

***Community  
Development Block  
Grant Program  
Implementation Policies &  
Procedures  
Town of Summerville***



# *UPDATE HISTORY*

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## INTRODUCTION

The Housing and Community Development Act of 1974 (HCDA), authorized HUD to create the Community Development Grant (CDBG) Program. The program seeks to provide decent housing, a suitable living environment, and expand economic opportunities for low- and moderate-income persons.

The town of Summerville is a participant in the Community Development Block Grant Program. To continue participation in this program, the Town contractually agrees with HUD to implement the Housing and Community Development Act of 1974 and related CDBG program regulations in 24 CFR 570. All CDBG allocations are subject to the regulations detailed in 2 CFR Part 200.

This Policies & Procedures Manual establishes the framework guiding the operation of the Summerville CDBG Program; which is administered by the Town of Summerville Finance Department, specifically the Grants Writer. It provides an approach for making decisions, ensuring the program is operated in a fair and consistent manner, as well as providing all program participants with an understanding of how the town manages its CDBG program.

## KEY DEFINITIONS

**Action Plan:** An annual update to HUD regarding the Consolidated Plan.

**Consolidated Plan:** The Consolidated Plan is prepared by the grantee in accordance with 24 CFR Part 91, and describes needs, resources, priorities and proposed activities to be undertaken with respect to CDBG program. An approved Consolidated Plan is one which has been approved by HUD.

**Contractors:** A contractor is an entity paid with CDBG funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process based on the Town's procurement standards. The Town's Procurement Procedures can be found in the Code of Ordinances, Chapter 2, Administration, Article 5, Finance, Division 2, Purchasing.

**Copeland Anti-Kickback Act:** Makes it a criminal offense for a person to induce anyone employed in the construction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which the employee is otherwise entitled. The Act also regulates payroll deductions, specifies methods of paying wages to covered employees, and requires the submission of weekly payrolls in conjunction with statements of compliance by all contractors in a format that meets the requirements of 29 CFR Section 5.5.

**Davis-Bacon Act:** The Act is triggered when construction work over \$2,000 is financed in whole or in part with CDBG funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area.

**Draw down:** Refers to the process of requesting and receiving CDBG funds. Grantees draw down funds from a line of credit established by HUD, while subrecipients draw down funds from the grantee.

**Executive Order 11246:** This Executive Order applies to all federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.

**Grantee:** Each entitlement community, or grantee, administers its local CDBG program in accordance with program requirements.

**Household:** All the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any groups of related or unrelated persons who share living arrangements.

**Income:** Grantees may select any of three definitions of income: (1) Annual income as defined under Section 8; (2) Annual income as reported under the Census long form; or (3) Adjusted gross income as defined by the IRS Form 1040.

**Limited Clientele:** Persons (or groups of persons) can be presumed to be principally LMI, according to HUD. These include: abused children, battered spouses, elderly persons (age 62 and over), adults meeting the Bureau of the Census' definition of severely disabled, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers.

**Low and Moderate Income:** Low and moderate income (LMI) means family or household annual income less than the Section 8 Low Income Limit, generally 80% of the area median income, as established by HUD.

**Low-Income Household/Family:** A household/family having an income equal to or less than the Section 8 Very Income Low limit (50% of the area median income) as established by HUD.

**Moderate-Income Household/Family:** A household/family having an income equal to or less than the Section 8 Low Income limit (80% of area median income) established by HUD, but greater than the Section 8 Very Low-Income Limit (50% of area median income) established by HUD.

**Section 109 of Title 1 of the Housing and Community Development Act of 1974:** This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.

**Section 3 of the Housing and Urban Development Act of 1968, as amended:** Requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area, to the greatest extent feasible and consistent with Federal, State and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in

contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

**Section 504 of the Rehabilitation Act of 1973:** It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.

**Subrecipient:** An entity that assists the grantee to implement and administer its program. Subrecipients are generally nonprofit organizations that assist the recipient to undertake one or more activities on behalf of the grantee, such as a home rehabilitation. Subrecipients are also referred to as subgrantees.

**The Age Discrimination Act of 1975:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.

**The Americans with Disabilities Act of 1990 (ADA):** This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210.

**The Equal Employment Opportunity Act:** This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.

**The Fair Housing Amendment Act of 1988:** This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.

**Title VI of the Civil Rights Act of 1964:** This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race, color, and/or national origin under any program or activity receiving Federal financial assistance.

**Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act):** This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.

## CDBG IMPLEMENTATION PROCESS

### Consolidated Plan Submission & Determine Program Delivery Method

#### Consolidated Plan & Action Plan

The process of completing/submitting the Consolidated Plan (and Annual Action Plans) helps the Town to determine what activities to fund during the upcoming program year.

The Consolidated Plan is a five-year plan which describes the community needs, resources, priorities, and proposed activities to be undertaken under the CDBG program. The Consolidated Plan is designed to assist local jurisdictions, to assess its affordable housing and community development needs as well as current market conditions. This will help the Town make data driven and place-based (community-based educated) decisions. The Consolidated Plan also helps provide a framework for community-wide dialogue to identify housing and community development priorities that align with the CDBG program.

