

City of Missoula



# Grants Administration Manual

For HUD Entitlement Programs:

**Community Development Block Grant (CDBG)**

**Home Investment Partnerships Program (HOME)**

*Updated November 2025*

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## Introduction

The City of Missoula (City) administers two major sources of U.S. Housing and Urban Development (HUD) funding through its Community Development division (CD). The Community Development Block Grant Program (CDBG) and the HOME Investments Partnership Program (HOME) are used to support activities that benefit low- and moderate-income households.

This manual sets forth policies and procedures for the administration of programs funded by the City of Missoula CDBG and HOME programs. Although some portions of these procedures are complicated and involve complex Federal regulations and policies, this manual summarizes the essential elements for proper program operation.

No handbook can address every type of administrative/accounting problem or situation that may arise during the course of the contract year; therefore, the City's CD staff is available to respond to requests for clarification or additional information. In the event that new procedures or policies are implemented during the contract period, CD staff will provide timely notification and technical assistance. This manual is neither intended to be all-inclusive nor so restrictive that it cannot be amended.

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## I. HUD Entitlement Block Grant Programs

### A. Background

The primary purpose of the CDBG and HOME programs is to assist low- and moderate-income households. Agencies that receive a CDBG or HOME grant or loan must be able to implement their program soon after the award. If an agency is unable to promptly implement the program, these lower income people are not receiving the intended benefits. The City developed the standard to keep programs on track and to ensure that the specified activity is being carried out in a timely manner.

The City, as approved by HUD, may provide CDBG funds for certain housing activities, public infrastructure and facilities, and public services. Public infrastructure, facilities and services must demonstrate a direct connection to housing and/or homelessness outcomes. The City may provide HOME funds for housing development, certain activities eligible to be undertaken by Community Housing Development Organizations (CHDOs) and Tenant-Based Rental Assistance (TBRA).

***Prior to contract execution, all Subrecipients must have the needed support, confirmed matching resources, sufficiently developed plans, a program site, and budget to start the proposed program after the funding approval, and be able to complete the program within the approved award term. Projects may begin no earlier than July 1, the beginning of the City's Program Year, if funds are available and your organization is under contract with the City. Unspent funds or project delays may be subject to potential reprogramming to other eligible programs, which may require City Council approval.***

### B. Methods to Improve Timely Implementation and Use of Funds

- Study this manual and become familiar with the Pre-Contracting requirements. Submit the required documents to the Grants Administrator soon after notification of your award.
- Attend trainings and workshops organized by CD on various topics related to CDBG and HOME.
- Request a follow-up one-on-one meeting with your Grants Administrator if needed so that specific topics related to your particular program can be addressed and other key staff from your organization can attend.
- Invoice the City in a timely manner for CDBG or HOME activities; failure to do so can become a serious problem. Agencies will be expected to submit payment requests and quarterly performance reports in a timely fashion. *Do not save up several months of payment requests and submit them in bulk. This may cause unnecessary delays in your reimbursement.*
- Contact the Grants Administrator immediately to schedule an orientation if your agency experiences key staff changes, such as new Executive Director or financial staff. Staff and organizational capacity are key components in determining whether an organization is capable of administering CDBG and/or HOME-funded activities.
- Control and monitor the program activities through sound management principles.

- Contact the Grants Administrator if you have any questions or need assistance. Assigned Grants Administrators are important members of the team. They are available to explain the CDBG or HOME program processes and help the program get started and stay on track.

### ***C. Subrecipients***

In order to achieve the national objectives, the City allocates CDBG and HOME funds on an application basis each year. A Subrecipient is a public or private nonprofit agency, authority, or organization that receives CDBG or HOME funds from the City to undertake eligible activities, via loan, grant, or other financial arrangement. Unless otherwise noted, the term “Subrecipient” will be used throughout this manual.

A Community Housing Development Organization (CHDO) is a private nonprofit organization that has among its purposes the provision of decent housing that is affordable to low-income households (those with incomes less than 80 percent of the area median income) as evidenced in its charter, articles of incorporation, board composition, resolutions, and by-laws. At least 15 percent of the HOME allocation annually is reserved for specific types of activities by CHDOs. Additional CHDO requirements are defined at [24 CFR 92.2](#).

A Community Based Development Organization (CBDO) is generally a nonprofit organization that can receive CDBG funds to carry out certain activities in connection with neighborhood revitalization, community economic development or energy conservation projects. CBDOs must be organized under state or local law to engage in community development activities in a specific geographic area within Missoula. Additional requirements (defined at [24 CFR 570.204](#)) must be met to qualify as a CBDO. Qualified CHDOs that serve a geographic area of operation of no more than one neighborhood may qualify as CBDOs.

The City expects that Subrecipients, CHDOs and CBDOs will have sufficient program and financial management capacity as well as knowledge of federal regulations in order to carry out CDBG and HOME activities. The City will provide technical assistance and guidance, but these entities have the sole responsibility of assuring that their program complies with all federal regulations as they relate to the entities' work with beneficiaries, contractors, vendors, or other partners. In short, the City's only working, contractual relationship is with the Subrecipient, CHDO or CBDO. These entities, in turn, are responsible for all communications and compliance with their various program partners, subcontractors, and beneficiaries.

### ***D. Contractual Agreement***

Prior to the release of CDBG or HOME funds from the City, a written agreement must be executed with the Subrecipient. The agreement remains in effect during any period when the Subrecipient is operating a program or implementing a program in which CDBG or HOME funds are being invested. Every project must be reviewed for environmental compliance. The City will conduct an environmental review (ER) under the National Environmental Policy Act (NEPA). If the City determines it necessary to consult out portions of the ER, additional funds will be allocated to the project for this purpose. No funds will be formally committed nor expended until the completion of the environmental review. The subrecipient may be required to furnish data, information, and assistance as part of the environmental review.

No obligations or expenditures of HUD or non-HUD funds may be incurred until a satisfactory Environmental Review is completed. For projects that require an Environmental Assessment, the Environmental Review will not be considered complete until HUD issues an Authority to Use Grant Funds (AUGF). Once the Environmental Review is complete and before a contract is signed, the Subrecipient may begin incurring CDBG or HOME-eligible costs only with City approval, but the Subrecipient incurs these costs at its own risk as any reimbursement is contingent upon HUD approval of the City's Action Plan and the City and the Subrecipient entering into the written contract agreement. The subrecipient cannot request reimbursement for these funds until after the written agreement is signed.

In addition, the following is required for HOME projects before funds can be committed to the project in IDIS: confirmed sources and uses of funds and determination that costs are reasonable; a current market assessment; proof of experience and financial capacity of developer or project owner; firm financial commitments; and an established project budget and schedule. In addition, project underwriting must be completed, as well as a site selection and neighborhood standards review (if applicable). Construction will be expected to start within 12 months.

## ***E. Pre-Contract Procedures***

### **1. General Information – Responsible Party**

**Award of Funds** – The City Council reviews staff recommendations for awards to applicant agencies and authorizes the Mayor to enter into contracts for the approved projects.

**Release of Funds** – Each year, Congress and the President approve federal appropriations that fund the U. S. Department of Housing and Urban Development (HUD). HUD reviews the City's program application as submitted in the annual Action Plan and makes the CDBG and HOME funds available to the City after the federal budget is approved. Typically, HUD makes funds available to the City in the spring, though delays in passing appropriation bills result in delays locally.

**HUD/City Grants Administrator Assignment** – Each project will have an assigned Grants Administrator to work with the agency receiving funds. The Grants Administrator will provide ongoing technical assistance needed to support the program and to ensure timely contracting and successful program implementation.

**City Orientation** – After the City Council allocates the awards, the Grants Administrator provides Subrecipient agencies a training opportunity to teach the basic rules under which all CDBG or HOME activities must operate. This opportunity helps to establish clear expectations with respect to performance standards, policies, and procedures. The agency will find out how and when to start the program.

**City/Agency Environmental Review Required** – No HUD or non-HUD funds can be obligated or expended until an Environmental Record (ER) is completed and the contract is executed. Following completion of the ERR, any expenditures for a program that take place before the execution of a contract are done so at the risk of the Subrecipient as any reimbursement for eligible CDBG or HOME expenditures are contingent upon HUD approval of the Annual Action Plan and the City and the Subrecipient entering into a written agreement.

**City/Agency Monitoring/Site Visit** – The Grants Administrator will monitor and review the agency's fiscal, management, operational procedures, compliance with ADA and

other federal requirements, and the program or services offered. For most projects, a site visit will be scheduled as well.

**City Contract** – The written contract is the central part of the Subrecipient agreement of the CDBG or HOME program. It fulfills a legal requirement by presenting a concise statement of rules of the CDBG and HOME programs, the conditions under which funds are provided and measures fiscal and program performance. This contract must be signed by the Chair of the subrecipient's Board of Directors—not by the executive director.

**City/Agency Procurement Requirements** – If the subrecipient plans to purchase materials, agency products, or services under the CDBG or HOME programs, the agency must follow a free and open competitive process in securing products or services. Agencies must properly document the purchase activity and decisions. All procurement undertakings must make an effort to outreach/utilize Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) firms. In addition, Build America, Buy America (BABA) requirements may be required. Documentation must be maintained to verify efforts and compliance. BABA requirements must be included in the terms and conditions for subrecipient agreements, contracts, subawards, and purchase orders for all infrastructure projects (see Section 8 for more information).

See section VIII. for details on procurement procedures.

