

**STATE OF VERMONT GRANT AGREEMENT**

**Part 1 - Grant Award Detail**

**SECTION I - GENERAL GRANT INFORMATION**

<sup>1</sup> Grant #: 07110-IG-2020-Middlebury-61		<sup>2</sup> Original <input checked="" type="checkbox"/> Amendment # _____	
<sup>3</sup> Grant Title: Lindale Mobile Home Park Community Septic			
<sup>4</sup> Amount Previously Awarded: \$ 0.00		<sup>5</sup> Amount Awarded This Action: \$ 350,000.00	
<sup>6</sup> Total Award Amount: \$ 350,000.00			
<sup>7</sup> Award Start Date: 6/10/2021		<sup>8</sup> Award End Date: 12/31/2023	
<sup>9</sup> Subrecipient Award: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>			
<sup>10</sup> Vendor #: 39947		<sup>11</sup> Grantee Name: Town of Middlebury	
<sup>12</sup> Grantee Address: 77 Main Street			
<sup>13</sup> City: Middlebury		<sup>14</sup> State: VT	
		<sup>15</sup> Zip Code: 05753	
<sup>16</sup> State Granting Agency: Agency of Commerce and Community Development-DHCD			<sup>17</sup> Business Unit: 07110
<sup>18</sup> Performance Measures: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<sup>19</sup> Match/In-Kind: \$7,415,782 Description: See Attachment B - Payment Provisions and Project Budget, 4. Sources and Uses	
<sup>20</sup> If this action is an amendment, the following is amended: Amount: <input type="checkbox"/> Funding Allocation: <input type="checkbox"/> Performance Period: <input type="checkbox"/> Scope of Work: <input type="checkbox"/> Other: <input type="checkbox"/>			

**SECTION II - SUBRECIPIENT AWARD INFORMATION**

<sup>21</sup> Grantee DUNS #: 026135772		<sup>22</sup> Indirect Rate: <u>0</u> % <small>(Approved rate or de minimis 10%)</small>		<sup>23</sup> FFATA: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
<sup>24</sup> Grantee Fiscal Year End Month (MM format): 6/30				<sup>25</sup> R&D: <input type="checkbox"/>	
<sup>26</sup> DUNS Registered Name (if different than VISION Vendor Name in Box 11):					

**SECTION III - FUNDING ALLOCATION**

**STATE FUNDS**

Fund Type	<sup>27</sup> Awarded Previously	<sup>28</sup> Award This Action	<sup>29</sup> Cumulative Award	<sup>30</sup> Special & Other Fund Descriptions
General Fund	\$0.00	\$0.00	\$0.00	
Special Fund	\$0.00	\$0.00	\$0.00	
Global Commitment (non-subrecipient funds)	\$0.00	\$0.00	\$0.00	
Other State Funds	\$0.00	\$0.00	\$0.00	

**FEDERAL FUNDS**

*(includes subrecipient Global Commitment funds)*

**Required Federal Award Information**

<sup>31</sup> CFDA #	<sup>32</sup> Program Title	<sup>33</sup> Awarded Previously	<sup>34</sup> Award This Action	<sup>35</sup> Cumulative Award	<sup>36</sup> FAIN	<sup>37</sup> Federal Award Date	<sup>38</sup> Total Federal Award
14.228	Community Development Block Grant (CDBG)	\$0.00	\$350,000.00	\$350,000.00	B.21.DC.50.0001	8/26/2021	\$7,436,844.00
<sup>39</sup> Federal Awarding Agency: U.S. Department of Housing and Urban Development (HUD)		<sup>40</sup> Federal Award Project Descr: CDBG FY21					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
		\$0.00	\$0.00	\$0.00			\$0.00
Federal Awarding Agency:		Federal Award Project Descr:					
<b>Total Awarded - All Funds</b>		<b>\$0.00</b>	<b>\$350,000</b>	<b>\$350,000.00</b>			

**SECTION IV - CONTACT INFORMATION**

<p><b>STATE GRANTING AGENCY</b></p> <p>NAME: Julia Connell          TITLE: Community Development Specialist          PHONE: 802-828-5215          EMAIL: Julia.Connell@vermont.gov</p>	<p><b>GRANTEE</b></p> <p>NAME: Elise Shanbacher          TITLE: Executive Director          PHONE: 802-877-2626          EMAIL: elise@addisontrust.org</p>
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## GRANT AGREEMENT # 07110-IG-2020-MIDDLEBURY-61

1. **Parties:** This is a Grant Agreement between State of Vermont Agency of Commerce and Community Development (hereinafter called “State” or “Agency”) and Town of Middlebury with principal place of business at 77 Main Street, Middlebury 05753 (hereinafter called “Grantee”). It is the grantee’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the grantee is required to have a Vermont Department of Taxes Business Account Number. The grantee is required by law to have a Federal ID# and it is 036000564.
2. **Subject Matter:** The subject matter of this Grant Agreement is Community Development Block Grant.
3. **Award Details:** Amounts, dates and other award details are as shown in the attached *Grant Agreement Part 1-Grant Award Detail*. A detailed scope of work covered by this award is described in Attachment A.
4. **Amendment:** No changes, modifications, or amendments in the terms and conditions of this Grant Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Grantee.
5. **Cancellation:** This Grant Agreement may be suspended or cancelled by either party by giving written notice as provided in Attachment C, Section 27 or Attachment D, Sections XVI and XVII.
6. **Attachments:** This Grant consists of ?? pages including the following attachments that are incorporated herein:

Attachment A – Scope of Work to Be Performed and Special Conditions

Attachment B – Payment Provisions and Project Budget

Attachment C – Customary State Grant Provisions

Attachment D – Other Provisions (CDBG Standard Provisions)

Attachment E – Certifications

**NOTE: Signatures blocks have been omitted because document will use e-signing technology in lieu of signatures.**

## SCOPE OF WORK AND SPECIAL CONDITIONS

(A) Definitions - The following definitions shall apply throughout:

<b>Grantee:</b>	Town of Middlebury
<b>Subgrantee:</b>	Addison County Community Trust (ACCT), PO Box 311, Vergennes, VT 05491 (DUNS # 797942786 and Federal ID# 22-3032009)
<b>Administrator:</b>	Town and ACCT
<b>Program Manager:</b>	ACCT

(B) **Project Description:**

The Grantee shall subgrant CDBG funds together with Other Resources, as set out in the *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, to Addison County Community Trust for the construction of a community septic systems for Lindale Mobile Home Park, located on Rte. 116 in Middlebury. Parcel map shows the location as 0 Case Street, Middlebury, VT 05735.