Each year, the Town must submit an update to the Consolidated Plan to HUD, referred to as an Annual Action Plan. The Action Plan describes the specific planned uses for CDBG. Both the Consolidated Plan and Annual Actions Plan are approved by Town Council prior to HUD submission.

The Consolidated Plan includes the following:

- A description of the entity responsible for overseeing the development of the Consolidated Plan and a description of the process undertaken to develop the plan;
- A housing and homeless needs assessment;
- A housing market analysis;
- A strategic plan; and
- A one-year Action Plan.

#### Program Delivery Method

The Town is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the Town of this responsibility. The Town is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts and for taking appropriate action when performance problems arise.

Upon review of the Town's current needs, staff will make funding recommendations to Town Council as part of the Council's approval of the Annual Action Plan. Town Council approves all projects and subrecipient allocations.

As specified by 24 CFR 570.503, before disbursing funds to any organization that is carrying out CDBG activities on behalf of the Town, a written subrecipient agreement must be executed. Furthermore, The U.S. Department of Housing and Urban Development stipulates that certain requirements be included in all written agreements with subrecipients. Moreover, these requirements may vary over time and it is the responsibility of the Town to remain aware of revised requirements. If any such changes are made to the subrecipient agreement an amendment to the agreement will be made.

Written agreements must remain in effect for the length of time that the subrecipient has control over any CDBG funds, including program income and/or property. However, it is good practice to update subrecipient agreements annually to ensure the agreements are current with regulations and requirements. This process also allows an opportunity to revisit and clarify problem areas or issues.

### **National Objectives**

The LMI national objective is considered the primary national objective. 24 CFR 570.200 (6)(2) & 570.208) requires that grantees expend 70% of the CDBG funds to meet the LMI national objective.

### **Low-Moderate Income Housing**

For single family housing, 100% of the households assisted must be low-moderate income. For buildings with 2 unit, at least one of the households must be low-moderate income. For buildings with 3 or more units at least 51% must be low-moderate income households.

### **51% Low- and Moderate-Income Area**

At least 51% or more of the persons and families residing in the service area must be low and moderate- income (LMI) for public projects and public facilities. LMI can be determined by HUD census data or by conducting a survey. LMI is generally calculated on an area basis, meaning either the entire jurisdiction of the Town or a defined targeted area within the Town must be at least 51% LMI.

To be counted as a beneficiary of a project, LMI documentation must be obtained.

For every separate activity funded under the same project, there must be 51% LMI or the removal of slum and blight achieved.



For the purposes of determining eligibility, all persons and families must be counted. For the purposes of determining the amount of CDBG funding, all households must be counted.

A project may not be designed to benefit moderate-income persons to the exclusion of low-income persons.

HUD's Section 8 program income guidelines (as modified by the Housing and Community Development Act of 1987) shall be used to define low and moderate-income for the CDBG Program. The annual income limits are available from <http://www.huduser.org/portal/>. If HUD has not published the applicable year's limits, then the community may use the previous year in order to begin the survey work.

"Income" should be viewed as a family's total adjusted gross income. Any person that belongs to an LMI family is considered an LMI person. Request a copy of the direct beneficiaries IRS Form 1040 or other equivalent income statements.

### **Limited Clientele**

Limited Clientele activities benefit a specific targeted group of persons of which at least 51% must be LMI. In order to meet the LMI Limited Clientele criteria, the activity must:

- Serve at least 51%LMI, as evidenced by documentation and data concerning beneficiary family size and income;
- Have income-eligibility requirements which limit the service to persons meeting the LMI income requirement, as evidenced by the administering agency's procedures, intake/application forms, income limits, and other sources of documentation;
- Serve a group primarily presumed to be LMI such as abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or
- Be of such a nature and in a location that it may be concluded that the activity's clientele are LMI.

Upon approval of the Community Development Department that a CDBG-funded public service activity meets the limited clientele national objective, subrecipients implementing a public service may use a verifiable self-certification to document the income of beneficiaries in lieu of a full income calculation or for recertification. Subrecipients must use the "Self-Certification of Annual Income by Beneficiary" form.

Subrecipients will be required to request source documentation for 20% of the certifications.

The subrecipient must also inform beneficiaries that all sources of income and assets must be included when calculating annual income.

## Elimination of Slum & Blight

To prove this HUD national objective, a project must propose one of the two different methods (24 CFR 570.208(6)).

- A. The first method occurs when a structure is blighted; when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to health, safety and public welfare. For the Town to participate in this activity it must, at a minimum, determine blighted structures by applying existing dangerous building ordinance, building code level of violation or applicable occupancy or habitability designation or code violation in a manner consistent with their ordinance. The ordinance, code violation or designation must be applied to the specific structure, not to the area as a whole. The predominance of blight in an area does not allow blight to be assumed for each structure inside the area.
- B. The second method covers area blight and includes submitting a resolution passed by the governing legislative body declaring the area blighted in accordance with 24 CFR 570. As stated, the definition of the national objective elimination of slum and blight reads as follows. The area meets the conditions of either (a) or (b):
  1. At least 25% of the properties throughout the area experience one or more of the following conditions:
    - i. Physical deterioration of buildings or improvements,
    - ii. Abandonment of properties,
    - iii. Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings,
    - iv. Significant declines in property values or abnormally low property values relative to other areas in the community, or
    - v. Known or suspected environmental contamination.
  2. The public improvements throughout the area are in a general state of deterioration.