## **2. General Information – Agency**

**Responsible Party Audit Required** – An audit for the agency's most recent audited year shall be provided including any management letters and any responses the agency has made to the audit. On an ongoing basis, agencies are required to submit their audit to CD within 180 days of the close of their fiscal year. If the agency is required to conduct a 2 CFR 200 single audit, that agency must submit their audit within nine months of the close of their fiscal year. If an agency is not required to conduct an audit, that agency must submit their Form 990 and the financial statements of their most recent fiscal year approved and signed by a Board Officer.

**Agency Formal Monitoring Visit** – During the course of the year the City may conduct a Program and Financial Performance Monitoring Visit. The purpose of the visit is to ensure Subrecipient activities and clients served were eligible and in compliance with the HUD National Objectives and that other regulatory requirements were met.

**Agency Affirmative Action Requirements** – Each agency must complete a description of the agency's Affirmative Action Plan prior to receiving reimbursement from the City.

**Agency Articles of Incorporation, Agency By-Laws and Corporate Resolution** – Agencies shall forward copies of these documents to the assigned Grants Administrator. These documents must be signed and dated by an Officer of the Board of Directors. Articles of Incorporation must include the State of Montana stamp to prove they were filed. If at any time the agency's Articles of Incorporation or By-Laws are updated, the agency must submit a copy of the revised documents to CD within 30 days of the effective date of the changes.

**Agency Taxpayer Identification Information Form/UEI number** – A W-9 form is required by IRS regulations. A Unique Entity Identifier (UEI) is required and must be on file prior to payment request. Return this information to the assigned Grants Administrator.

**Workers' Compensation:** Subrecipient must, at their own expense, obtain and keep in force any required workers' compensation insurance. The City of Missoula is not the worker's compensation insurer of Subrecipient's employees. Subrecipient must have current workers' compensation insurance in place for its employees. The City of Missoula shall have no liability with respect to any and all actions of Subrecipient's employees, officers or agents. Subrecipient shall provide City with a certificate of insurance evidencing Subrecipient's worker's compensation insurance coverage.

**Liability Insurance:** Subrecipient must, at their own expense, obtain and keep in force general commercial liability insurance to provide insurance against liability for loss, damage, or injury to property or persons that might arise out of Subrecipient's activities. The City of Missoula shall have no liability with respect to any and all actions of Subrecipient's officers, employees or agents. Subrecipient shall provide City with a certificate of insurance evidencing liability insurance.

### **3. Preliminary Title Report and Insurance**

The City will require receipt of a Preliminary Title Report on the Site to be encumbered by HOME or CDBG funds prior to recording any Montana Trust Indenture and prior to disbursement of any funds. The City will require receipt of Title Insurance from the Subrecipient on the Site for the amount of the HOME or CDBG funds encumbering the property.

## II. CDBG Program Objectives

The Community Development Block Grant (CDBG) program was created in 1974 and is administered by the Federal Government through the U.S. Department of Housing and Urban Development (HUD). The City of Missoula is an “Entitlement City” and therefore receives a direct annual allocation of federal CDBG dollars. The primary emphasis of the CDBG program is to ensure that each activity meets and complies with one of HUD's three broad national objectives, which are:

1. Benefit to low-and moderate-income (LMI) households and/or persons
2. Prevention and/or elimination of slum and blight
3. Addressing other community development needs having a particular urgency

Subrecipients are within HUD compliance when any one of the national objectives is met, however, all City Subrecipients to this date have been designated under a national objective benefiting low-to moderate-income households or individuals. For this reason, only program benefit criteria under the LMI benefit objective are fully explained in this manual; the other two objectives are merely summarized.

### ***A. Benefit to Low- And Moderate-Income***

The project must be located within the City of Missoula limits or demonstrate that reasonable benefits from the activity will accrue to City of Missoula residents and must:

- Serve individuals or households who are low/moderate income
- Provide a direct benefit to Missoula individuals or families, the majority of whom are considered low/moderate income based on the area median income figures (**Limited Clientele Benefit**)
- Serve an area where at least 51 percent of the residents are low/moderate income persons (**Area Benefit**)

### **Households and/or Individuals**

Clients who benefit from CDBG funds must have low- and moderate-incomes as defined by HUD. In order to meet this benefit test, each Subrecipient must adhere to the following:

1. Every Subrecipient must serve persons of low- and moderate-income. CDBG defines these income limits as percentages of Area Median Income (AMI): Extremely Low (30%), Low (50%) and Moderate (80%) Income. The CDBG program uses the [HOME income limits](#) as guidance for determining income eligibility. HUD typically updates these income limits in June of each year. The Grants Administrator will provide new tables to the Subrecipient as soon as they become available. It is the responsibility of the Subrecipient to adhere to all guidelines.
2. All CDBG program Subrecipients must ensure that the incomes of their clients do not exceed CDBG Income Limits regardless of other income limits, requirements, guidelines and regulations that may govern their activities.

### **Limited Clientele Benefit**

A limited clientele activity benefits a specific group of people, rather than all the residents in a particular area. The activities addressed in this section are intended to benefit at least 51 percent low-and moderate-income individuals. However, housing activities and activities designed to create or retain jobs may not qualify under this category. To qualify under this category, the activity must adhere to the following:

1. Benefit a clientele who are generally presumed to be principally low- and moderate-income (L/M) individuals. This presumption covers abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers ([Basically CDBG](#)); or

- **Presumed Benefit Activities:** If an LMC\* activity is limited to assisting one or more of the presumptive benefit groups, report the number of persons benefiting under the following income categories unless you have information that supports reporting them under a different income category:

Group	Income Level
Abused children	Extremely low income
Battered spouses	Low income
Severely disabled adults	Low income
Homeless persons	Extremely low income
Illiterate adults	Low income
Persons with AIDS	Low income
Migrant farm workers	Low income
Elderly	If assistance is to acquire, construct, convert, and/or rehabilitate a senior center or to pay for providing center-based senior services, report the beneficiaries as moderate income.  If assistance is for other services (not center-based), report the elderly beneficiaries as low income.

2. Require information on family size and income so that it is evident that at least 51 percent of the clientele are individuals whose family income does not exceed the L/M limit; or
3. Set required income eligibility to limit the activity exclusively to low- and moderate-income individuals; or
4. Be of such nature and location that it is obvious the clientele benefiting from the activity will be low- and moderate-income individuals.

Limited clientele activities include, for example:

- Construction of a senior center
- Public services for the homeless
- Construction of job training facilities for the disabled

### **Limited Area Benefit**

A limited area activity is an activity that benefits individuals and households in a specific area, such as a census block group or identifiable neighborhood that consists of at least 51 percent low/moderate income population. HUD's [CPD Maps Tool](#) is helpful in determining which areas qualify under this category.

### **Definition of Income**

In accordance with 24 CFR 570.3, for CDBG, the City of Missoula utilizes the annual income definition provided at [24 CFR 5.609](#). When determining income eligibility, 24 CFR 5.609(b)(3) requires that CDBG Subrecipients and CBDOS include in calculating annual income the greater of either: (1) actual income resulting from all net family assets; or (2) a percentage of the value of such assets based upon the current passbook savings rate as determined by HUD when a family has net assets in excess of \$5,000. Current passbook savings rate can be found [here](#).

### **Connection to Housing Outcomes**

In addition to meeting a CDBG National Objective, the City of Missoula further requires that all CDBG applications show a direct connection to affordable housing and/or homelessness outcomes.

#### ***B. Aid in the prevention of slum or blight***

The project must be located within the City of Missoula and must show that the area meets the State or local government's definition of slums and blight. For Missoula, the determination of whether a property is defined as slum or blight shall be obtained from the Missoula Redevelopment Agency.

#### ***C. Meet an urgent need***

The activity must provide a remedy for a serious and immediate health or welfare problem, such as a natural disaster; no other federal funds can be available; and the problem must be of recent origin.

#### ***D. Match***

The City of Missoula encourages Subrecipients to match their CDBG assistance with at least 25 percent in non-federal financial matching funds. In-kind donations of goods and/or professional services may be deemed as acceptable match provided that the Subrecipient submits documentation to the satisfaction of CD that demonstrates a) these costs would have been paid for with cash by the Subrecipient to a third-party were it not for the in-kind donation, and b) these costs are reasonable and acceptable based on industry standards.

#### ***E. Standards for Affordable Rents***

When CDBG is used to support affordable rental housing for low-to-moderate income households, CD will use the [High HOME rent limits](#) posted annually by HUD as the standard for affordable rents.

#### ***F. Rehabilitation Standards***

When CDBG is used to support housing rehabilitation, the City of Missoula's Rehabilitation Standards included in building codes will apply.

### **G. Period of Affordability**

While not required by CDBG regulations, in an effort to promote long-term affordable housing, CD will require that CDBG-supported housing developments, homeowner rehabilitation, and homebuyer assistance have periods of affordability based on the level of CDBG assistance per unit. CD will follow the same guidelines that apply to the HOME program based on CDBG subsidy per affordable unit.

1. Rehabilitation and/or acquisition of housing per unit amount of federal HOME funds:
  - Under \$15,000 per unit..... 5 years
  - \$15,000 to \$40,000 per unit..... 10 years
  - Over \$40,000 per unit..... 15 years
2. New construction of rental housing..... 20 years

Affordability requirements apply regardless of the term of any loan or mortgage or the transfer of ownership. They are imposed by trust indentures, covenants running with the land, or other HUD approved mechanisms, but may terminate upon foreclosure or transfer in lieu of foreclosure.

During the period of affordability, funds are recaptured upon sale or transfer of title of the assisted units, or the assisted units may be re-sold to an eligible buyer. A recorded Montana Trust Indenture will ensure the resale or recapture in the event of a sale or transfer. The City reserves the right to file a Montana Trust Indenture on any CDBG or HOME project that includes a period of affordability; the trust indenture will stay in effect until project close-out, period of affordability, or longer as determined by the City.