The project will construct a community septic system for Lindale Mobile Home Park and will serve *sixty (60)* households, including 116 individuals, of which 48 household (85 individuals) are at or below 80% of median income. ACCT entered into a purchase and sale agreement immediately after the Environmental Release was secured in December 2020 for a parcel of land adjacent to the park which will hold the septic. The park is connected to municipal water, but the Middlebury sewer system does not extend to the park and each lot has an individual or shared septic system. The project was awarded VCDP planning grant in 2017 to examine the long-term options with cost estimates of the Park's septic needs; to investigate any archaeological issues should a community septic system be the recommended option; and to conduct any needed legal review relative to any of the options. Community septic was determined to be the best alternative solution, as replacement systems have failed within months due to hydrogeology and individual septic replacement is costly. Engineering assessment for wastewater improvement was done in 2020, completed as part of the planning grant. As of late 2020, ACCT has completed an in-depth Preliminary Engineering Report, a full NEPA review, a full financing plan, and a purchase and sales agreement with a neighboring landowner. ACCT is currently working on a financial restructuring with Vermont Housing Finance Agency (VHFA) and moving through the Agency of Natural Resources (ANR) engineering process to secure approval for community wastewater system.

### **Background:**

The community septic project is part of a comprehensive plan to preserve the nine ACCT mobile home parks and ensure that ACCT can continue to offer affordable homeownership opportunities to low- and moderate- income households. Lindale represents 17% of the entire mobile home park housing stock in the county, so it is vital to the affordable housing stock in Addison county. Of the *67 units* in the Park, 48 units were constructed in 1968 and

an additional 19 lots added in 1991 – many systems are well past their lifespan. As part of their portfolio restructuring process, ACCT has also submitted an application for tax-exempt bond financing from the Vermont Housing Finance Agency. This refinance of existing debt will also include the purchase of the abutting parcel of land on which the new leach field system will be constructed. The ACCT portfolio refinance will also improve the park's cash flow by about \$35,000 annually in order to better maintain park infrastructure, as well as create capacity to service the new USDA-RD debt. VHCB and VCDP grants are needed to bring the project debt down to a level the park can afford to service even after the refinance.

Lindale is not able to generate reserves for replacement sufficient for the capital expense of constructing a new community septic system or another replacement strategy from the lot rents paid by residents. Exacerbating this issue is Lindale's high debt burden. Lindale carries a total annual debt payment of \$86,000 with outstanding debt just under \$1M. This debt includes original acquisition costs and the 1991 expansion project. A majority of this debt is not scheduled to be retired until 2034. ACCT has kept pace with regular lot rent increases. 30% of the lot rent that each homeowner in the park pays each month goes toward outstanding debt. Even with the debt burden and ballooning operating costs related to septic failures, ACCT has managed to accumulate a small replacement reserve of \$120,000.

**(1) Acquisition Real Property (1001)**

The Subgrantee will use Other Resources, as set out in the *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, to purchase a parcel of land adjacent to the park which will hold the septic located at (address).

**(2) Sewer (Activity 1005)**

The Subgrantee will use CDBG funds, together with Other Resources, as set out in the *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, to eliminate the use of sixty (60) individual on-site septic systems and construct a community septic sewer infrastructure to provide sewer service to all 60 households in Lindale Mobile Home Park.

**(3) Program Management (Activity 1013)**

The Subgrantee shall use Other Resources, as set out in the *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, to perform Program Management including but not necessarily limited to, activities relating to securing release of funds under the environmental regulations, securing compliance with labor standards (including Davis-Bacon wage rates), permit assistance, procurement standards, contracts management, construction oversight and coordination, and legal services.

**(C) General Administration (Activity 5013)**

The Grantee shall use CDBG funds, as set out in *Attachment B, Payment Provisions and Project Budget, 4. Sources and Uses*, for the general administration of the grant. General administration responsibilities include, but are not limited to, activities relating to setting up and maintaining financial management records, completing progress reports, ensuring that the terms and conditions of this *Agreement* are carried out, assisting with subrecipient monitoring, and for eligible costs of audit.

**(D) National Objective**

The National Objective will be met by completing the public facility improvements to the water and sewer infrastructure of the Lindale Mobile Home Park in support of housing to benefit sixty (60) residential households, of which 48 (80%) of the households are at or below 80% median income determined through income surveys.

Activity	National Objective	Performance Indicator(s)	Proposed
Public Facility	Low & Moderate Income	Number of Units	60
		Number of Households	60
		Number of Low to Moderate Income Households	48
		Number of Persons Served	60
		Number of Low or Moderate-Income Persons Served	48

(E) The following documents shall be filed with the Agency at the times specified:

- (1) Prior to the first requisition of funds under this Agreement, as required by Attachment D, Section II(D), Grantee shall provide copies of the management forms and municipal policies or a certification that all required policies previously have been adopted and filed with the Agency.
- (2) Prior to the first requisition of funds, Grantee shall provide evidence of a firm commitment of Other Resources called for by Attachment B, Section 4.
- (3) Prior to executing the Contract for Program Management, Subgrant with the Program Manager, Grantee shall ensure that the Program Manager and Subgrantee have each obtained DUNS numbers from the D&B D-U-N- S Request Service at <http://fedgov.dnb.com/webform/displayHomePage.do>, have each registered with the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov), are not listed on the State’s debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>, and shall provide the DUNS number, evidence of registration, and evidence that the parties are not debarred to the Agency.
- (4) Prior to the first requisition of funds, a copy of the fully executed Subgrant Agreement between the Grantee and Subgrantee, together with such other documents as may be required to secure compliance with the conditions of said subgrant.
- (5) Prior to the first requisition of funds, the Subgrant Agreement shall require, at a minimum, that Subgrantee secure its obligations thereunder by providing Grantee a mortgage on the real property being assisted with CDBG funds. The Grantee shall upload a copy of the fully executed and recorded mortgage to GEARS along with any other supporting documentation. This mortgage may be discharged upon request of the Subgrantee after the National Objective is achieved and the requisite five (5) years of compliance with the terms of the subgrant is completed, if applicable.
- (6) Prior to the first requisition of funds, the Grantee shall provide an opinion of counsel, satisfactory to the Agency, that each of the documents provided pursuant to Paragraphs (E)(4) through (5) hereof is a legal, valid, and binding instrument, enforceable in accordance with its terms; that such documents meet the requirements of this Agreement,

including but not limited to the requirements set forth at paragraphs (J) (1) to (16), and provides for use of the CDBG funds in compliance with this Agreement; and that the Subgrantee/Borrower has met all conditions required under such documents which must predate the first requisition.