## Urgent Need

The use of the urgent need national objective (24 CFR 570.208 (c)) is rare. It is generally used for activities to alleviate emergency conditions. According to “Basically CDBG” Course Training Manual examples include:

- Acquisition of property located in a flood plain that was severely damaged by a recent flood;
- Public facility improvements like the reconstruction of a publicly-owned hospital that was severely damaged by a tornado;
- Demolition of structures that are severely damaged by a major earthquake;
- Urgent need qualified activities must meet the following criteria:
  - The existing conditions must pose a serious and immediate threat to the health or welfare of the community;

- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months);
- The grantee is unable to finance the activity on its own; and no other sources of funding are not available.

**\*\*Maintenance and Operation Costs:** Any cost that recurs on a regular basis (generally, less than five years) is considered a maintenance or operation cost, therefore ineligible for CDBG assistance.

## Activity Eligibility

### CDBG Eligible Activities as part of Summerville's CDBG program:

- Public services** (limited to 15% of the Town's total CDBG entitlement) which are directed toward improving the community's public services and facilities, including, but not limited to, those concerned with employment, welfare reform, child care, health, drug abuse, education, job training assistance, recreational needs, crime prevention, or energy conservation. To be eligible for CDBG funding, public services must be a new or expanded service. A new service is one that has not been previously offered. To qualify as an expanded service, an agency applying for funds must demonstrate how there will be a quantifiable increase in the service than was delivered in the 12 months prior to the Town's latest Action Plan.
- Public Facilities & Infrastructure.** CDBG funds may be used for the acquisition, construction, reconstruction, rehabilitation, or installation of public improvements or public facilities. "Public improvements" includes, but is not limited to, streets, sidewalks, water and sewer lines, and parks.
- Program Administrative Cost.** CDBG funds may be used for planning activities. Such activities might include community development plans, including the Consolidated Plan.

The Finance Department in conjunction with the Town Administrator and Town Council will approve activities and funding allocations. As part of the approval process, staff will review the proposed activity and confirm that it is an eligible activity and meets a national objective as per 24 CFR Part 570. If Town staff are unsure of whether a proposed activity is eligible or what national objective is being met, staff will seek guidance from their assigned Community Planning and Development representative.

### CDBG Ineligible Activities

The following activities may not be assisted with CDBG funds (in accordance with 24 CFR 570.207):

- Buildings or portions thereof, used for the general conduct of government** as defined at § 570.3(d) cannot be assisted with CDBG funds. This does not include, however, the removal of architectural barriers under § 570.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the

acquisition cost attributable to the land is eligible, provided such acquisition meets a national objective described in § 570.208.

- B. **General government expenses.** Except as otherwise specifically authorized in this subpart or under 2 CFR part 200, subpart E, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.
- C. **Political activities.** CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.
- D. The following activities may not be assisted with CDBG funds unless authorized under provisions of § 570.203 or as otherwise specifically noted herein or when carried out by an entity under the provisions of § 570.204.
  - 1. **Purchase of equipment.** The purchase of equipment with CDBG funds is generally ineligible.
    - i. **Construction equipment.** The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing or depreciation pursuant to 2 CFR part 200, subpart E, as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible under § 570.201(c).
    - ii. **Fire protection equipment.** Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.201(c).
    - iii. **Furnishings and personal property.** The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation in accordance with 2 CFR part 200, subpart E, for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201(e).
  - 2. **Operating and maintenance expenses.** The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under §

570.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

- i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and
  - ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.
3. ***New housing construction.*** For the purpose of this paragraph, activities in support of the development of low or moderate-income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing pre-construction costs set forth in § 570.206(g), are not considered as activities to subsidize or assist new residential construction. CDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:
- i. As provided under the last resort housing provisions set forth in 24 CFR part 42;
  - ii. As authorized under § 570.201(m) or (n);
  - iii. When carried out by an entity pursuant to § 570.204(a);
4. ***Income payments.*** The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, “income payments” means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

## Financial and Administrative Requirements

### **Administration and Planning**

CDBG funds can be used for administrative and planning activities. Funds under these categories are subject to the 20% statutory limitation (24 CFR 570.206).

The following are eligible administrative activities:

- General management, oversight and coordination
- Providing local officials and citizens with information about the CDBG program;
- Preparing budgets and schedules;
- Preparing reports;
- Monitoring program activities
- Fair Housing Activities;
- Indirect costs; and
- Submission of applications for Federal programs.

The following are eligible planning activities:

- Comprehensive plans;
- Community development plans (i.e. Consolidated Plan);
- Functional plans (i.e. land use, economic development, floodplain management, transportation, historic preservation, etc.).
- Other plans and studies (i.e. neighborhood plans, capital improvements, individual plans, historic preservation studies, etc.).