During the period of affordability, if the Subrecipient violates compliance requirements, Subrecipient will be subject to repayment of the entire CDBG investment.

See Recapture, Resale and Repayment Provisions, XI. Exhibits, Part D.

NOTE: Although affordability requirements are not required for CDBG, some projects are required to meet change of use restrictions. See 24 CFR 570.505 and 24 CFR 570.489.

### **III. HOME Program Objectives**

The Home Investment Partnerships (HOME) Program was created by the National Affordable Housing Act of 1990 and is administered by the Federal Government through the U.S. Department of Housing and Urban Development (HUD). This federal program is designed to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing. The City of Missoula is a “Participating Jurisdiction” and receives a direct annual allocation of federal HOME dollars.

#### ***A. HOME Objectives***

HOME funds are used to achieve the following objectives:

- Provide decent affordable housing for low- and moderate-income households
- Strengthen the ability of state and local governments to provide housing
- Leverage private sector participation

#### ***B. HOME Activities***

Eligible activities for use of these funds are defined in accordance with the following categories:

- Homebuyer activities
- Rental housing activities
- Tenant-based rental assistance
- Housing rehabilitation
- Affordable housing construction
- CHDO Operating Assistance
- CHDO Predevelopment Loans

## IV. Additional HOME Requirements

### A. Required Match

A minimum of 25% committed match as share of total funding request is currently required but is subject to change (see [24 CFR 92.220](#)). HOME funds must be matched by non-federal resources, which include but are not limited to:

- Cash contributions (from non-federal sources).
- Foregone interest, taxes, fees, or charges levied by public or private entities.
- Donated land or real property.
- Investments in on-or off-site improvements within 12 months of project start.
- Proceeds from bond financing.
- Donated site preparation and construction materials.
- Rental of donated use of site preparation or construction equipment.
- Donated or voluntary labor or professional services.
- Sweat equity (for homeownership projects); or
- Direct cost of supportive services to families residing in HOME-assisted units during the anticipated period of affordability.

The following does not count as match: Contributions made with other federal funds (including CDBG), tax benefits from the government, owner equity/investment in the project, cash contributions from people directly involved in the project (directly applying for HOME funds, receiving HOME funds, investors/owners working on HOME project).

Given the unique nature of Tenant-Based Rental Assistance, TBRA may be eligible for an exemption from match requirement if approved in advance by CD.

### B. Income Eligibility Determination

Technical eligibility of the household will usually be performed by the Subrecipient staff. However, participating jurisdictions may also accept determination of income eligibility from a public housing agency, owner, or federal tenant-based rental assistance provider, or from federal or non-federal entities administering public assistance such as TANF, Medicaid, LIHTC, or local rental subsidy programs. A full list of entities that can provide this information and the specific requirements associated is listed at [24 CFR 92.203\(a\)](#).

Household income eligibility will be performed in accordance with procedures identified in 24 CFR 92.203 (a) and (b)), using the most recent [HUD HOME Program Income Limits](#). The [CPD Income Eligibility Calculator](#) is also a helpful tool for determining income eligibility.

To determine if a family is income eligible:

- For families who are tenants in HOME-assisted **rental housing** and not receiving HOME tenant-based rental assistance, subrecipient staff must examine at least two months of source documentation evidencing annual income (e.g., wage

statement, interest statement, unemployment compensation statement) for the family.

- For subsequent income redeterminations, the same method can be used, or the subrecipient can obtain from the family a written statement of the family's annual income and family size, along with certification that the information is complete and accurate. See 24 CFR 92.203 (b)(1)(i).
- For families applying for **HOME ownership** activities, annual income should be determined by examining at least 2 months of source documents (e.g., wage statement, interest statement, unemployment compensation statement).
- For families applying for or receiving **TBRA**, annual income can be determined using the method of home ownership

The three cases where a tenants annual income must be adjusted is outlined in [24 CFR 92.203 \(f\)](#). [24 CFR 5.617](#) outlines the requirements for persons with disabilities.

An Income Eligibility Package must be completed on each household to include at a minimum an income and asset questionnaire, Household Income Declaration Form, and source documents used to verify income.

HOME Subrecipients and CHDOs should use the definition annual income as defined at [24 CFR 5.609](#).

When determining income eligibility for the HOME program, 24 CFR 5.609(a) requires that HOME Subrecipients and CHDOS include in calculating annual income the greater of either: (1) actual income resulting from all net family assets; or (2) a percentage of the value of such assets based upon the current passbook savings rate as determined by HUD when a family has net assets in excess of \$51,600. The [current passbook savings rate](#) determined by HUD is .45%.

### **C. Period of Affordability**

The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified, beginning after project completion.

1. Rehabilitation and/or acquisition of housing per unit amount of federal HOME funds:

- Under \$15,000 per unit..... 5 years
- \$15,000 to \$50,000 per unit..... 10 years
- Over \$50,000 per unit..... 15 years

2. New construction of rental housing..... 20 years

Affordability requirements apply regardless of the term of any loan or mortgage or the transfer of ownership. They are imposed by trust indentures, covenants running with the land, or other HUD approved mechanisms, but may terminate upon foreclosure or transfer in lieu of foreclosure.

During the period of affordability, funds are recaptured upon sale or transfer of title of the assisted units, or the assisted units may be re-sold to an eligible buyer. A recorded Montana Trust Indenture will ensure the resale or recapture in the event of a sale or transfer. The City reserves the right to file a Montana Trust Indenture on any CDBG or

HOME project that includes a period of affordability; the trust indenture will stay in effect until project close-out, period of affordability, or longer as determined by the City.

During the period of affordability, if the Subrecipient violates compliance requirements, Subrecipient will be subject to repayment of the entire HOME investment.

See Recapture, Resale and Repayment Provisions, XI. Exhibits, Part D.

#### ***D. Rental Housing – Program Targeting***

1. Rules for rental housing, as per 24 CFR 92.216:

- a. Rents for HOME-assisted units are at or below the [existing HOME “high” and “low” rent limits](#), including [utility allowances](#) as determined by the Montana Board of Housing, and households occupying HOME-assisted units have incomes at or below 50 percent or 80 percent of area median income as determined by HUD rules.
- b. In rental projects with five or more HOME-assisted rental units, 20 percent of the HOME-assisted units must be occupied by very low-income families and be charged rent – including utility allowance – that does not exceed the “low” HOME rent limit. The remaining units, and any units in rental projects with fewer than five HOME-assisted rental units, can be “high” HOME units occupied by families at 80% AMI.
- c. Units will remain affordable for the period of affordability.

#### ***E. Homebuyer Assistance Property Eligibility***

Property to be purchased or constructed must meet the following criteria:

- Be located within the City of Missoula limits.
- May be a single-family home, condominium, or manufactured housing unit.
- Purchase price (including all closing costs, options and upgrades) must comply with HOME [Homeownership Value Limits](#).
- New construction or existing. If existing, it must be owner-occupied or have been vacant for at least six months. There are three exceptions to this qualification:
  - Present renter is the homebuyer,
  - Tenant was evicted for cause, or
  - Tenant moved voluntarily.
- Existing housing that is acquired for homeownership must be decent, safe, sanitary, and in good repair. The City of Missoula must determine that the housing is decent, safe, sanitary, and in good repair, and must inspect the housing and document compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards. For more information, contact the CD Grants Team, and see the applicable standards in [24 CFR 5.703](#) and [24 CFR 92.251](#).
- Applicant must occupy as principal resident during the period of HUD affordability as per [24 CFR 92.254\(a\)\(4\)](#).

- When the City exercises its right to file a Montana Trust Indenture, applicant must accept the trust indenture, which will stay in effect until project close-out, period of affordability, or longer as determined by the City.
- Applicant may not allow any liens or encumbrances or refinance the property for the affordability period.

#### ***F. Underwriting and Subsidy Layering***

In accordance with [24 CFR 92.250](#) – and [HUD CPD Notice 15-11](#) – the City of Missoula will conduct an underwriting and subsidy layering review prior to committing HOME funds to a project. In general, underwriting and subsidy layering is required for all HOME-assisted projects except for HOME-assisted homeowner rehabilitation that does not involve an amortizing loan that the homeowner will pay back.

The City of Missoula will require that Subrecipients submit all relevant documentation in order to complete this underwriting and subsidy layering review.

#### ***G. Minimum and Maximum HOME Subsidy per Unit Limits***

Pursuant to [24 CFR 92.205\(c\)](#) “the minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project.” The minimum HOME investment does not apply to TBRA.

Notwithstanding other HOME requirements that may further limit the amount of HOME subsidy per unit that can be provided for a project, HUD has established maximum HOME subsidy per unit limits by unit type (1 bedroom, 2 bedroom, etc.) and updates these numbers each year around June. Please contact CD staff for most current calculations.

Please note that additional restrictions may apply on the maximum HOME subsidy per unit. For example, per [24 CFR 92.209\(h\)](#) for Tenant-Based Rental Assistance (TBRA) the maximum subsidy that the City of Missoula may pay for or on behalf of a family can not exceed the rent standard for the unit size minus 30 percent of the family’s monthly adjusted income .

It is also important to note that the maximum HOME subsidy per unit takes into account all HOME assistance, regardless of the source or program. For example, if the City provides HOME funds to a developer to create homebuyer housing and the homebuyer uses down payment assistance funded by HOME, the aggregate of those two HOME subsidies is considered when determining compliance with the maximum HOME subsidy per unit.

