documents allow this transfer. As in Options One and Two, all repayments flow directly to the NCDO. The repayments will be program income, since the loan was originated by the municipality. At the point when the NCDO originates loan(s) from the repayments of the assigned loan(s), those loan repayments will be Unrestricted Revenue.

22.8.2 Acceptance of Assignment: The NCDO may choose to accept or not to accept the assignment of loans and the associated Program Income and/or Unrestricted Revenue that comprise the repayments. The NCDO may review all loan portfolios,

including loan and security agreements, repayment records, and borrower financial statements prior to making a decision to accept this assignment. The NCDO may require the grantee to keep certain loans or property, or to remedy defects in loan agreements, real estate titles, and all related security documents, prior to accepting the assignment of those items. The NCDO must act upon an offer of assignment.

22.8.3 Agreement for Use: The grantee and NCDO shall execute an agreement upon assignment of the loan(s) and Program Income and/or Unrestricted Revenue that outlines the eligible uses for the funds and the NCDO's responsibilities in administering the funds. The agreement shall clearly state the grantee's understanding that all funds previously generated by a grant to the municipality shall be the property of the NCDO, and available to all participating municipalities in the NCDO region. Upon execution of the assignment agreement between the municipality and the NCDO, the NCDO must enter into a closeout agreement with the Agency, and the Agency will terminate the existing closeout agreement with the municipality.

22.8.4 Corporate Status: If the NCDO fails to maintain its certification with the Agency for any reason, then it must transfer all Program Income, Unrestricted Revenue and the loan portfolio that generates this income to another qualified NCDO. Such transfers must be approved by the Agency.

22.8.5 Record Keeping & Reporting: The NCDO shall follow VCDP's requirements for recording and reporting all Program Income and/or Unrestricted Revenue. In addition to any reports that are due the Agency, the NCDO shall report the following information on an annual basis by Grantees' fiscal year period to all the participating municipalities in its designated county or region:

22.8.5.1 the amount, purpose, and location of loans made with PI and/or UR

22.8.5.2 the terms of the loan (interest, repayment term)

22.8.5.3 balance sheet for the RLF into which loan repayments are made; and

22.8.5.4 administrative and management costs for the RLF for the year; these costs shall not exceed 20% of the gross receipts.

22.8.6 Use of Funds Relative to New Applications: Once a municipal grantee has assigned VCDP funds to an NCDO, the NCDO may not be compelled by the Agency to contribute these funds to any future project for which the municipality is seeking VCDP funding. However, the municipality is responsible for seeking funding from the NCDO if appropriate to the project.

22.9 CLOSEOUT AGREEMENTS

- 22.9.1 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.
- 22.9.2 The following types of closeout agreements will be executed between the Agency and the grantee or NCDO:
- 22.9.3 When the municipal grantee originates the loan and receives the loan repayments, a closeout agreement will be negotiated and executed between the Agency and the municipal grantee
- 22.9.4 When the municipal grantee subgrants 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
- 22.9.5 When the municipal grantee originates the loan and then assigns 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
- 22.9.6 When the municipal grantee originates the loan and receives 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 between the Agency and the municipal grantee will then be terminated.

22.10 TRACKING AND REPORTING PI AND UR

- 22.10.1 Initial Disbursement of Funds expected to be Repaid: All Program Income and Unrestricted Revenue shall be tracked and reported annually (see annual reporting period under Definitions) to the Agency under the terms of a closeout agreement on forms provided by the Agency. When recapture provisions apply, the grantee or the NCDO shall make payment to the Agency within 30 days from the last day of the reporting period specified in the Closeout Agreement.
- 22.10.2 Re-Use of Funds Prior to Grant Closeout: Program Income and/or Unrestricted 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.

REVOLVING FUNDS

23.0 GENERAL

- 23.0.1 This Chapter establishes the requirements that grantees must follow when choosing the option of establishing a Revolving Fund under the Program Income Procedures. See Chapter 22, Program Income of the Agency Procedures.
- 23.0.2 A Revolving Fund contains repayments of principal and interest of loans made under the VCDP. A Revolving Fund cannot be directly capitalized with grant funds. That is, unobligated funds cannot be requisitioned and deposited into the fund. As loans are made, funds to cover them are requisitioned. Then as the repayments come back, these can be deposited in the Revolving Fund account.
- 23.0.3 The Revolving Fund must be established to accomplish specific purposes, set forth and covered by provisions in a Grant Agreement or Closeout Agreement. Changes in the purpose require amending the Closeout Agreement.
- 23.0.4 A Revolving Fund must be active. Repayments cannot be deposited and allowed to accumulate beyond a level sufficient to meet the intent of the Revolving Fund.
- 23.0.5 The Revolving Fund must meet all the criteria listed in this Section.
- 23.0.5.1 It must be authorized by the legislative body of the grantee municipality(s), or by the board of the nonprofit community development organization (NCDO).
- 23.0.5.2 It must be approved by the Agency and covered by provisions of a Grant Agreement or Closeout Agreement.
- 23.0.5.3 A separate interest-bearing bank account must be set up specifically for the Revolving Fund.
- 23.0.5.4 A statement of policies must be adopted covering the operation of the Revolving Fund; conditions of loans, rates of interest, loan security, means of collection, etc. and shall be filed with the Agency, including any amendments or revisions.
- 23.0.5.5 There must be a managing entity a loan review committee (preferably distinct from the NCDO/RLF), and a bank or other financial entity to service the loans (if the managing entity does not directly service the loans).
- 23.0.5.5.1 VCDP grant funds in a revolving loan fund where 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 may be subject to recapture by the Agency.

AMENDMENTS

24.0 GENERAL

24.0.1 This chapter establishes the procedures for revisions, extensions, or amendments to the Grant Agreement under the VCDP.

24.1 BUDGET REVISIONS

24.1.1 The Grantee may, after first providing written notice and justification to the Agency, make a onetime revision of the amounts listed in the "VCDP Funds" column of the Grant Agreement Budget Sources and Uses:

24.1.1.1 the aggregate impact is no more than ten (10%) percent of the Total Award, listed as the "Total" item in the "VCDP Funds" column; and

24.1.1.2 the Total Award is not increased.

24.1.2 However, there shall be no change to budgeted amounts for General Administration or Program Management Activities without prior written approval of the Agency. Program Management and General Administration activities are indicated by a VCDP Code suffix of "13."

24.1.3 The Agency may, at its discretion, modify the reporting cycle established in the Grant Agreement.

24.2 CORRECTIONS

24.2.1 Minor corrections may be made to an executed Grant Agreement to names, words, or numbers as needed to correct errors of fact or to clarify understanding; provided doing so would not materially change the meaning of any provision of the Grant Agreement.

24.2.2 Such corrections may be made by letter, memorandum, initialed ink notations or similar means, provided all parties agree to said corrections and the means by which they are to be made.

24.3 AMENDMENTS

24.3.1 Except as provided for in this Chapter, all changes to the Grant Agreement shall constitute an amendment.

- 24.3.2 Substitution of a new Activity for a funded Activity will not be agreed to.
- 24.3.3 The Grantee shall notify the Agency if, through the use of Other Resources, there is an intention to expand, enhance, or add to the scope of the program covered by the Agreement, or if there is a proposal to undertake activities that will have an impact upon the buildings, areas, or activities of this VCDP. The Agency reserves the right to require an amendment to the Agreement if such is deemed necessary.
- 24.3.4 Amendments of the terms and conditions of the Agreement shall not become effective unless reduced to writing, numbered, and signed by the Secretary and the duly authorized representative of the Grantee.