Any costs and time charged must be documented through the appropriate means such as invoices, receipts, time and attendance records, etc. Documentation shall be kept on file and will be reviewed at financial monitoring.

Under this category, CDBG funds may not be used for the following activities:

- Engineering, architectural and design costs related to a specific project; or
- Other costs of implementing plans.

These costs may be eligible as part of an eligible project.

### **Public Services**

The total amount of CDBG funds expended for public services activities must not exceed 15% of the yearly allocation of funds plus 15% of program income received within the program year. According to 24 CFR 570.201 (e) allows the use of grant funds for public service activities, including but not limited to:

- Employment services (e.g. job training);
- Crime prevention and public safety;
- Child care;

- Health services;
- Substance abuse services (e.g. counseling and treatment);
- Fair housing counseling;
- Education programs;
- Energy conservation;
- Services for senior citizens;
- Services for homeless persons;
- Welfare services (excluding income payments);
- Down payment assistance; and
- Recreational services.

CDBG funds may be used to pay for labor, supplies, and material as well as to operate and/or maintain the portion of a facility in which the public service and located. This includes the lease of a facility, equipment and other property needed for the public service.

For the public service to be eligible, the service must be either 1) a new service; or 2) a quantifiable increase in the level of an existing service which has been provided by the entity through state or local government funds in the 12 months preceding the submission of The Town's Consolidated Plan / Annual Action Plan to HUD.

### **Timely Distribution of Funds**

HUD requires The Town of Summerville to use the CDBG funds it receives in a timely manner (24 CFR 570.902). HUD determines if the Town is spending down its CDBG entitlement in a timely manner by checking to see what the unspent balance is 60 days prior to the program year end; which is on May 1st of each year. HUD requires the amount of unspent funds to be no more than 150% of the entitlement amount for the current year.

The best method to review the Town's timeliness is to refer to the IDIS program report number PR 56.

### **Reimbursement Requests and Payments**

Drawdowns for the payment of eligible expenses shall be made on a reimbursement basis and against the line-item budgets specified in the subrecipient agreement. In order to receive reimbursement for eligible expenses, subrecipients must submit a Request for Reimbursement along with copies of invoices and/or receipts showing payment of eligible expenses or other documentation supporting and evidencing how CDBG funds have been expended to the Grants Writer. Subrecipients may submit Requests for Reimbursement as needed, but no less than quarterly. The timely submission of requests for reimbursement is required in order to ensure compliance with the CDBG program rules and regulations.

The Grants Writer will review the Request for Reimbursement for accuracy, e.g., payrolls, copies of checks showing invoices have been paid by subrecipient, expenses are for items stipulated in subrecipient agreement budget, etc. If any additional information or corrections are needed, the Grants Writer will request needed items from the Subrecipient.

Once the Grants Writer has determined the request for reimbursement is complete, he/she will create a voucher in IDIS and submit a requisition to the Assistant Finance Director to request a check payment to the subrecipient. The Assistant Finance Director will approve the check request and the voucher in IDIS.

### **Quarterly Reports**

Subrecipients will submit quarterly reports to the Town to ensure that the goals and performance measurements stipulated in the subrecipient agreement are met in a timely manner.

Subrecipients will complete and submit the quarterly report to the grantee on or before the deadlines given in the subrecipient agreement. Failure to submit timely quarterly reports will be notated and taken into consideration for the following program year funding.

### **Record Retention and Audits**

The Town and its subrecipients shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to CDBG



program and such other records as may be deemed necessary by the Town to assure proper accounting for all funds applicable to the program. Subrecipients agree to make documentation available to the grantee and/or a HUD representative upon request.

Subrecipients shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the CDBG program for a period of four (4) years. The retention period begins on the date of the submission of the Town's annual performance and evaluation report to HUD in which the activities assisted during the program year are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### **Subrecipient Oversight and Monitoring**

The Town will monitor the subrecipient's compliance with all regulations governing their administrative, financial, and program operations and that subrecipients achieve their performance objectives within their stated scheduled timeframe and budget.

The Town will determine whether to complete on-site monitoring or desk monitoring based on the subrecipients' past and current performance. The Grants Writer will notify subrecipients one month prior to conducting the monitoring visits (or desk monitoring), so they can prepare all documentation and have all financial and program files ready for review. This includes but is not limited to access to client files, programmatic policies and procedures, organizational and programmatic financial records.

When monitoring efforts have been completed, Town staff will prepare a final monitoring report within 30 days of the monitoring event, which indicate the status of the subrecipients' program. This report will discuss both programmatic and financial issues. Any concerns or findings will be initially documented in this report along with further instructions for a subrecipient response. In addition, these reports will highlight both strength and weaknesses and offer suggestions and recommendations from staff.

Substandard performance as determined by the Grantee will constitute noncompliance with the Subrecipient Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Town, contract suspension or termination procedures will be initiated.