#### ***H. Cost Allocation***

The City of Missoula will conduct a cost allocation calculation of all HOME-assisted development projects in order to assign the appropriate number of HOME-assisted units. The City will comply with guidance established by [HUD CPD Notice 16-15](#) entitled “Allocating eligible costs and identifying HOME-assisted units in multi-unit HOME rental and homeownership development projects.”

#### ***I. HOME Project Deadlines***

The HOME program imposes several additional regulatory deadlines:

**Acquisition/demolition (92.2(2)(ii)(A)):** Any acquisition of standard housing must occur within six months of the contract or purchase agreement date, and construction, or demolition of the property must be scheduled or reasonably can be expected to start within 12 months of the agreement date.

**Project completion (92.205(e)(2)):** Subrecipients must complete the projects within four years of the date funds are committed to the project.

**Lease-up (§92.252):** If a HOME-assisted unit is not occupied by an eligible tenant within six months following project completion, the Subrecipient must report status and marketing efforts to CD. If the unit remains unoccupied at 18 months after the project completion date, CD will require the Subrecipient to repay the HOME funds.

**Homebuyer unit sale (§92.254(a)(3)):** For homebuyer development projects subject to the HOME Rule, if there is no ratified sales contract within nine months of the construction or rehabilitation completion, the ownership unit must be converted to HOME-assisted rental housing pursuant to §92.252.

### ***J. Property Standards***

All properties assisted with HOME funds are subject to minimum property standards at project completion, as outlined in [24 CFR 92.251](#). For the City of Missoula, the property standards are the local building codes. In addition, rental projects are subject to property standards throughout the affordability period. For projects that provide 26 or more units, the Subrecipient must submit, and the City of Missoula must approve, a capital needs assessment (24 CFR 92.251(b)(1)(ix)).

At project completion, the City of Missoula must ensure that the HOME-assisted project meets the property standards outlined in [24 CFR 92.251](#). An on-site inspection is required both at project completion and every three years; however, the City of Missoula can accept a recent inspection conducted under the National Standards for the Condition of HUD Housing ([24 CFR part 5, subpart G](#)) in place of conducting its own inspection. More details about this is available in 24 CFR 92.251 (b)(1)(viii).

HUD is transitioning from the Housing Quality Standards (HSQ) inspection model to the National Standards for the Physical Inspection of Real Estate (NSPIRE). NSPIRE aligns multiple HUD programs to a single set of inspection standards, ensuring consistent housing quality expectations. For guidance on NSPIRE is available [here](#).

### ***K. Site and Neighborhood Standards***

All HOME-assisted rental developments must conform to the site and neighborhood standards identified in [24 CFR 983.55\(e\)\(2\)](#) and [\(3\)](#), in accordance with [24 CFR 92.202](#)

New construction site and neighborhood standards. The proposed sites for new construction units must meet the following site and neighborhood standards:

1. The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
2. The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil

Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

3. The site must not be located in an area of minority concentration, except as permitted under paragraph (b)(3)(ii) of this section and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area. More information on exceptions is available in [24 CFR 983.55\(e\)\(3\)](#).
4. The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.
5. The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwelling or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
6. The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
7. Except for housing designed for elderly persons, travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers must not be excessive.

#### ***M. Affirmative Marketing Procedures***

In accordance with 24 CFR 92.351, the City of Missoula adopts and follows affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability.

**Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups)**

The City of Missoula posts HUD Fair Housing brochures on its website and includes the Equal Opportunity Logo on letters and in presentations.

**Requirements and practices each Subrecipient and owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster)**

The City of Missoula requires that Subrecipients undertaking HOME activities develop affirmative marketing policies and place the Equal Housing Opportunity logo on all printed materials promoting HOME-assisted housing.

For all HOME-assisted housing activities, the City of Missoula encourages Subrecipients to promote their programs through outreach to local media, the At-Risk Housing Coalition, the Missoula Housing Authority, Homeword's Homeowner/Homebuyer/Renter classes, and other avenues.

**Procedures to be used by Subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies)**

Subrecipients are encouraged to engage such persons through a variety of avenues including the At-Risk Housing Coalition, Missoula Job Service, and Homeword Housing Education Classes.

**Records that will be kept describing actions taken by the participating jurisdiction and by Subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions**

The City of Missoula will require Subrecipients and owners to keep on file all documents demonstrating their affirmative marketing approach, including:

- A copy of their Affirmative Marketing Plan for the project
- Affidavits of legal ads or postings in local media
- Email announcements through the At-Risk Housing Coalition and other partners
- Copies of letters and announcements that include the Fair Housing logo
- Any other documentation that demonstrates their marketing outreach

**A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.**

In working with new Subrecipients on project marketing, the City of Missoula will document Affirmative Marketing Plans and email correspondence with Subrecipients. The City of Missoula will monitor all projects still in periods of affordability for compliance with affirmative marketing procedures to evaluate subrecipients' records during on-site monitoring to ensure that compliance is taking place and being adequately documented. Subrecipients may be required to modify or expand their marketing activities and procedures if a determination of non-compliance is reached through the monitoring process.

## **V. Administrative Provisions**

### ***A. Written Agreement with City***

A written agreement must be entered into between the City and all entities receiving CDBG or HOME funds. The written agreement forms the basis for the contractual obligation between the parties to fund and implement the activity or program. The agreement will denote responsibilities attributable to each party and shall outline in exact measure the scope of services to be provided, methods of accountability, and a schedule for payment. Execution of the agreement binds the Subrecipient for a specified period of time and is amendable only upon written authorization from the City.

### ***B. Post-Award Responsibilities***

Upon execution of the agreement between the City and the Subrecipient, the Subrecipient shall:

1. Immediately report all changes in its articles of incorporation, bylaws, or tax-exempt status to the City.
2. Maintain no member of the Board of Directors as a paid employee, agent or subcontractor.
3. Include on the Board of Directors representation from the broadest possible cross-section of the community, including those with expertise and interest in the provided services, representatives from community organizations interested in the services, and users of the services.
4. Open to the public all meetings of the Board of Directors, except meetings or portions thereof dealing with personnel or litigation matters, consistent with Montana's open meeting laws.
5. Keep minutes of all regular and special meetings of the Board of Directors, have a regular meeting at least once each three (3) months, and upon request, forward copies of minutes to the Grants Administrator.

### ***C. Federal Requirements***

Subrecipients and subcontractors must comply with all applicable federal regulations governing the use of CDBG and HOME funds. Following are several key requirements:

#### **1. Relocation Requirements**

Funded projects are subject to relocation requirements contained in the Uniform Relocation Act (URA), and in some projects, Section 104(d) of the Housing and Community Development Act. URA relocation requirements are triggered whenever displacement occurs as a direct result of rehabilitation, demolition, or acquisition for an assisted project. Subrecipients must document compliance with URA even if displacement does not occur. The extent of the relocation assistance will be determined on a project-by-project basis. See the City of Missoula's URA Policy and its Residential Anti-Displacement and Relocation Assistance Plan (RARAP) at <https://www.ci.missoula.mt.us/3071/HUD-Grants>.

## **2. Handicapped Accessibility Requirements**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted activities on the basis of handicap, and imposes requirements to ensure that qualified individuals with handicaps have access to these program and activities. The extent of the application of Section 504 requirements will vary with each individual project, but general guidelines include:

- For new construction of multi-family projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
- The Section 504 definition of substantial rehabilitation multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (but not less than one unit) must be accessible to individuals with sensory impairments.
- When rehabilitation less extensive than substantial rehabilitation is undertaken, alterations must make the unit accessible to and usable by individuals with handicaps to the maximum extent feasible, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must make the project accessible to the maximum extent feasible.
- Accessible units must be distributed throughout projects and sites to the maximum extent feasible, and must be available in a sufficient range of sizes and amenities to not limit choice.
- Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.
- When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.
- The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.

## **3. Housing Quality Standards**

All assisted housing, including homeownership and rental housing, must maintain the housing in compliance with all applicable State and local housing quality standards (HQS) and code requirements. If there are no such standards, the housing must meet the housing quality standards in 24 CFR 982.402. Therefore, City of Missoula codes and standards apply as listed on the City [website](#). Each rental unit is required to have an annual HQS inspection performed by a certified HQS inspector.

#### **4. Sam.gov Registration**

CDBG and HOME regulations require that all CDBG-HOME Subrecipients and their subcontractors are registered and have no active exclusions in the System for Award management ([www.sam.gov](http://www.sam.gov)). Subrecipients must submit documentation of good standing of their organization and any subcontractors prior to receiving CDBG or HOME funds.

## VI. Recordkeeping

The City of Missoula is responsible for ensuring that Subrecipient activities are carried out in compliance with all applicable program requirements and that the program goals are on track with the objectives outlined in the agency contract. Accurate recordkeeping is crucial to the successful management of CDBG and HOME funded programs.

Insufficient documentation can lead to delayed payments or monitoring findings, both of which can be difficult to resolve if records are missing, inadequate or inaccurate.

### A. Financial Records

Financial recordkeeping is a primary area subject to HUD reviews and, if inadequate, can lead to serious problems. These types of financial records must be maintained by the agency:

- Chart of accounts, written accounting procedures, accounting journals and ledgers
- Payment requests and source documentation (bills, receipts, copies or cancelled checks, etc.)
- Procurement files (bids, contracts, etc.) and real property inventory
- Bank account and payroll records
- Financial reports, correspondence and audit files

Staff with accounting skills but not necessarily with a CDBG or HOME background often handle the agency's financial functions. To ensure proper financial recordkeeping and reporting, agencies shall help their financial staff understand:

- What information needs to be kept and why
- When the information should be collected and how often reported
- How the information should be acquired, organized, and stored
- How the information should be reported (format)
- How long the records must be kept

#### 1. Grants Accounting Records

Financial records are an integral part of the required computer accounting system. The required grants accounting records for Subrecipients are listed and discussed below.