- (7) Prior to the first requisition of funds, certification that all permits needed for the project have been identified and those needed to commence activities have been secured.
- (8) Prior to the first requisition of funds, Grantee shall provide evidence that it has established a bank account that meets the requirements of Attachment D, Paragraph V.
- (9) Within six months of the date of this Grant Agreement, or prior to the completion date of the project, whichever occurs first, a member of the legislative body, municipal CEO, municipal manager/administrator or a municipal designee responsible for housing issues within a municipality such as a member of the planning commission, zoning board of appeal, development review board or local housing committee, shall attend an Agency-approved Fair Housing Training.
- (F) Grantee shall demonstrate compliance with Davis-Bacon reporting requirements.
- (G) Grantee shall demonstrate compliance with **Section 3 24 CFR 75 Subpart C reporting requirements** by uploading the CDBG Section 3 Report Form in each required progress report in GEARS.
- (H) Grantee shall comply and shall require Subgrantee to comply with all conditions set forth in the Environmental Review Release Letter dated **December 28, 2020**, and shall maintain/upload documentation demonstrating compliance.
- (I) Grantee shall ensure adequate Subrecipient Oversight Monitoring per the Uniform Guidance using the Subgrantee Financial Monitoring Worksheet that was submitted as an award condition. If the Subgrantee Financial Monitoring Worksheet was not submitted as an award condition, it must be completed prior to the first requisition. Only a Municipal staff person can complete and be responsible for the Subgrantee monitoring.
- (J) **The Subgrant Agreement** between the Grantee and the Subgrantee shall contain such provisions as are appropriate and necessary to meet the requirements of the VCDP as set forth in this *Agreement*, and as set forth in VCDP's Sample Subgrant Agreement; shall incorporate by reference this Grant Agreement; and shall, at a minimum, provide for the following:
  - (1) The Grantee shall subgrant **\$350,000** in CDBG funds.
  - (2) Require the Subgrantee to provide documentation to certify that, as of the date of execution of the Subgrant Agreement the organization is authorized to do business in the State of Vermont.
  - (3) Require the Subgrantee to provide documentation to certify that, as of the date of execution of the Subgrant Agreement, the organization is in good standing with respect to, or in full compliance with a plan to pay, any and all federal, state and local taxes.
  - (4) Require the Subgrantee to provide documentation to certify that, as of the date of execution of the Subgrant Agreement, the organization is current on or is in full

compliance with a plan to pay, any and all financial obligations.

- (5) Require Subgrantee to certify that, as of the date of execution of the Subgrant Agreement, the organization is not listed in the Exclusions portion of Performance Information in the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov); nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>.
- (6) Require the Subgrantee to provide documentation to certify that, as of the date of execution of the Subgrant Agreement, all permits needed for the project have been identified and those needed to commence activities have been secured.
- (7) Require the Subgrantee to provide a firm commitment of all Other Resources.
- (8) Require Subgrantee to secure its obligations hereunder by providing Grantee a **mortgage** on the real property. A copy of the recorded mortgage shall be uploaded to the GEARS system.
- (9) Require the Subgrantee to perform the **General Administration** (Activity #5013) and the **Program Management** (Activity #3013) of this grant, including all applicable specific functions set forth in the “VCDP Sample Subgrant and Administrative Services/Program Management Agreement.”
- (10) Require the Subgrantee to comply with Section 3 requirements in accordance with 24 CFR 75 Subpart C to provide economic opportunities in connection with this project, to the greatest extent feasible, to low and very low-income persons residing within the area in which the project is located and to Section 3 businesses. Section 3 requirements shall be included in bid documents and be attached to all contracts executed in connection with this project. For more information on Section 3 see [HUD Regulations](#).
- (11) Require the Subgrantee to demonstrate compliance with Davis-Bacon reporting requirements.
- (12) Require Subgrantee to demonstrate compliance with **Section 3 24 CFR 75 Subpart C reporting requirements** by uploading the CDBG Section 3 Report Form in each required progress report in GEARS.
- (13) Require the Subgrantee to complete a Subgrantee Financial Monitoring Worksheet that complies with Subrecipient Monitoring per the Uniform Guidance and upload the documentation to the Agency’s on-line grants management system (GEARS).
- (14) Require Subgrantee to commit to meet the national objectives called for under the *Federal Act* by:
  - (a) achieving the benefits called for in the National Objective section of this Agreement, and
  - (b) maintaining documentation as may be necessary to clearly demonstrate that said benefits have been met.
- (15) Contain a provision that for a period of at least five (5) years from the Completion Date, the Subgrantee shall obtain, pay for, and keep in full force, insurance on the property assisted with CDBG funds against such risks and in such amounts and with an insurance

carrier as may be reasonably acceptable to the Grantee. Such insurance policy shall contain a loss payable clause acceptable to the Grantee. The Subgrantee shall furnish the Grantee satisfactory evidence of such insurance.

- (16) Contain a provision that for a period of five (5) years from the Completion Date, in compliance with the provisions of "**Use of Real Property**," [24 CFR §570.505](#) and "**Agreements with Sub Recipients**" [24 CFR §570.503\(b\)\(7\)](#) including that timely notice shall be given to the Grantee and the Agency should there be the anticipation of a change of use or sale of all or a portion of the facility assisted using CDBG funds to any person or entity who will use it for any changed purpose, of discontinuance of operation of all or a portion of the facility, or of material alteration or expansion of its purpose or function, including the loss of affordability of the facility or housing units. The Grantee shall have such remedies that are available under the law, up to and including full recovery of the CDBG funds."



## PAYMENT PROVISIONS AND PROJECT BUDGET

### 1. Payment Requisitions

The Agency will process requisitions on or about the first and fifteenth of the month. The Grantee must submit requisitions a minimum of seven (7) business days prior to processing.

The Grantee shall submit requisition requests through the GEARS System along with adequate source documentation such as: invoices paid, canceled checks and timesheets. For reimbursement for Grantee's or Subgrantee's personnel, the supporting documentation must detail the expenditures by identifying the personnel, the time worked, the rate being charged per each respective individual, and a description of the work that was performed. For any other costs that are billed directly to Grantee or Subgrantee, Grantee shall identify the expenditures and attach copies of supporting invoices.