## COMPLIANCE WITH OTHER FEDERAL REGULATIONS

### Environmental Review

An Environmental Review Record must be completed for each project in order to meet the Environmental Review Requirements set forth at 24 CFR Part 58 (24 CFR 570.604). All projects will publish appropriate notices (including HUD 8-Step Process), submission of the Request for Release of Funds and Certification and Authority to Use Grant Funds will be issued by HUD prior to commencing with project activities.

### Fair Housing, Accessibility & Equal Employment

The Town and any subrecipient(s) must adhere to all the basic tenets of fair housing and equal opportunity regulations (24 CFR 570.601). Recipients are prohibited from practicing discrimination on the grounds of race, color, national origin, religion, sex, handicap, or familial status. This prohibition applies to all project contractors or subcontractors. Beneficiary information should be determined and demographic data compiled, with this information made available in the project file for public review.

#### **Fair Housing**

According to the HUD Fair Housing Planning Manual, the broad objectives of Affirmatively Furthering Fair Housing can be interpreted to mean:

- Analyze and eliminate housing discrimination in the jurisdiction.
- Promote fair housing choice for all persons.
- Provide opportunities for racially and ethnically inclusive patterns of housing occupancy.
- Promote housing that is physically accessible to, and usable by, all persons, particularly persons with disabilities.
- Foster compliance with the nondiscrimination provisions of the Fair Housing Act.

#### **Accessibility**

The Town shall abide by HUD regulations in Section 504, HUD's implementation of the American with Disability Act (ADA). The Town is to conduct a self-evaluation of accessibility to determine their current programs, services, policies, and practices meet the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

## Equal Employment

Nondiscrimination is a requirement of employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Affirmative action and equal employment opportunity policies are fundamental aspects of CDBG funded activities.

The Americans with Disabilities Act modifies and expands the Section 504 Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

## Procurement

All procurements made in whole or in part with CDBG funds must comply with the applicable Federal requirements found in 24 CFR 20. The requirements governing the purchasing process are designed to ensure that:

- a free and open competitive process is followed in securing products and/or services.
- purchasing activities and decisions are properly documented.
- the special rules for particular kinds of purchases are observed (small purchases, competitive sealed bids, competitive proposals, and sole source procurements).
- work involving large construction contracts and/or subcontracts is properly bonded and insured.
- local businesses and small, minority and/or women-owned businesses are contracted with (to the maximum extent feasible).

Below is the Town’s procurement policy:

Procurement Amount	Requirements
\$0.00- \$2,499	<ul style="list-style-type: none"> <li>● Department Head or designee can approve a small purchase or a request may be submitted to the purchasing agent for procurement</li> </ul>
\$2,500- \$24,999	<ul style="list-style-type: none"> <li>● Competitive quotes may be obtained by the purchasing agent, department head or his designee</li> <li>● Offers shall be requested and obtained from at least three sources whenever possible</li> </ul>

\$25,000 and over	<ul style="list-style-type: none"> <li>● Purchases and/or contracts valued at \$25,000.00 or greater shall be awarded by competitive, sealed bidding</li> <li>● Purchase orders more than \$25,000.00 must be approved by the finance committee of town council.</li> </ul>
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## **Labor Standards**

### **Davis-Bacon Act**

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation). Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor.

### **Copeland Anti-Kickback Act**

The Copeland Anti-Kickback Act(40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers’ pay be permissible, and that contractors maintain and submit weekly payrolls.

### **Contract Work Hours and Safety Standards Act**

The Contract Work Hours and Safety Standards Act (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week.

### **Section 3**

Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

## **Contract Management**

Contract management is a large part of the Town's project management process and staff takes great pains to ensure that all parties are held to the roles and responsibilities for which they are receiving payment.

Before entering into a contract, the Town ensures that all contracts are written so that they are based on a lump sum or unit price. Moreover, staff is careful of any hidden or unexpected costs or additional fees that may have been added to the contract. Such fees may include per hour additional fees for surveying, obtaining easements, etc. Often grantees may think these costs are part of the base contract and have not allowed for the additional cost in their budget.

As required by Title 24 of the Code of the Federal Register as well as other selected contract provisions required by the Community Development Office for CDBG-assisted grants/activities.

## **Other Federal Regulations**

The following Federal Regulations, Contract Provisions and Clauses are incorporated into all CDBG agreements in their entirety:

### **Prime Contractor Responsibilities:**

The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this contract. The Town will consider the Contractor to be the sole point of contact with regard to all contractual matters.

### **Reversion of Assets:**

All real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 under this Contract must continue in the use that provides the service benefits and national objectives for which it was funded until five years after expiration of this Contract as set forth in 24 CFR 503 (b) (7) or such longer period of time as determined by the Town; or it must be disposed of in a manner resulting in a reimbursement to the Town in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

### **Legal Services:**

No attorney-at-law shall be engaged through the use of any funds provided under this contract in suits against the State, Local Public Body or any political subdivision.

### **Political Activity: (24.CFR 570.207(a)(3))**

None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act.

**Reporting of Fraudulent Activity:**

If at any time during the term of this contract anyone has reason to believe by whatever means that, under this or any other program administered by the Town a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be reported to the appropriate authorities.