The computer bookkeeping/accounting system should have a general ledger type printout showing the assets, liabilities, income, and expenses. The system should provide a separate report for income and expenses by category or grant. Bank reconciliations must be performed monthly and balanced with the cash account in the general ledger. Further explanation of these required reports are as follows:

**General Ledger** - The general ledger shall include separate accounts for all assets, liabilities, income, and expense categories, as well as an account for the cash/fund balance.

**Cash Disbursements** - A computer printout of the grant expenses by category or account code must be submitted with the reimbursement request.

**Payroll Reports** - The Subrecipient must maintain payroll reports detailing gross salaries, all withholding and employer payments.

**Property Register** - To adhere to requirements outlined in the Revisions to 24 CFR Part 570 at subpart J, a listing of all property and/or equipment purchased with Federal grant funds for \$500 or more must be maintained. All federally funded equipment purchases must be recorded on an Inventory/Property Control Form, and submitted to CD upon request. All use and proposed dispositions of grant-funded property is governed by the provisions under the revisions to 24 CFR Part 570 at subpart J.

## **2. General Responsibilities**

Management and administration of HUD grant funds is the responsibility of the Subrecipient accepting the funds. The Subrecipient's Director, or authorized designee, will be responsible for reviewing and approving all transactions involving the grant funds, before the Subrecipient's financial officer or accountant, or authorized designee, processes them. The Subrecipient's Director and/or Board of Directors, or authorized designee, responsibilities include:

- Approval of purchase orders and contracts to be reimbursed through HUD grant funds
- Receipt and approval of invoices
- Review and approval of properly coded requests for payments
- Assurance of compliance with the City Grant Agreement and Subrecipient Informational Program Manual

### **Finance Officer Responsibilities**

The finance officer or accountant is responsible for maintaining a computer accounting/bookkeeping system. The finance officer's or accountant's responsibilities include, but are not limited to the following:

- Control of accounting documents for processing by the Subrecipient
- Preparation of financial reports based on accounting records
- Preparation of requests for reimbursement, subject to review by the agency's Director
- Implementation and oversight of all financial procedures designed to avoid or eliminate waste, fraud, or abuse of grant funds

Should the City determine that the finance officer or accountant is not maintaining proper financial records, or processing accurate information, the City has the right to request the Subrecipient to remove that individual from grants responsibility. Following are key elements required of financial systems for managing federal funds.

#### **a. Internal Controls**

To meet the cash management requirements a Subrecipient's financial management systems must provide:

- A computer accounting system that records the source of income and categorizes expenses for grant activities. This system should contain income and expenses pertaining to federal grants.
- Effective control over all grant funds, property and equipment, and other assets. Subrecipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

- Comparison of actual checks written with budgeted amounts for each grant
- Computer printouts that are supported by source documentation (i.e., original invoices marked "Paid" with dates and check number)
- A separate account for all grant income and expenses
- A method to ensure timely and appropriate resolution of audit findings and recommendations
- Written policies and procedures that define separation of duties, authority, etc.
- Written accounting procedures for approving and recording transactions
- Financial records periodically compared to actual assets/liabilities for accuracy

**b. Accounting Records**

The Subrecipient's accounting system will be based on a cash accounting basis. This system is noted for two distinguishing elements; income is recorded when it is received, and expenses are recorded when they are paid.

- Adequate financial accounting systems must be in place and maintained.
- Reliable, complete, up to date information must be available and reconciliations performed on regular basis.
- Agency has accounting records that track CDBG or HOME income and expenditures separately from other income and expenditures.
- Agency has internal controls for preparing expenditures and assigning them to the proper fund account and budget item.

**c. Allowable Costs**

Agency shall have written procedures for determining what is reasonable and allowable in accordance with [2 CFR Part 200](#).

**d. Source Documentation**

In the simplest terms, financial transactions involve writing checks, and receiving reimbursement for eligible activities. Every grant related financial transaction must be recorded immediately into the accounting system.

Source documents, such as invoices or time allocations, should provide all details of each transaction or activity. The information contained in the source documents is necessary for accounting purposes, and is recorded in the accounting/accounts payable system on Subrecipient's computer. The source documents must be readily accessible during monitoring visits. A variety of source documents and records are needed to properly account for grant transactions. These documents include but are not limited to the following:

**Service Contracts** - All grant funded service contracts (accounting, leases, janitorial, etc.) must be a written agreement between the Subrecipient and the firm/individual.

**The City of Missoula Community Development division must have copies of all service contracts that are to be reimbursed with City grant funds.**

**Proof of Payment** - All Subrecipients are required to retain original invoices or sales receipts for all purchases. All invoices must be marked "PAID IN FULL" with the

check number, date paid, and payee information included. A stamp is recommended for this. Subrecipient must submit proof of payment with all requests for funds in order to be eligible for reimbursement. In addition to invoices marked paid in full, other acceptable documentation includes cancelled checks, wire transfer or escrow records, and other documents deemed acceptable by CD.

**Payroll Records** - All Subrecipients will maintain concise documentation for both the time worked and tasks undertaken. The employee and his/her immediate supervisor must sign employee time allocations. Subrecipients that receive CDBG or HOME support for payroll expenses must submit these payroll records with each request for funds in order to be eligible for reimbursement.

Up-to-date files of original source documents (receipts, invoices, bills, cancelled checks, credit card reconciliations, time cards, etc.) must be maintained for all financial transactions.

**e. Budget Controls**

Appropriate bookkeeping/accounting software can manage budget controls.

- Agency must develop monthly financial statements that compare actual expenditures for each budget category against approved budget.
- Agency must regularly compare progress toward the achievement of goals with the rate of expenditures of program funds.

**f. Cash Management**

- Agency must have a procedure for accurately projecting the cash needs.

**g. Financial Reporting**

- Agency shall provide accurate disclosure of financial results of CDBG or HOME programs.

**h. Audits**

Subrecipient agreement with the City is subject to audits as prescribed by 2 CFR Part 200. According to 2 CFR § 200.501(a): "A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part."

In order to ensure compliance to the greatest extent feasible, CD requires agencies receiving federal funding to submit audited financial statements within 180 days of the close of that agency's fiscal year, or 270 days if the agency must complete a 2 CFR 200 audit. Subrecipients are advised to be careful when selecting a CPA firm to perform an audit. Not all CPA firms have experience with non-profit agencies' requirements.

The United States General Accounting Office (GAO) states that Subrecipient agencies must ensure that federal program resources are applied "efficiently", economically and effectively to accomplish the program objectives. The financial and performance audits are designed to ensure that Subrecipient agencies are accountable to HUD, the City and the public. In particular:

1. *Financial audits* are designed to provide an independent opinion on the agency's financial statements, internal central structures, and compliance with specific financial systems and procedural requirements.

2. *Performance audits* provide an independent point of view on how efficiently and effectively the agency has carried out its operations and achieved the intended program results and benefit. The primary goal of the audit is to determine whether your agency has adequate systems in place to ensure that:

- Goals and objectives are met
- Resources are safe-guarded
- Laws and regulations are followed
- Reliable data is obtained, maintained and accurately disclosed

**i. Reimbursements**

Reimbursement will only be provided for allowable costs as approved by the City of Missoula. Allowable costs must be directly related to the Grant.

**The City of Missoula will only reimburse the Subrecipient for expenditures actually incurred.**

All Subrecipient requests for reimbursement must be made by accurately completing the Draw Request form, provided by CD. Proof of payment must be included with source documentation. See [Part 4. "Source Documentation"](#) of this section for more information.

Subrecipients are expected to have sufficient cash-on-hand to undertake CDBG and HOME funded projects on a reimbursement basis. While the City of Missoula does everything it can to process payments as quickly as possible, Subrecipients should expect that reimbursement may take up to 30 days to process, or, potentially longer if any issues are encountered with the reimbursement request.

**j. Petty Cash Record**

A petty cash fund may be set up to take care of small item payments, usually no more than \$20. All such payments must be supported by petty cash vouchers and receipts and must be an eligible expense.

**B. Program Activity Records**

For each program, the agency should determine what data must be maintained in the program files and establish a system for ensuring that every file contains the necessary information. This list will vary from program to program, but each file should include the following:

- CDBG and/or HOME application, City contract, procurement information, bids and other contracts; budget, expenditure and payment information with supporting documentation
- Characteristics and location of clients served
- Affirmative marketing, and compliance with other federal regulations
- Program status, progress reports, audits, monitoring reports and correspondence

Other records to be maintained include:

### **1. Payroll Records**

Payroll records will show actual gross earnings, net payroll and payroll deductions for each individual staff member by pay period. If an employee is paid by more than one fund or program, the payroll journal will need to reflect the distribution of time and money against each fund or program. Back-up documentation must include:

- Canceled paychecks
- Tax records
- Worker's compensation records
- Individual time allocations

### **2. Time Records**

The Subrecipients shall keep time records that indicate actual time paid, including types of time such as sick leave, vacation leave, compensatory time, etc., as well as daily time allocations that are signed by the employee and supervisor.

If an employee's time is split between CDBG or HOME and other funding sources, time allocation records must support the allocation of charges among the sources.