### 2. Reporting Requirements

The Grantee shall submit Progress and Financial Reports through the GEARS System biannually to the Agency detailing the status of the Grantee's or Subgrantee's work and the status of the Project, and in particular the activities described in Attachment A. The First Reporting period shall end **September 30, 2021** and the report shall be due no later than **October 30, 2021**. The Second Reporting period shall end **March 31, 2022**. All subsequent biannual reports shall be due no later than thirty (30) days following the end of the reporting period.

The Grantee shall develop an overall financial management system sufficient to demonstrate the tracking of all expenditures and receipts.

### 3. General Provisions

In no event will the total funds provided by the Agency exceed the Total Award. Any additional funds required to complete the activities set forth in this Agreement will be the responsibility of the Grantee.

### 4. Sources and Uses

The Other Resources total **\$1,777,215**, derived as follows: **Update budget to reflect the reduced award amount and approved enhancement.**

Other Resources	Funding Source	Type	Amount	Status
Rural Development (USDA-RD)	Federal	Deferred Loan	\$ 822,255	Pending
Vermont Housing & Conservation Board (VHCB)	State/Local	Grant	\$ 500,000	Pending
Vermont Housing Finance Agency (VHFA)	State/Local	Loan	\$ 144,013	Pending
Other (Other) - Northern Borders Regional Comm	Federal	Grant	\$ 200,000	Pending
Other (Other) - Lindale Reserves	Private	Equity	\$ 110,947	Committed
<b>Total Other Resources</b>			<b>\$1,777,215</b>	

Activity	Program Area	Code	VCDP Amount	VHCB	VHFA	USDA-RD	Other	Total Activity Costs
Acquisition - Real Property	Public_Facilities	1001	\$ -		\$114,000			\$ 114,000
Sewer	Public_Facilities	1005	\$ 683,500	\$ 170,482		\$518,037	\$ 200,000	\$ 1,572,019
Program Management	Public_Facilities	1013	\$ -	\$ 329,518	\$ 30,013	\$304,218	\$110,947	\$ 774,696
General Administration	Public_Facilities	5013	\$ 16,500					\$ 16,500
<b>Total Costs</b>			<b>\$ 700,000</b>	<b>\$ 500,000</b>	<b>\$144,013</b>	<b>\$822,255</b>	<b>\$310,947</b>	<b>\$ 2,477,215</b>
<b>Percentage of Total</b>			<b>28%</b>	<b>20%</b>	<b>6%</b>	<b>33%</b>	<b>13%</b>	<b>100%</b>

**5. Funding Sources for Project** **VCDP staff to complete with finalized budget**

Federal Funds: \$ (%)

State/Local Funds: \$ (%)

Private Funds: \$ (%)

**STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED DECEMBER 15, 2017**

**1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State

retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this

Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors

and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event

described in this paragraph.

**26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**27. Termination:**

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

**B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

**C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**29. No Implied Waiver of Remedies:** Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements:** If this Agreement is a grant that is funded in whole or in part by Federal funds:

**A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.



For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

### 32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

## OTHER PROVISIONS (CDBG STANDARD PROVISIONS)

### I. Subject Matter:

(A) This Agreement is funded, in whole or in part, through a grant provided to the Agency by the United States Department of Housing and Urban Development (HUD) under Title I of the federal Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 *et seq.* (the “Federal Act”). Pursuant to the Federal Act, the State of Vermont has elected to administer the federal program of Community Development Block Grants (CDBG) through the Agency. The Agency, in accordance with the provisions of the Vermont Community Development Act, 10 V.S.A. chapter 29 (the “State Act”), has awarded CDBG funds for the purpose of supporting the Grantee’s community development program. This Agreement shall be governed by all applicable provisions, as amended, contained in the Federal Act, the CDBG Regulations (24 CFR Part 570), the State Act, and the Grants Management Guide, including the Agency Procedures contained therein, whether specifically referred to in this Agreement or not.

### II. Obligations of Grantee.

(A) Agreements to be in Writing. The activities required by this Agreement shall be performed by the Grantee or one or more subrecipients, such as a subgrantee or borrower, or one or more third parties such as a contractor or subcontractor, pursuant to one or more written contracts consistent with this Agreement. When the term “subrecipient” is used herein it shall mean a person or entity that receives a subgrant or loan from the Grantee hereunder to contribute to the achievement of the National Objective set out in Attachment A.

(B) Liability of Grantee. The Grantee shall remain fully liable and obligated for compliance with this Agreement notwithstanding the subgranting, lending or contracting with any third party(s). The Grantee shall require any third party to comply with all applicable provisions of this Agreement, shall provide a copy of this Agreement to any such third party, and shall, when appropriate, attach and incorporate by reference this Agreement to any contract with such third party.

(C) Documents. The Grantee understands that the filing of documents with the Agency does not require that the Agency review and comment upon any such documents. It shall be the Grantee’s sole responsibility. Filing of such documents with the Agency or use of model documents provided by the Agency shall in no way diminish Grantee’s obligations hereunder.

(D) Municipal Policies and Forms.

(1) Grantee shall have duly adopted municipal policies as set forth below, and shall file copies of such policies with the Agency:

- (a) Equal Employment Opportunity
- (b) Fair Housing
- (c) Use of Excessive Force
- (d) Use of CDBG funds for Federal Lobbying
- (e) Drug-Free Workplace
- (f) Code of Ethics
- (g) Subrecipient Oversight Monitoring Policy
- (h) Whistleblower Protections
- (i) Texting While Driving Policy

The Grantee may have previously adopted the above policies and filed copies of the same with the Agency. No duplicate filing shall be required if Grantee certifies such facts.

- (2) Grantee shall duly adopt and file the following with the Agency: Form PM-1:  
Resolution to Accept the Grant Agreement

(E) Public Hearing. The Grantee shall hold a public hearing prior to the Completion Date to afford its residents the opportunity to review and comment on the program results and overall performance. The hearing shall be publicly warned at least fifteen (15) days in advance, stating the purpose of the hearing, with the notice appearing in a newspaper of general circulation in the municipality. Written minutes and a summary of public comments shall be filed with the Agency with the Final Program report.

(F) Publicity. If the Grantee or Subrecipient issues a press release or public communication pertaining to the Project assisted by this Agreement, it shall include a statement that the project is funded by a VCDP grant awarded by the Agency of Commerce and Community Development and shall reference the Total Award amount. Any construction sign posted at the Project Site shall identify that funding is provided by the U.S. Department of Housing and Urban Development through a VCDP grant awarded by the Agency of Commerce and Community Development.

(G) Continuing Obligations. Grantee's obligations under Sections XI (Monitoring and Reporting), XII (Audits), XIII (Completion Certificate) and XIV (Retention of and Access to Records) shall survive the termination of this Agreement.