**Acquisitions, Relocation and Anti-displacement:**

In carrying out this agreement, the contractor agrees to comply with the requirements of the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act Amendments of 1987 Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987. Any displacement of persons resulting from the proposed CDBG project will be carried out in accordance with Section 104(d) of the Housing and Community Development Act of 1974, as amended.

**Equal Employment Opportunity (Executive Order 11246 dated 9/24/65, as amended by Executive Order 11375 dated 10/13/67):**

The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan insurance or guarantee or undertaken pursuant to any federal program involving such grant, contract, loan insurance or guarantee, the following equal opportunity clause: During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination.

- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375, and with the rules, regulations and relevant orders of the Secretary of Labor.
- E. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- F. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 14, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrument or subdivision of such government which does not participate in work on or under the contract.

- I. The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- J. The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate proceedings.

**Compliance in the Provision of Training, Employment and Business Opportunities:**

- A. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development through the Town and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC, 1701, Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.
- C. Compliance with the provisions of Section 3, the regulations set forth in 24CFR135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and



assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

**Subcontracting with Small and Minority Firms, Women's Business Enterprises:**

It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

- A. Including qualified small and minority businesses on solicitation lists;
- B. Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;
- C. Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;
- D. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and
- E. Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the Department of Commerce and the Community Services Administration as required.

**Title VI Civil Rights Act of 1964:**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the contractor), agrees as follows:

- A. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.
- B. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- C. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, their sources of information and its facilities as may be determined by the Town or the United States Department of Housing and Urban Development to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any

information is required or a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the awarding agency, the Town, or the United States Department of Housing and Urban Development, as appropriate, and shall set forth what efforts it has made to obtain the information.

- D. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Town or the United States Department of Housing and Urban Development shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the contractor under the contract until the contractor complies; and/or,
  - 2. Cancellation, termination or suspension of the contract, in whole or in part.
  
- E. The contractor shall include the provisions of paragraph (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Town or the United States Department of Housing and Urban Development may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Town to enter into such litigation to protect the interests of the Town, and, in addition, the contractor may request the United States Department of Housing and Urban Development to enter into such litigation to protect the interests of the United States.

**Title VIII Civil Rights Acts of 1968 (as applicable):**

The contractor shall comply with Title VIII Civil Rights Acts of 1968 which prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing or housing, blockbusting, and discriminatory advertising; and makes it unlawful to deny any person access to, or membership or participation in, any multiple listing service or real estate broker organization for discriminatory reasons.

**Section 109 Housing and Urban Development Act of 1974 (as applicable):**

The contractor provides that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part under this title.

**Section 504 Rehabilitation Act of 1973:**

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Town, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 504 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 504 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

**Lead-Based Paint:**

The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint regulations, 24 CFR 35. Any grants or loans made by the Town for the rehabilitation of residential structures with assistance provided under this Agreement shall be made subject to the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations, and the Town shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.

**Fair Housing Amendments Act of 1988 (as applicable):**

The contractor shall comply with Fair Housing Amendments Act of 1988 which amends Title VIII of the Civil Rights Act of 1968 that prohibits discrimination on the basis of race, color, religion, sex or national origin in the sale, rental and financing of dwellings. The 1988 Act extends coverage of the 1968 Act to persons with disabilities and families with children. In addition, the 1988 amendments establish certain design and construction requirements for new multi-family housing built for first occupancy on or after March 13, 1991.

**Age Discrimination Act of 1975:**

The contractor shall comply with the Age Discrimination Act of 1975 which provides that no person, on the basis of age, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**Americans with Disabilities Act of 1990:**

The contractor shall comply with the Americans with Disabilities Act of 1990 which provides that no person, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

**Conflict of Interest (24 CFR 570.611):**

- A. The contractor shall maintain a written code or standards of conduct, which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer or agent of the Town shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Persons covered under this section include any person who is:
1. An employee, agent, consultant, officer, or elected or appointed official of the Town, any designated public agency or any subrecipient agency that is receiving CDBG funds;
  2. Any member of his/her immediate family;
  3. his or her partner; or
  4. An organization, which employs, or is about to employ, any of the above, or has a financial or other interest in the firm selected for award.
  5. The contractor'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 funded with CDBG funds. To the extent permitted by state or local law or regulations, such standards of conduct shall

provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the contractors or their agents.

6. No persons described in (1) through (4) above who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, 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 in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter.

**Debarment Certification:**

The contractor must comply with Federal Debarment and Suspension regulations prior to entering into a financial agreement for any transaction as outlined below:

- A. Any procurement contract for goods and services, regardless of type, is expected to equal or exceed the Federal procurement small purchase threshold (which is \$25,000 and includes all federal funding sources).
- B. Any procurement contract for goods and services, regardless of amount, under which the Contractor will have a critical influence on or substantive control over the transaction.

**Records and Audits:**

The contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to this contract and such other records as may be deemed necessary by the Town to assure proper accounting for all funds applicable to this contract. These records will be made available for audit purposes to the Town or any authorized representative, and will be retained for five years after the expiration of this contract unless permission to destroy them is granted.