The Subrecipient shall maintain a system of internal control in accordance with generally accepted accounting practices. Internal control consists of a plan or procedure to safeguard assets, check the adequacy and reliability of accounting data, promote operating efficiency, and ensure compliance with appropriate laws and regulations. On or before 30 calendar days after termination of the contract, the project coordinator shall submit to the City an annual inventory update and a closeout financial report. All property, documents, data, studies, reports and records purchased or prepared by the Subrecipient under contract should be disposed of according to contract.

In the event the program terminates, copies of all records relating to the program or activity that are the subject of the contract shall be furnished to the City. Financial reports required to be prepared and submitted by the Subrecipient to the City shall be accurate and correct in all respects. Should inaccurate reports be submitted to the City, the City may elect to have the Subrecipient secure the services of a licensed accounting firm. Cost of such accounting services are to be borne by the Subrecipient.

## ***C. Record Retention***

### **1. CDBG Record-Keeping Policy**

For each activity, the following types of documentation must be kept for a period not less than four (4) years as measured from the date of submission of the CAPER in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report of the award.

For CDBG housing activities that involve a period of affordability, records must be kept for a period of four years following the end of the period of affordability.

- Records showing the activity is used by a segment of the population presumed by HUD to be low/mod individuals, e.g., disabled persons, persons with HIV/AIDS, homeless; or

- Records describing how the nature and, if applicable, the location of the activity establishes that it is used predominantly by low-and moderate-income individuals (Census tract data); or
- Data showing the size and annual income of the immediate family of each individual receiving the benefit, if not in the applicable low-income census tracts.

If CDBG assistance is provided as a loan, Subrecipient must maintain documentation for a period of four years after the CAPER that reports on the final loan payment (when the loan is fully paid off).

## 2. HOME Record-Keeping Policy

For HOME Subrecipients and CHDOs, the following [record-keeping policies](#) apply:

**Program records:** These program records must be maintained:

- Efforts to maximize participation by the private sector
- Forms of assistance used
- Subsidy layering guidelines
- Multi-family refinancing guidelines
- Procedures for establishing 95 percent of median value
- Resale/recapture guidelines
- TBRA records, including:
  - Consolidated Plan TBRA certification
  - Market Conditions/Needs Assessment
  - Selection policies and criteria
  - If using preferences for persons with special needs, supporting documentation on categories used
  - Rent standards and minimum tenant contribution
  - Compliance with requirement that 90 percent of assisted families have incomes at or below 60 percent of median
- Compliance with matching requirements
- Compliance with set-aside and funding commitment requirements

**Project records:** These project records must be maintained:

- Description of each project:
  - Location (with a map)
  - Form of assistance
  - Number and identification of units or tenants associated with HOME
- Source and application of funds
- Compliance with maximum per-unit subsidy limits and subsidy layering guidelines
- Compliance with property standards and lead-based paint requirements

- Compliance with income-eligibility requirements
- For TBRA, compliance with written tenant selection policies, lease provisions and other applicable requirements
- For rental projects, compliance with income targeting, affordability and lease requirements
- If multi-family or single-family refinancing is provided, compliance with established guidelines and/or requirements
- If multi-family new construction, results of the site and neighborhood standards review conducted
- For homeownership projects, compliance with maximum property value and affordability requirements
- If pre-award costs, compliance with applicable requirements

**CHDO records:** These CHDO records must be maintained:

- Written agreements reserving funds for CHDOs
- Efforts to identify and encourage CHDOs
- Names and qualifications of each CHDO, and amount of set-aside funds reserved and committed
- Documentation of compliance with written agreements
- Use of CHDO set-aside funds, including funds for capacity building
- Use of HOME for operating expenses and compliance with applicable requirements
- Tenant participation plan
- Use of HOME as project-specific assistance, including issues surrounding repayment

**Financial records:** These financial records must be maintained:

- Source and application of funds
- Treasury and local HOME accounts
- Source and application of program income, repayments and recaptured funds
- Budget control measures, including periodic account reconciliations.

**Program administration records:** These program administration records must be maintained:

- Compliance with written agreements
- Compliance with applicable uniform administrative requirements
- Inspections, monitoring reviews and audits, and resolution of any findings or concerns

**Documentation records:** These records documenting compliance with the following additional Federal requirements must be maintained:

- Equal opportunity and fair housing
- Affirmative marketing and minority/women's business outreach

- Environmental review
- Acquisition, relocation, displacement and replacement of housing
- Labor standards
- Lead-based paint
- Conflict-of-interest
- Debarment and suspension

### **Record Retention**

The HOME record retention period is five years from the date submission of the CAPER in which the specific activity is reported on for the final time rather than from the date of submission of the final expenditure report of the award.

**Rental:** Rental housing records must be kept:

- General records must be kept for five years after project completion; and
- Tenant income, rent and inspection information must be kept for the most recent five years, until five years after the affordability period ends.

**Homeownership:** Homeownership records must be kept:

- Five years after project completion; and
- For resale/recapture records, five years after the affordability period ends.

**TBRA:** TBRA records must be kept for five years after rental assistance ends.

**Written agreements:** Generally, all written agreements must be maintained for five years after the agreement ends.

**Displacement and acquisition:** Displacement and acquisition records must be kept for five years after final payment to displacees.

If HOME assistance is provided as a loan, Subrecipient must maintain documentation for a period of five years after the CAPER that reports on the final loan payment (when the loan is fully paid off).

### **D. Access to Records**

HUD and the Comptroller General of the United States, or their authorized representatives, have the right to access Subrecipient agency program records. All CDBG and HOME Subrecipients are required to provide citizens with reasonable access to records regarding the current funded programs and past, consistent with applicable State and local laws regarding privacy and confidentiality. Information may be provided utilizing aggregate statistics. All clients may be lumped into categories, but no personal information may be released. For example, provide a report that states: 150 clients served this month, 60 Caucasian, 60 African American, 15 Native Americans, and 15 Asian. Of those clients, 25 were female head of household, 30 were Veterans, 100 were very low income, and 50 were moderate income. Do not release information regarding individuals to the public or aggregate data that due to small sample size can lead to identification of an individual.

### ***E. Confidentiality***

Physical access to records, program applications, client information, blank forms, cash, and other assets should be limited to authorized personnel only. For example, access to accounting records should be limited to only those individuals having record-keeping or supervisory responsibility.

Consistent with applicable state and local laws regarding privacy and obligations of confidentiality, the Subrecipient also must provide citizens with reasonable access to records on the past use of CDBG funds.

Files that include sensitive client information must be stored in a locked cabinet. Furthermore, the Subrecipient should redact sensitive client information from all reports, draw requests, and other communications to the City unless required for specific project underwriting.

## VII. Fiscal Management

### A. Budget Types and Cost Categories

Budgets should be prepared in one of two general formats:

#### 1. General Budgets

Three cost categories are within this budget type:

##### a. Personnel Costs

- 1) Personnel - Costs associated with the positions identified on the Staffing Plan. Costs should reflect the actual amount of time each position spends on the program.
- 2) Fringe Benefits - Eligible payroll-related costs of health insurance, retirement fund contributions, FICA, Worker's Compensation, and other payments made on the behalf of the employee.

##### b. General Non-Personnel Costs

- 1) Supplies - Consumable commodities that have a useful life of one year or less and valued under \$500, except for computer equipment, which must be inventoried and accounted for separately.
- 2) Communication - Costs of telephone, telephone installation, leasing of phone equipment, and postage.
- 3) Printing - Cost of copying and printing, whether done in-house or through an outside printer; supplies such as paper or fluids for copy machine owned or leased for program use.
- 4) Utilities - Costs associated with gas, electricity, water, and trash removal.
- 5) Rent - Rental charges for real property; office space for program.
- 6) Travel (local) - Costs for mileage reimbursement and conference expenses within Missoula County. Mileage reimbursement includes only travel by staff or volunteers for conducting the business of the Subrecipient. No personal mileage will be reimbursed.
- 7) Travel (other) - All travel and conference expenses outside of Missoula County to employees and volunteers for actual mileage. Out of state travel requires prior City approval.
- 8) Insurance - Insurance-related costs required for the operation of the program.
- 9) Miscellaneous - For eligible expenses not noted above (should not exceed one percent of CDBG or HOME grant).
- 10) Food/snacks – Eligible only for clients, such as after school snacks for children. Please contact your Grants Administrator for guidance.

##### c. Specific Non-Personnel Costs

- 1) Equipment Rental - Costs for the rental of equipment, which is essential for the operation of the program.
- 2) Equipment Purchase - Purchase of equipment essential for the operation of the program in those instances where it is more cost effective to purchase equipment

rather than rent it. This includes any item with a useful life of more than one year and a cost greater than \$500. Purchase of equipment requires prior City approval.

3) Contracted Services - Professional and technical services not performed by staff.

## **2. Development Budgets**

The cost categories associated with this budget type pertain to expenses identified with the financing, management, and construction of affordable housing projects. Remember that new construction costs are not eligible under the CDBG program.

- a. Site Acquisition - Normal cost associated with acquisition of raw land.
- b. Demolition – Normal cost associated with demolition of existing structures. Permission to demolish must be received from the City prior to undertaking this activity. Property may be subject to historic preservation restrictions.
- c. Closing Costs - Fees, points, interest, or other costs to finance acquisition or construction.
- d. Architecture and Engineering - Normal fees and costs for professional design services to prepare plans and specifications.
- e. Site Work - Costs normally associated with preliminary site construction work: grading, underground utilities, soils report, and environmental remediation.
- f. Fees and Permits - Costs for design review, building, planning or other required permits.
- g. Construction Management - Consultant or other costs to provide construction management services.
- h. Construction Contracts - All fees included in primary and subcontracts.
- i. Consultants - All consultant fees including environmental testing or other specialty consultants.
- j. Administration - Overhead costs for administration by the applicant or other administrative costs.
- k. Interest - Interest paid on construction loans.
- l. Legal - Costs for legal services.
- m. Financing costs - Miscellaneous costs not included elsewhere but necessary to finance the construction costs.
- n. Taxes/Insurance - Property or other taxes required for the property during the construction period and costs of all required construction insurance.
- o. Marketing - Costs associated with marketing the project and attaining rent-up and occupancy.
- p. Operating Reserve - May be included for a specified period of time. Maximum operating reserve allowance to be determined in accordance with HUD regulations.
- q. Developer Fee - Any fees or other charges due to the developer on completion of the project. The developer fee on affordable housing projects generally should not provide undue enrichment to the developer. Consult your Grants Administrator.