### III. Program Costs.

(A) Allowable Costs. The Grantee may incur only such costs as are reasonable and necessary for the Project and are allocable and allowable under the Agency Procedures, Chapters 5 through 7. Expenditures not specifically authorized may not be incurred without prior written approval by the Agency.

- (B) Cash-in Kind. Cash and cash-in-kind contributions made by the Grantee shall follow the criteria established by the Agency Procedures, Chapter 8.
- (C) Impermissible Expenditures Pending Environmental Review. The Grantee shall not incur costs for Project activities, except as provided in Subparagraph (D) below, until the Environmental Review required by §104(g) of the Federal Act has been completed and the Agency has issued the "Notice of Release of Funds."
- (D) Allowable Expenditures Pending Grant Agreement. As of the Award Date (Award Start Date), reasonable costs may be incurred for Environmental Studies, Planning, General Administration, Program Engineering and Design, and Public Information. Any Project activities performed by the Grantee in the period between the Award Date and the execution of this Agreement shall be performed at the sole risk of the Grantee.
- (E) Completion and Closeout. All costs other than General Administration must be obligated or expended prior to the Completion Date (Award End Date). All CDBG funds (other than those related to Closeout) must be liquidated or paid within thirty (30) days after the Award End Date. No CDBG funds may be obligated after the Completion Date except for those General Administration activities required to close out the Grant, such as the Final Program Report, Single Audit (if required), and Closeout Agreement. All obligations must be liquidated prior to closeout.
- (F) Agency Review of Expenses. At any time during the performance of this Agreement, or upon receipt of the Final Program Report and the Final Audit Report, the Agency may review any or all costs incurred by the Grantee and any or all payments made. Upon such review the Agency shall disallow any items of expense which are determined to be in excess of approved expenditures and shall inform the Grantee of any such disallowance by written notice.
- (G) Disallowance of Expenses. If the Agency disallows costs for which payment has not yet been made, it shall refuse to pay such costs. If payment has been made with respect to costs which are subsequently disallowed, the Agency may deduct and/or withhold the amount of disallowed costs from any future payments under this Agreement or require that such costs be refunded to the Agency.

#### **IV.Requisition of CDBG funds.**

- (A) CDBG funds may be requisitioned as advances and/or reimbursements, except as provided in paragraph (C), below. The Grantee shall establish procedures to ensure that any CDBG funds in excess of \$5,000 are expended within ten (10) calendar days of receipt in Grantee's depository account and shall ensure that any subrecipient shall conform to such procedures.

- (B) The Grantee shall not requisition CDBG funds for amounts that are withheld from contractors or subcontractors to assure satisfactory completion of the work. These amounts may be requisitioned when the Grantee makes final payment, including the amounts withheld.
- (C) The Secretary may suspend the requisition of advances should it be determined that the Grantee is unwilling or unable to establish and comply with procedures to minimize the time period between cash advances and disbursement. Payments to the Grantee shall then be made only as reimbursement for actual cash disbursements.
- (D) The Grantee shall expend CDBG funds on a pro rata basis with Other Resources, unless otherwise authorized by the Agency.
- (E) If CDBG funds are needed prior to their availability due to VCDP requirements or conditions, the Grantee and/or one of the project parties must seek bridge financing to meet any expenses that cannot be delayed. The expenditure of bridge financing must comply with all VCDP requirements, including the environmental review process.
- (F) If the project's non-general administration budget comes in under budget, CDBG funds in an amount proportionate to the unused portion of the total budget (CDBG funds and Other Resources) shall be returned to the Agency. Such amounts may not be reallocated to other activities.
- (G) If the project's general administration budget comes in under budget, the unused portion shall be returned to the Agency. The expenditure of CDBG funds for General Administration must be maintained at the ratio set out in the Project Budget, Attachment B.

## **V. Bank Accounts for CDBG funds.**

### **(A) Depository Accounts.**

- (1) Funds disbursed pursuant this Agreement shall be deposited in a separate, non interest-bearing account, dedicated to CDBG funds, and held in the name of and under the ownership of the Grantee. Any interest earned on funds in the depository account shall be remitted to the State for subsequent return to the United States Treasury. Funds held in the depository account shall be under the control of the Grantee's treasurer, and shall be paid out only on orders drawn by officials authorized by law to draw such orders.
- (2) Accounts established in the name of the Grantee and into which Program Income or housing rehabilitation escrow funds are deposited shall conform to the requirements of subparagraph (A)(1) of this Paragraph, except that such accounts may be interest bearing.

(3) All depository accounts shall be fully insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. Any balance exceeding such coverage must be collaterally secured by U.S. Government obligations.

(B) Fidelity Bond Requirements. All individuals who are authorized to deposit receipts and/or pay out funds from any of the accounts covered by this Paragraph shall have fidelity bond coverage in an amount commensurate with the total losses which might be incurred.

(C) Other Accounts. The Grantee shall require that accounts involved with the activities covered by this Agreement which are established by Subrecipients or entities retained for the purposes of administration of this grant be secured as required in Subparagraph (A)(3) and that persons who are authorized to make deposits into or pay out funds from any such accounts have fidelity coverage as required in Subparagraph (B).

## **VI. Financial Management.**

The Grantee shall establish and maintain a system which assures effective control over and accountability for all funds, property and other assets used for or obtained under this Agreement. Such system shall:

- (A) Maintain separate accounting records and source documentation for the activities funded under this Agreement and provide accurate financial information in the Progress Reports and any other status reports in the form specified by the Agency;
- (B) Provide for accurate, current and complete disclosure of the financial status of the Program and for the expenditure of any Other Resources listed in the Project Budget, Attachment B;
- (C) Establish records of budgets, receipts, and expenditures for each activity and demonstrate the sequence and status of receipts, obligations, disbursements, and fund balance;
- (D) Be consistent with generally accepted accounting principles and support the program and/or single audit(s) requirements set forth in Agency Procedures, Chapter 21; and
- (E) Include a subrecipient monitoring policy that requires the Grantee to exercise oversight monitoring of grant funds that are disbursed to a sub-recipient, to ensure the funds are properly managed (See Agency Procedures, Chapter 19). The Grantee shall also require the sub-recipient to complete the Financial Monitoring Worksheet.