**Retention and Access Requirements for Records (24 CFR 570.506 & 24 CFR 200.333-337):**

- A. The contractor shall comply with Retention and Access Requirements for Records and Town records access and retention requirements:
- B. Financial records, supporting documents, statistical records and all other records pertinent to a grant shall be retained for a period of five (5) years, with the following qualifications:
  1. If any litigation, claim, negotiation, audits or other action is started before the expiration of the five-year period, the records shall be retained until all litigation, claim or audit findings involving the records have been resolved, or the five-year period, whichever is later.

2. Records of nonexpendable property acquired with federal funds shall be retained for five years after final disposition of such property.
  3. When records are transferred to or maintained by the federal sponsoring agency, the five- year retention required is not applicable to the Town.
- C. The five-year retention period starts from the date of final payment by the Town.
  - D. The Town shall request transfer of certain records to its custody when it is determined that the records possess long-term retention value. However, in order to avoid duplicate record keeping, the Town may make arrangements to retain any records that are continuously needed for joint uses.
  - E. The Town, the United States Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records to make audits, examinations, excerpts and transcripts.
  - F. Unless otherwise required by law, the Town shall not place restrictions that will limit public access to the records that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 USC 552) if the records had belonged to the grantor agency.
  - G. The Town of Summerville will ensure the privacy of all Personally Identifiable Information (PII) obtained from participants and to protect such information from unauthorized disclosure. All parties must ensure that PII used during their grant has been obtained in conformity with applicable Federal and State laws and policies governing the confidentiality of information. All PII transmitted via e-mail or stored on external drives must be encrypted. All PII stored onsite must be kept safe from unauthorized individuals at all times and must be managed with appropriate information technology services. Accessing, processing, and storing of PII data on personally owned equipment at off-site locations (including, but not limited to employee's home, and non-grantee managed IT services, e.g. Yahoo mail, Gmail, etc.) is strictly prohibited. All parties who will have access to sensitive/confidential/proprietary/private data must be advised of the confidential nature of the information, the safeguards with which they must comply to protect the information, and that they may be liable to civil and criminal sanctions for improper disclosure. Access to any PII obtained through the grant must be restricted to only those employees of the grant recipient who need it in their official capacity to perform duties in connection with the scope of work in the grant agreement. All PII data must be processed in a manner that will protect the confidentiality of the records/documents and is designed to prevent unauthorized persons from retrieving such records by computer, remote terminal, or any other means.

#### **Compliance with State and Local Laws:**

The contractor specifically agrees that in performance of the services herein enumerated, the contractor and his/her employees/agents will comply with any applicable State, and Local Statutes, ordinances and regulations at the time this agreement is executed.

**Federal Labor Standards Provisions:**

In carrying out this agreement, the contractor agrees to comply with the following Federal Labor Standards Provisions for applicable construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units. These regulations must be complied with or sanctions will be instituted.

- A. ***Minimum Wage Rates for Laborers and Mechanics:*** All laborers and mechanics will be paid, unconditionally and not less than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and other such payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Copeland Act, hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also, for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period are deemed to be constructively made or incurred during such weekly period.
- B. ***Under Payments of Wages and Salaries:*** In cases of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this contract, the Town, in addition to such other rights as may be afforded it under this contract, shall withhold from the Contractor out of any payments due the Contractor, so much thereof as the Town may consider necessary to pay such laborers or mechanics the full number of wages required by this Contract. The amount so withheld may be disbursed by the Town, for and on account of the Contractor or the subcontractor, (as may be appropriate), to the respective laborers or mechanics to whom the same is due on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.
- C. ***Anticipated Costs of Fringe Benefits:*** If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract, provided that, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to

fringe benefits being provided by the Contractor must be submitted to the Town with the first payroll filed by the Contractor subsequent to receipt of the findings.

- D. ***Overtime Compensation Required by Contract Work Hours and Safety Standards Act (76 Stat. 357-360: Title 40 U.S.C., Section 327-332):***
1. **Overtime Requirements:** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such work week.
  2. **Violation-Liability for Unpaid Wages, Liquidated Damages:** In the event of any violation of the clause set forth in Paragraph (1), the Contractor and any subcontractor shall be liable such affected employee for his unpaid wages and shall, in addition, be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual employed in violation of the clause set forth in Paragraph (1) in the sum of \$10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in Paragraph (1).
  3. **Withholding for Liquidated Damages:** The Town shall withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may be administratively determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (2).
  4. **Subcontracts:** The Contractor shall insert in any subcontracts the clauses set forth in Paragraphs (1), (2), and (3) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- E. ***Employment of Apprentices/Trainees:***
1. **Apprentices:** Apprentices will be permitted to work at less than the pre-determined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program who is not individually registered in the program but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in a craft classification shall not be greater than the ration permitted to the contractor as to his entire work force under the registered program. Any



employee listed on a payroll at an apprentice wage rate who is not a trainee as defined in subdivision (2) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates) for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