## ***B. Budget Revisions***

Modifications to approved budgets are allowable but must be directly related to changes in program services and activities. Changes amounting to less than \$1,000.00 do not need prior approval of CD.

To implement a budget modification, the Subrecipient must submit a written request, which identifies the reasons for the adjustment. The request must be specific as to which line items are to be increased and which are to be reduced and must be specifically approved by the City in writing as a change to the written agreement or contract between the City and the Subrecipient.

The Grants Administrator has the authority to grant or deny requests for budget revisions. The City will issue a written decision within seven business days of receiving the request.

## ***C. Activities and Expenditures***

All Subrecipients must comply with the provisions of [2 CFR Part 200](#) entitled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”. A summary of certain key provisions from 2 CFR 200 is included below as well as City of Missoula policies related to Activities and Expenditures.

Subrecipients are also encouraged to participate in HUD’s [“Financial Management 201: A Closer Look”](#) webinar series to gain a better understanding of HUD requirements.

All expenditures associated with an approved activity or program must comply with the following criteria:

### **1. Limitation of Expenditures**

- The Subrecipient shall not expend funds provided under the contract prior to the commencement of the contract or subsequent to the suspension or termination of the contract. Upon approval by the Grants Administrator, expenses incurred starting July 1 are eligible for reimbursement as long as they are administrative, not subject to procurement and the City of Missoula has completed the Environmental Review Record.
- Expenditures shall be made in conformance with the approved budget and shall meet the criteria established for allowable costs.
- Expenditures shall be in direct support of the program that is the subject of the contract. The Subrecipient shall notify the City in writing of any expenditure for items jointly used for any other program(s), and the expenditures shall be apportioned according to the percentage of direct use in the program.

### **2. Eligible Costs**

In order to be reimbursable, costs must be incurred for activities that are eligible under the applicable program. For example, costs for CDBG-funded projects must conform to CDBG program regulations at 24 CFR Part 570 and costs for HOME-funded projects must conform to HOME program regulations at 24 CFR Part 92.

Furthermore, in order to be deemed eligible, any program cost must be included in the project budget in the signed written agreement awarding CDBG or HOME funds between the City and the Subrecipient.

### **3. Allowable and Unallowable Costs**

The regulations found in 2 CFR Part 200 subpart E provide guidance on allowable and unallowable costs.

Examples of allowable costs that apply to all Federal awards include: salaries, materials and supplies, equipment and other capital expenditures (approved by the awarding agency), and travel expenses. The list is not all-inclusive. The full list of selected cost items is in the CFR.

The CFR also defines unallowable costs that include entertainment and alcohol, legal defense, contributions, lobbying and fundraising. Stated CFR unallowable costs cannot be paid by Federal reimbursement; however, a program could otherwise pay for unallowable costs with non-Federal unrestricted funds.

### **4. Cost Reasonableness – Prudent Person Test**

A cost is reasonable if the amount would not exceed what a prudent person under like circumstances at the time of the decision would likely pay. In determining reasonableness of a given cost, consideration must be given to the following:

- If the cost generally would be recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- If restraints or requirements would be imposed by such factors as sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- If market prices would be similar for comparable goods or services in the geographic area.
- If the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.
- If the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award cost [2 CFR 200.400](#)

Subrecipients must document cost reasonableness using price comparisons and analyses for comparable goods and services procurement, detailed receipts, and invoices for comparable services provided by consultants and vendors.

### **5. Allocable Costs**

A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

- Is incurred specifically for the Federal award;
- Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

All activities that benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies; to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards; or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. When the purchase of equipment or other capital asset is specifically authorized under a Federal award for a particular purpose, the costs are assignable to the Federal award regardless of how the equipment or capital asset would be used when no longer needed ([2 CFR 200.400](#))

## **6. Direct and Indirect Costs**

Simply defined, direct costs are those costs that can be tied to a specific CDBG or HOME-supported activity ([2 CFR 200.400](#)). Examples may include:

- Salaries for an employee that manages a CDBG or HOME-funded activity
- Printing and postage for mailings specifically about CDBG or HOME-funded activities

Indirect costs ([2 CFR 200.400](#)) are those costs that cannot be tied only to a specific CDBG or HOME-supported activity. Examples may include:

- Salaries of Executive Director or other management that may oversee multiple programs, only some of which relate to CDBG or HOMD-funded activities
- Rent
- The cost of equipment such as copiers or printers used for multiple programs

2 CFR 200.414(c) details options available to CDBG-HOME Subrecipients to charge indirect costs to this award. However, 2 CFR 200.100(c) details the limitations on charging for indirect costs:

c) Cost Principles. Subpart E—Cost Principles of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The intent of these principles is to ensure that Federal awards fairly share costs recognized under these principles except where restricted or prohibited by statute.

[24 CFR 570.200\(g\)](#) details the regulatory limits of program and administrative expenses, which would include such indirect costs:

(g) Limitation on planning and administrative costs—(1) Origin year grant expenditure test. No more than 20 percent of any origin year 2015 grant or subsequent grant shall be expended for planning and program administrative costs, as defined in §§570.205 and 570.206, respectively. Expenditures of program income for planning and program administrative costs are excluded from this calculation.

(2) Program year obligation test. For all grants and recipients subject to subpart D, the amount of CDBG funds obligated during each program year for planning plus administrative costs, as defined in §§570.205 and 570.206, respectively, shall be limited to an amount no greater than 20 percent of the sum of the grant made for that program year (if any) plus the program income received by the recipient and its Subrecipients (if any) during that program year. For origin year 2015 grants and subsequent grants, recipients must apply this test consistent with paragraph (g)(1) of this section.

24 CFR §92.207 defines the HOME program's cap on administrative and planning costs:

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program and ADDI, an amount of HOME funds that is not more than 10 percent of the sum of the Fiscal Year HOME basic formula allocation plus any funds received in accordance with §92.102(b) to meet or exceed participation threshold requirements that Fiscal Year.

Given that CDBG and HOME regulations "restrict" the amount that can be expended on planning and administrative costs, Subrecipient may select an indirect cost rate as part of written agreements. However, the City does not anticipate being able to reimburse for indirect costs given that it plans to allocate and expend planning and administrative funds up to the regulatory maximum, and reimbursement of indirect costs would result in the City exceeding the regulatory cap.

Subrecipients wishing to include indirect costs as part of their reimbursement of Community Development Block Grant (CDBG) funds and/or HOME funds must inform the City of their intent by completing an Administration and Indirect Cost Selection Form. Subrecipients must indicate the type of indirect rate option proposed/requested for the Program Year. Depending on the option chosen, the City may require additional documentation to establish an approved or negotiated indirect rate. The two indirect rate options followed by a brief definition are as follows:

- Federally Negotiated Indirect Cost Rate: Actual costs that are incurred by an organization and are part of an approved Cost Allocation Plan that has been approved through a Federal agency or a cognizant agency.
- Federally Accepted de minimis Indirect Rate: Organizations that have never received a federally negotiated indirect cost rate will charge a flat de minimis indirect cost rate of 10 percent of Modified Total Direct Costs (MTDC) (see Exhibit B for definition of MTDC).

*MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and sub awards and subcontracts up to the first \$25,000 of each sub award or subcontract.*

## **7. Ineligible Costs—General**

- Bad debts: any losses arising from uncollectible accounts and other claims, and related costs.
- Contingencies: contributions to a contingency reserve or any similar provisions for unforeseen events.
- Contributions and donations.

- Entertainment: costs of amusements, social activities and incidental costs such as meals, beverages, lodging and gratuities relating to entertainment, or any political or lobbying activity.
- Fines and penalties: costs resulting from violations of or failure to comply with Federal, State, and local laws and regulations.
- Interest and other financial costs: interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith.
- Membership expenses: costs of membership in any organization, which devotes a substantial part of its activities to influencing legislation.
- Non-competitive subcontracts: payments under a subcontract not obtained under competitive bidding procedure, unless the City specifically waives the requirement for such a procedure.