## VII. Procurement Procedures.

- (A) The Grantee may use established procurement procedures which reflect applicable State and local laws and regulations, provided that these procedures meet the requirements of the standards set forth in the Agency Procedures, Chapter 10. This Agreement and the Agency Procedures shall in no way be construed to relieve the Grantee of contractual obligations outside of this Agreement.
- (B) Conflict of Interest.
- (1) In the procurement of supplies, equipment, construction, and services by the Grantee, all members of the legislative bodies, officers or employees of the Grantee, or their designees, Subrecipients, or agents, or other persons who exercise any functions or responsibilities with respect to the program shall be bound by the provisions of Agency Procedures, Chapters 9 and 10.
- (2) The Grantee shall include or cause to be included, provisions covering conflict of interest consistent with the requirements of this Paragraph in all contracts with third parties.
- (3) The Grantee shall not employ any employee of the Agency.
- (C) The Grantee shall be responsible, in accordance with good administrative practices and sound business judgment, for the settlement of any contractual or other issues arising out of procurement obligations set forth herein.
- (D) Prior to entering into agreements with third party recipients (contractor, subcontractor, architect, engineer, etc.), the Grantee and any subrecipient (subgrantee/borrower) shall ensure that each third party recipient of the funds provided under this Agreement is not included on the List of Parties Excluded from Federal Procurement or Non-Procurement Programs ([www.sam.gov](http://www.sam.gov)) in accordance with Executive Orders 12549 and 12689; nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment> Documentation of compliance with this requirement shall be kept with other program documents and shall be available for review upon request.
- (E) Compliance with Section 3 of the Housing and Urban Development Act of 1968. Grantee and Subgrantees/Borrowers shall ensure compliance with [24 CFR 75 Subpart C](#) when employment or contracting opportunities are generated because a Section 3 Project: housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs. Preference shall be given to low- and very low-income persons, particularly those who are recipients of government

assistance for housing and to Section 3 business concerns which provide economic opportunities to low- and very low-income persons residing in the community where the project is located or service area. Additional information on Section 3 compliance can be found at: [https://www.hud.gov/program\\_offices/field\\_policy\\_mgt/section3](https://www.hud.gov/program_offices/field_policy_mgt/section3)

**(F) Compliance with Davis-Bacon and Related Acts.**

Grantee and Subgrantees shall ensure compliance with the Davis Bacon Act, including its prevailing wage and reporting requirements, for construction contracts paid with funds under this Agreement in excess of \$2,000.

Grantee and Subgrantees shall also ensure compliance with all other applicable federal labor requirements including the Copeland Anti-Kickback Act and the Contract Work Hours and Safety Standards Act. Additional information on these and other applicable Federal Labor Standards Requirements can be found in the Agency's Grants Management Guide, Chapter 7 at

<http://accd.vermont.gov/sites/accdnew/files/documents/CD-VCDP-GMG-FLSandDB-Chapter.pdf> and on HUD's website at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/handbooks/sech/13441](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/sech/13441).

## **VIII. Bonding Requirements.**

(A) For construction or facility improvement where the contract is for less than \$100,000, the Grantee may follow its established procedures. In the event Grantee has no established procedures in place, the requirements of subparagraph (B) hereof shall be met.

(B) For contracts or subcontracts exceeding \$100,000, the provisions of the Agency Procedures, Chapter 11 on bonding requirements shall be followed. If bonds are required, they shall be in such form and amount as provided in the Agency Procedures, Chapter 11.

(C) Where bonds are required they 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.

## **IX. Program Income.**

Except as may be provided in Special Conditions (Attachment A), Program Income and Unrestricted Revenue generated by the use of funds granted pursuant to this Agreement will be administered in accordance with the policies set forth in Agency Procedures, Chapter 22.

## **X. Equal Opportunity and Americans with Disabilities Act.**

No person shall on the ground of race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition, be excluded



from participation in, be denied the benefits of, or be subjected to discrimination under any of the activities covered by this Agreement.

## **XI. Monitoring and Reporting.**

- (A) The Grantee shall monitor the activities covered by this Agreement, including those of contractors and subcontractors, to assure that all program requirements are met.
- (B) 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. 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 required by the Agency.
- (C) The Final Program Report shall be submitted as the report for the period which ends with the Completion Date. The Grantee shall submit a Final Program Report no later than thirty (30) days following the Completion Date. Evidence of a public hearing held in conformance with Paragraph II of this Agreement shall be filed with the Agency as part of the Final Program Report, which shall consist of, at a minimum, the hearing notice and the minutes taken.

## **XII. Audit(s).**

- (A) Grantees must submit a fully completed and signed Subrecipient Annual Report to the Department of Finance & Management within 45 days after Grantee's fiscal year ends. The form may be downloaded from: <http://finance.vermont.gov>. The report must be completed and signed by the Chief Financial Officer, Controller, Business Manager, Treasurer or other person responsible for the financial records of the organization and submitted to the following address: Department of Finance & Management, Financial Operations Division, 109 State Street, 4<sup>th</sup> Floor, Montpelier, VT 05609-5901.
- (B) The Grantee shall arrange for an independent financial and compliance audit (or audits) of all VCDP costs and activities undertaken during the Period of Performance. In compliance with the Single Audit Act of 1984, as amended, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (Uniform Guidance, the Compliance Supplement for the Code of Federal Domestic Assistance (CFDA) 14.228, and Agency Procedures, Chapter 21, the Grantee shall determine whether a single audit or a program audit is required.
- (C) The Grantee shall submit to the Agency an Interim Audit Report(s) and/or Final Audit Report covering the Period of Performance under this Agreement. An audit that covers a portion of the Period of Performance, or a portion of all expenditures, is defined as an Interim Audit. A Final Audit is the audit that covers all VCDP grant funds; or if there is

an Interim Audit, the audit that covers the balance of any remaining unaudited CDBG funds through the Completion Date, or beyond if necessary.

- (D) Any contract or Agreement entered into by the Grantee and a Subgrantee shall contain language requiring the Subgrantee to comply with the federal Uniform Guidance, 2 CFR Part 200.
- (E) If any expenditure is disallowed as a result of any Interim Audit Report(s) and/or Final Audit Report, the obligation for reimbursement to the Agency shall rest with the Grantee.

### **XIII. Completion Certificates.**

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

### **XIV. Retention of and Access to Records.**

- (A) Financial records, supporting documents, statistical records, and all other records pertinent to this VCDP Grant shall be retained in accordance with the Agency Procedures, Chapter 3.
- (B) Authorized representatives of the Agency, 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 receipt and administration of Vermont Community Development Program funds, as may be necessary to make audits, examinations, excerpts, and transcripts.
- (C) Any contract or Agreement entered into by the Grantee that relates or pertains to this VCDP Grant shall contain language comparable to Subparagraph (B) above so as to assure access by an authorized party(s) to the pertinent records of any subrecipient, contractor, or subcontractor.
- (D) The Final Program Report, Interim Audit Report(s) and/or Final Audit Report shall be maintained with other program documents available for public review, and at least one copy must remain in the Grantee's files.