2. **Trainees:** Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Manpower Administration, and the Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every Trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any trainee listed on the payroll at a trainee rate who is not registered and participating in a training program approved by the Bureau of Apprenticeship and Training, shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
  3. **Equal Employment Opportunity:** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR 30.
  4. **Employment of Certain Persons Prohibited:** No person under the age of sixteen years and no person who, at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this contract.
- F. **Regulations Pursuant to Copeland "Anti-Kickback" Act:** The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the Copland Act of June 13, 1934 (48 Stat. 948; 62 Stat. 862; Title U.S.C., Section 874; and Title U.S.C., Section 276c) and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure

compliance by all subcontractors subject thereto, and shall be responsible for submission of affidavits required by subcontractors thereunder, except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

- G. *Employment of Laborers or Mechanics not listed in Wage Determination Decision:*** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract will be classified or reclassified in conformance with the wage determination by the Town, and a report of the action taken shall be submitted by the Town, through the Secretary of Housing and Urban Development to the Secretary of Labor, U.S. Department of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Town, shall be referred through the Secretary of Housing and Urban Development to the Secretary of Labor for final determination.
- H. *Fringe Benefits Not Expressed as Hourly Wage Rates:*** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, the Town shall require an hourly cash equivalent be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Town, shall be referred through the Secretary of Housing and Urban Development to the Department of Labor for determination.
- I. *Posting Wage Determination Decisions and Authorized Wage Deductions:*** The applicable wage poster of the Secretary of Labor, U.S. Department of Labor and the applicable wage determination decisions of said Secretary of Labor with respect to the various classifications of laborers and mechanics employed and to be employed upon the work covered by this contract, and a statement showing all deductions, if any, in accordance with the provisions of this contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.
- J. *Complaints, Proceedings, or Testimony by Employees:*** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceedings or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.
- K. *Claims and Disputes Pertaining to Wage Rates:*** Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this contract shall be promptly reported by the Contractor in writing to the Town for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, U.S. Department of Labor, whose decision shall be final with respect thereto.

- L. **Questions Concerning Certain Federal Statutes and Regulations:** All questions arising under this contract which relate to the application or interpretation of (a) the aforesaid Copeland Act; (b) the Contract Work Hours and Safety Standards Act; (c) the Davis-Bacon Act; (d) the regulations issued by the Secretary of Labor, U.S. Department of Labor pursuant to said Acts; or (e) the labor standards provisions of any other pertinent Federal statute, shall be referred through the Town and the Secretary of Housing and Urban Development, to the Secretary of Labor, U.S. Department of Labor for the Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purposes of this contract.
- M. **Payrolls and Basic Payroll Records of Contractor and Subcontractors:** The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Town. The Contractor shall submit weekly to the Town two certified copies of all payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for submission of copies of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of five years thereafter. Such payrolls and basic payroll records shall contain the name and address of each employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5 (a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis- Bacon Act, the Contractor or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Town, and the U.S. Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.
- N. **Specific Coverage of Certain Types of Work by Employees:** The transporting of materials and supplies to or from the site of the project or program to which this contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the project or program to which this contract pertains by persons employed by the Contractor or by any subcontractor, shall for the purposes of this contract, and without limiting the generality

of the foregoing provisions of this contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

- O. ***Ineligible Subcontractors:*** The Contractor shall not subcontract any part of the work covered by this contract or permit subcontracted work to be further subcontracted without the Town's prior written consent. The Town will not approve any subcontractor for work covered by this contract who is at the time ineligible to receive an award of such subcontract under the provisions of any applicable regulations issued by the Secretary of Labor, U.S. Department of Labor or the Secretary of Housing and Urban Development.
- P. ***Provisions to be Included in Certain Subcontracts:*** The Contractor shall include, or cause to be included, in each subcontract covering any of the work covered by this contract, provisions which are consistent with these federal labor standards provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.
- Q. ***Breach of Foregoing Federal Labor Standards Provisions:*** In addition to the causes for termination of this contract as herein set forth, the Town reserves the right to terminate this contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, U.S. Department of Labor.

#### **Compliance with Clean Air and Water Acts (applicable to all contracts over \$100,000)**

In carrying out any CDBG funded agreement, the contractor agrees to comply with the requirements of Section 306 of the Federal Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and the Environmental Protection Agency regulations (40 CFR 15) respective to all contracts in excess of \$100,000 awarded by the Town. Such statutes and regulations prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the Environmental Protection Agency's List of Violating Facilities. The provision shall require reporting of violations to the Town and to the US Environmental Protection Agency.

#### **Conservation:**

In carrying out this agreement, the contractor agrees to comply with the requirements of mandatory standards and policies relating to energy efficiency, which are contained in the State's energy conservation plan issued in compliance with the Federal Energy Policy and Conservation Act (PL 94-163, 89 Statutes 871)

#### **Engineer/Consultant's Certificate of Completed Work:**

A copy of the Certificate for Acceptance, and Final Payment, signed by the project engineer/consultant, must be obtained prior to closeout. This certificate must cover all work included in the project (regardless of funding source), including grantee cash and in-kind. The certificate must state that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for Final Payment.