**XV. Administrative Sanctions.**

- (A) The Grantee shall receive notice from the Agency in the event of a failure to submit a timely progress report. No disbursement of grant funds shall be made if such failure continues after thirty (30) days from the date of notice. The Agency shall, in its discretion, determine whether to disburse funds during the notice period.
- (B) The Grantee shall receive a Notice of Delinquency from the Agency in the event of a failure to submit timely Interim or Final Audits, Final Program Reports, Closeout Agreement Proposals, or Closeout Annual Reports. The Grantee shall not be eligible for further CDBG funds if such failure continues after thirty (30) days from the date of notice, and, in addition to the remedies provided under this Agreement, may be subject to any action available to the Agency at law or equity.
- (C) Resolution of Monitoring Findings - The Agency shall notify the Grantee of any issues identified through monitoring by providing a monitoring report containing the Agency's monitoring results, including any Findings or Concerns. No further disbursement of grant funds shall be made under this Agreement until the Agency's Findings and Concerns have been resolved in a manner satisfactory to the Agency. Grantee shall not be eligible for further CDBG funds if such resolution is not achieved within thirty (30) days of the date of the monitoring report, and, in addition to the remedies provided under this Agreement, may be subject to any action available to the Agency at law or equity.

**XVI. Termination for Convenience.**

The Agency and the Grantee may terminate the grant in whole, or in part, when agreed that the continuation of the program would not produce the benefits anticipated hereunder, and shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Agency may allow full credit for non-cancellable obligations, properly incurred prior to termination.

**XVII. Suspension or Termination for Cause.**

- (A) Upon reasonable notice to the Grantee at any time prior to completion, the Agency may suspend this Agreement in whole or in part, may withhold further payments, or may prohibit the Grantee from incurring additional obligations of CDBG funds if it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement or that the continued costs to be incurred will not produce benefits of comparable value. The Agency shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension.

- (B) The Agency may terminate this Agreement at any time prior to completion, after reasonable notice and opportunity for hearing, when it is determined that the Grantee has failed to substantially comply with the conditions of this Agreement or that the continued costs to be incurred will not produce benefits of comparable value. The Agency shall promptly notify the Grantee, in writing, of the determination and reasons for the termination, together with the effective date.

### **XVIII. Appeals and Waiver of Enforcement.**

- (A) Appeals from the decisions or actions of the Agency may be made to the Secretary through the provisions of the Agency Procedures, Chapter 18.
- (B) No waiver by the Secretary of the right to enforce any provision of this Agreement shall be deemed a waiver of the right to enforce such provision upon subsequent breach or default, nor waiver of the right to enforce any other provision hereof.

### **XIX. Budget Revisions and Amendments.**

- (A) Budget Revisions. The Grantee may, after providing written notice and justification to the Agency, make a one-time revision of the amounts listed in the "CDBG funds" column of 4. Sources and Uses in Attachment B – Payment Provisions and Project Budget, provided that:
- (1) the aggregate impact is no more than ten (10%) percent of the Maximum Amount, listed as the "Total" item in the "CDBG funds" column;
  - (2) the Maximum Amount is not increased; and
  - (3) there is no change to budgeted amounts for General Administration or Program Management Activities (indicated by VCDP Code suffix of "13") without prior written approval of the Agency.
- (B) Amendments.
- (1) Any change or deviation from this Agreement not specifically identified in subparagraph (A) hereof, including extensions of time for completion and budget revisions in excess of ten (10%) percent, shall constitute an amendment of this Agreement and shall only be effective when reduced to writing and signed by or on behalf of the Agency and the Grantee. No more than one amendment for changes which in the view of the Agency are not substantial, shall be permissible. The Agency will not allow any amendment which would substitute the funded activity.
  - (2) 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 this Agreement, or if there is a proposal to undertake activities that will have an impact upon the buildings, areas, or activities of this VCDP Grant. The Agency reserves the right to require an amendment to this Agreement if such is deemed necessary.

- (3) If any Amendment affects any related documents, including but not limited to Subgrants or Loans of the grant funds, the Grantee shall amend such documents as appropriate and upload the amended documents to the record in the online grants management system.

## CERTIFICATIONS AND ASSURANCES

The Grantee hereby certifies and assures that Vermont Community Development Program Funds will be utilized in accordance with all the following: to the extent applicable, and that:

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion from Federal Procurement and Non-procurement Programs**

The Chief Executive Officer certifies that the Municipality is not listed in the Exclusions portion of Performance Information in the System for Award Management (“SAM”) at [www.sam.gov](http://www.sam.gov), in accordance with Executive Orders 12549 and 12689; nor named on the State’s debarment list at: <http://bgs.vermont.gov/purchasing-contracting/debarment>. In addition, it certifies that no awards will be made to any subgrantees/borrowers, or permit any award at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs.

### **Legal Authority**

(1) It possesses legal authority as defined in the Vermont Community Development Act [10 VSA 29] to apply for and accept the grant and administer the program.

(2) The legislative body has duly adopted and passed an official act or resolution authorizing the acceptance of and agreement to the conditions and provisions of this *Agreement*, including all understandings, certifications, and assurances contained herein; and designating and authorizing the Chief Executive Officer or designee to execute this *Agreement* and other such documents as may be necessary.

### **Benefit to Persons of Low and Moderate Income**

(3) It will comply with the provisions of Section 104(b)(3) of the Federal Act which requires the use of funds to be developed to give maximum feasible priority to those activities which will benefit low and moderate income families, or aid in the prevention or elimination of slums or blight or meet other community development needs having a particular urgency.

### **Citizens Information**

(4) It held at least one public hearing warned at least 15 days prior to obtain the views of citizens on community development and furnished citizens with information required by the Federal and State Acts.

(5) It prepared statements of community development and housing needs, including the needs of lower income persons and activities to be undertaken to meet such needs, the objectives and the projected use of community development funds, including information on the past use of such funds, if any, and have given affected citizens an opportunity to examine these statements and furnished a copy to the Agency.

(6) It allowed citizens an opportunity to examine the application and all supporting documentation and to submit comments thereon and will, in like manner, provide citizen participation when considering substantial program amendments.

### **Labor**

(7) It will administer and enforce:

- (a) the Davis-Bacon Act [40 USC 276a et seq.];
- (b) the Federal Fair Labor Standards Act [29 USC 201 et seq.]; and
- (c) the Contract Work Hours and Safety Standards Act [40 USC 327-333].

(8) It will comply with:

- (a) the Copeland Anti-kickback Act of 1934, [18 USC 874 and 40 USC 276c];
- (b) Executive Order 11246 (Equal Employment Opportunities) as amended by Executive Orders 11375 and 12086 and the regulations issued pursuant thereto [ 41 CFR 60]; and
- (c) Section 3 of the Housing and Urban Development Act of 1968 [12 USC 1701u] as amended, (equal employment and business opportunities) and the regulations at 24 CFR 75.

### **Environmental and Historic**

(9) The Chief Executive Officer, or other official so designated by the Legislative Body and approved by the Secretary will consent to assume the status of a responsible Federal official under the National Environmental Policy Act (NEPA) of 1969 as amended [42 USC 4321 et seq.] and the regulations found at 24 CFR 58; and the Chief Executive Officer is authorized and consents on behalf of the Applicant and him/herself to accept the jurisdiction of the Federal Courts for the purposes of enforcement of the responsibilities of such official.

(10) It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Secretary of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(11) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with:

- (a) Section 106 of the Historic Preservation Act of 1966 [16 USC 470];
- (b) Executive Order 11593 (Protection and Enhancement of the Cultural Environment);
- (c) the Preservation of Archaeological and Historic Data Act of 1974 [16 USC 469 et seq.]; and
- (d) the procedures prescribed by the Advisory Council on Historic Preservation found at 36 CFR 800.

(12) It will comply with:

- (a) the National Environmental Policy Act of 1969 [42 USC 4321 et seq. and 24 CFR 58];
- (b) the Endangered Species Act of 1973, as amended [16 USC 153 et seq. and 10 VSA 4046 and Chapter 123];
- (c) Executive Order 11990, Protection of Wetlands;
- (d) the Fish and Wildlife Coordination Act of 1958, as amended [16 USC 661 et seq.];
- (e) the Fragile Areas Registry Act of 1977 [10 VSA 6551];
- (f) the Safe Drinking Water Act of 1974, as amended by the Safe Drinking Water Act of 1977 [21 USC 349 and 42 USC 210 and 300f et seq.] pertaining to sole-source aquifers;
- (g) the Clean Air Act of 1970, as amended [42 USC 7401 et seq.] and Vermont law [10 VSA 551 et seq.] as amended;
- (h) Executive Order 12088 relating to the prevention, control, and abatement of water pollution and the Federal Water Pollution Control Act of 1972, as amended, [33 USC 1251 et seq.] and Vermont law [10 VSA 1251 et seq. and 18 VSA § 101 et seq.];
- (i) the provisions of Executive Order 11988 as amended, relating to evaluation of flood hazards and with the flood insurance purchase requirements of Section 102(e) of the Flood Disaster Protection Act of 1973 [42 USC 4001 et seq.] and Vermont law [10 VSA 751 et seq. and Executive Order No. 17 of 1978];
- (j) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 [42 USC 6901 et seq.] and Vermont law [24 VSA 2202a]; and
- (k) noise abatement and control regulations [24 CFR 51]
- (l) The Wild and Scenic River Act of 1968, as amended [16 U.S.C. 1271 et seq.];

### Relocation and Acquisition

- (13) It will comply with:
  - (a) the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended [42 USC 4601 et seq.], referred to as the "Uniform Act;"
  - (b) the implementing regulations of the Uniform Act issued by the Department of Housing and Urban Development (CFR Title 49, Part 24) contained in HUD Acquisition and Relocation Handbook 1378; and
  - (c) the requirements of the Vermont Community Development Acquisition and Relocation Policy.

### Architecture and Construction

- (14) It will comply with:
  - (a) the Lead-Based Paint Requirements [24 CFR Part 35, Subpart B];
  - (b) the Architectural Barriers Act of 1968 [42 USC 4151] and the rules applicable thereto;

- (c) Section 504 of the Rehabilitation Act of 1973 [29 USC 794]; and
- (d) the provisions of Section 104(b)(5) of the Federal Act which restricts recovery of capital costs by assessing any amount against properties owned and/or occupied by persons with lower incomes.

### Equal Opportunity and Fair Housing

- (15) It will affirmatively further fair housing and will comply with Pub. Law 90-284 [Title VIII of the Civil Rights Act of 1968; 42 USC 3601 known as the "Fair Housing Act"], as amended and the regulations issued pursuant thereto [24 CFR 100 to 115].
- (16) It will comply with and will immediately take any measures necessary to effectuate compliance with Pub. L. 88-352 [Title VI of the Civil Rights Act of 1964; 42 USC 2000d] and the regulations at 24 CFR 1.
- (17) It will comply with:
  - (a) Executive Order 11063 as amended by Executive Order 12259 (Leadership and Coordination of Fair Housing in Federal Programs) and the regulations at 24 CFR 100 and 107;
  - (b) Section 109 of the Federal Act [42 USC 5309] and the regulations issued pursuant thereto [24 CFR 5-70.496(b)];
  - (c) the Age Discrimination Act of 1975 [42 USC 6101 et seq.]; and
  - (d) the Americans with Disabilities Act of 1990 [42 USC 12010-12213; 42 USC 225-611] and the regulations issued pursuant thereto.

### Other Requirements

- (18) It will comply with the provisions of the Hatch Act [5 USC 1501 et seq.] which limits the political activities of employees.
- (19) It will provide a drug-free workplace according to the requirements set forth in the Drug Free Workplace Act [Public Law 100-690 Title V, Subtitle D, 41 USC 701 et seq.].
- (20) It will comply with the provisions of 24 CFR Part 570.489(h) which govern Conflict of Interest.
- (21) It will comply with the other provisions of The Federal Act [Title I of the Housing and Community Development Act of 1974, as amended; 42 USC 5301 et seq.]; the State Act [10 VSA 29], the Agency Procedures and all other applicable requirements.
- (22) It will comply with Single Audit Act of 1984, as amended, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (Uniform Guidance, the Compliance Supplement for the Code of Federal Domestic Assistance (CFDA) 14.228.
- (23) It will comply with 43 CFR part 18, New Restrictions on Lobbying. Submission of an application also represents the applicant's certification of the statements in 43 CFR part 18, appendix A, Certification Regarding Lobbying

(24) It will comply with Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving. Recipients are encouraged to adopt and enforce policies that ban text messaging while driving, including conducting initiatives of the type described in section 3(a) of the Executive Order.