## **8. Eligible HOME-funded Activities**

- Production/acquisition of rental housing
- Moderate (less than \$25,000/unit) or Substantial (more than \$25,000/unit) rehabilitation (Rental or Homeowner)
- Tenant-based rental assistance
- New construction
- Finance costs
- Site improvements
- Homebuyer assistance
- Certain activities undertaken by a Community Housing Development Organization (CHDO) such as CHDO Predevelopment Loans and CHDO Operating Assistance

## **9. Eligible HOME-funded project costs**

- Development hard costs - cost of constructing or rehabilitating housing
- Refinancing costs – cost to refinance existing debt secured by housing that is being rehabilitated with HOME funds
- Acquisition costs – cost of acquiring improved or unimproved real property
- Related soft costs – reasonable and necessary costs associated with the financing or development (or both) of new construction, rehabilitation, or acquisition of housing assisted with HOME funds
- Down payment and closing costs

## **10. Activities that are NOT eligible for HOME**

- Public housing modernization
- Tenant subsidies for special mandated purposes under Section 8
- Matching funds for other programs
- Annual contributions contracts

- Operating subsidies for rental housing

## **11. Eligible CDBG-funded Activities**

- Housing (except new construction)
- Public facilities or infrastructure
- Economic development
- Public services

## **12. Eligible CDBG-funded project costs**

- Acquisition of real property
- Public facilities and improvement of privately-owned utilities
- Code enforcement
- Clearance, rehab, reconstruction and construction of buildings
- Architectural barrier removal
- Loss of rental income
- Disposition of real property
- Public services
- Payment of the non-federal share
- Relocation
- Planning and capacity building
- Program administration costs
- Activities carried out through nonprofits
- Assistance to neighborhood-based development organizations
- Energy efficiency/conservation
- Economic development assistance to for-profit businesses
- Technical assistance
- Housing services
- Assistance to Institutions of Higher Education
- Microenterprise assistance
- Homeownership Assistance
- Tornado safe shelters
- Lead-based paint hazard evaluation and reduction
- Program administration costs and charges related to the planning and execution of the CDBG or HOME Program

### **13. Activities that are NOT eligible for CDBG**

- New construction of housing including both hard costs and soft costs unless qualified by CD as an eligible CBDO activity
- Construction or rehabilitation of buildings for the general conduct of government, with some exceptions
- Operation and maintenance

### ***D. Program Income***

Organizations providing services funded through a City of Missoula CDBG or HOME grant may charge fees to clients to reduce the costs of service delivery. Such fees, or any other earnings generated using CDBG or HOME funds, are considered program income (PI). PI includes, but is not limited to, fees charged for services, proceeds from the sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties.

PI shall be reported to the City on the quarterly report and shall only be used by the Subrecipient if the City and the Subrecipient have entered into a Program Income Agreement. If no such Program Income Agreement exists, then all program income must be returned to the City to be allocated to CDBG and/or HOME eligible activities.

All PI must be reported.

Donations are defined as free will offerings to an organization not related to receiving a service or benefit. Donations are not PI and do not have to be reported.

## **VIII. Procurement, and Contracting - Procedures and Requirements**

What follows is a summary of key procurement provisions. CD encourages CDBG Subrecipients to also review "Chapter 3.0: Procurement and Contracting" [Playing by the Rules: A Handbook for CDBG Subrecipients on Administrative Systems](#) for additional CDBG guidance.

### **A. Property and Equipment Procurement**

#### **1. Title of Property**

Title to any personal or real property used in the performance of the services and work specified in this agreement shall be as follows:

- a. Personal property donated or purchased with other than CDBG or HOME funds shall become the property of Subrecipient or person specified by the donor or funding source.
- b. Personal property and equipment permanently affixed to buildings owned by Subrecipient shall become the property of the Subrecipient.
- c. All other personal property, supplies and equipment purchased pursuant to this agreement and not consumed shall become property of the City.
- d. When the City exercises its right to file a Montana Trust Indenture, applicant must accept the trust indenture, which will stay in effect until project close-out, period of affordability, or longer as determined by the City.
- e. The City shall be named as the beneficiary on all land or property purchases associated with a recorded Montana Trust Indenture.

#### **2. Equipment v. Supplies**

Equipment is defined as tangible property costing more than \$500 and having a useful life of more than one year. The purchase of equipment is generally ineligible, because equipment is usually expensive, and can generally be rented at a lesser cost for a short period of time. Because CDBG and HOME funds are limited, equipment may only be purchased if absolutely necessary for the program. Thus, rental of equipment is recommended over purchase.

Items that cost less than \$500 and have a useful life of less than one year are considered supplies and are to be purchased under the General Non- Personnel Costs (Supplies) cost category, except for computer equipment, which must be inventoried and accounted for.

#### **3. Limitation on Purchase of Equipment**

Under HUD regulations, the purchase of equipment, fixtures, motor vehicles, or furnishings that are not an integral structural fixture is ineligible except when necessary for use by the City or a Subrecipient in the administration of the overall City CDBG or HOME grant or as part of the administration of a public service program.

#### **4. Equipment Notification Requirements**

All purchases of equipment require prior City approval. Requests to purchase equipment shall be sent to the Grants Administrator 45 days prior to the purchase order date. The

request must include the cost of the item, where it will be purchased, a detailed explanation of why it should be bought rather than leased or rented, and from where the funds for the purchase will come. If City CDBG or HOME funds will only be paying a portion of the purchase, list other funding sources and the respective amounts. The Grants Administrator will review the request and provide a decision within 10 working days. Rationale for a negative decision will be included in the response.

## 5. Reversion to City

Under HUD regulations, the City has the option to obtain any property or equipment from the program when funding ends.

All equipment with a cost of \$500 or more purchased with HUD grant funds shall revert to the City of Missoula at the close of the activity. If a Subrecipient wishes to continue utilizing the equipment, and is **not** funded the following year, a letter must be submitted to CD requesting approval and describing how, through the continued use of the equipment, the grant objectives will be met. The City reserves the right to refuse any request.

All other personal property, supplies and equipment purchased pursuant to this agreement and not consumed shall become property of the City.

## ***B. Inventory Instructions***

Include the following information when reporting inventory:

1. Agency - Name of Agency receiving grant
2. Description - A brief description of the item of property
3. Manufacturer's Serial Number - The manufacturer's serial number for all items
4. Title or Owner - Name of Agency on property's title
5. Acquisition Date - Date of Purchase
6. Percentage of Federal Participation - Portion paid by CDBG or HOME funds
7. Cost - The actual purchase price
8. Disposal Date - Date sold or disposed of

### **C. Procurement Definitions**

**Price and Cost Analysis:** A price or cost analysis must be made in connection with every procurement action. Price analysis involves comparing the bottom line price quoted, with typical prices paid for the same or similar materials or services (does not apply to sole source contracts). Cost analysis simply means you obtain the best price with the best service. At least three sources should be solicited for prices.

**Sole Source:** Procurement by noncompetitive process is solicitation from only one source. This process is rare and is acceptable only after solicitation of a number of sources is determined inadequate, and only with the approval of the City. Extensive documentation and justification is required to establish the audit trail. The agency may make the determination that competition is not feasible if one of the following circumstances exists:

1. The item is unique and available only from a single source.

2. There is a public urgency or emergency that exists that will not permit a delay resulting from a competitive solicitation.

#### **D. Methods of Procurement to be Followed**

##### **1. Equipment and or Services**

0 - \$5,000 -- Direct reimbursement with an invoice copy.

\$5,000 - \$24,999 -- Two (2) or more verbal quotes; written quotes if labor or detailed product or service specifications.

\$24,999 - \$70,999 -- Three (3) or more written quotes obtained by Subrecipient agency or the City's Purchasing staff. May use "Request For Quotes," advertise, and/or use pre-bid conference.

Over \$80,000 -- Formal bid process with pre-bid conferences and formal bid openings.

##### **2. Construction**

At a minimum, procurement by sealed bids as defined at [2 CFR 200.320\(c\)](#) must be used for all construction projects. Major steps to be taken through this process include:

- a. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids; for local, and tribal governments, the invitation for bids must be publicly advertised;
- b. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to respond properly;
- c. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- d. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder.

##### **3. Guidelines for Notice of Invitation to Bid**

In addition, City of Missoula Administrative Rule #3 provides guidance as to how bids must be publicly noticed. Here, as with all references to federal, state, or city regulations, the procurement responsibility extends from the government entity to the Subrecipient receiving CDBG and/or HOME funds.

The department arranges for notice of the Invitation for Bid (IFB) to be published for a minimum of two consecutive weeks in the newspaper under contract with the City to provide legal advertising. The final published notice must appear at least 5 days but no more than 12 days prior to the bid opening, in accordance with [MCA 7-5-4302](#). The published notice shall contain a brief statement about the procurement for which bids are sought, where complete specifications may be obtained if not provided in the published notice, the contact information for the City employee responsible for answering questions about the bid, specific bid requirements for contract or performance security, the initial contract term and any renewal periods, the address where bids are to be mailed, the due date and time for receipt of bids, and the location of the bid opening.

## 4. Bonding Requirements for Construction

In accordance with [2 CFR §200.325 Bonding requirements](#), CDBG-HOME Subrecipients and their Contractors must also adhere to the following bonding requirements:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder upon acceptance of the bid will execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**5. Contracting with small businesses, minority businesses, women's business enterprises, veteran owned businesses, and labor surplus area firms ([2 CFR 200.321](#)).**

- (a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.
- (b) Such consideration means:
  - (1) These business types are included on solicitation lists;
  - (2) These business types are solicited whenever they are deemed eligible as potential sources;
  - (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
  - (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
  - (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring a contractor under a Federal award to apply this section to subcontracts.

CDBG-HOME Subrecipients should utilize the [Montana Disadvantaged Business List](#) to conduct outreach to small, women-owned and minority businesses.

## 6. Property Purchasing:

- a. Single-family lots can be evaluated via a market analysis.
- b. Single-family home acquisition (1-4 units) requires a market analysis of the location listing characteristics of the housing (e.g., sale prices, age and amenities of the housing stock in the neighborhood). A market analysis by the HUD-required method is time consuming; therefore, to save time the City recommends an appraisal by a certified appraiser.
- c. More than four units - a certified appraisal is required.
- d. Appraisals may be reimbursable grant expenses subject to CDBG and HOME regulations.

All procurement must be done in accordance with the [Montana Procurement Act](#), Section 18, Chapter 4.

## 7. Build America, Buy America requirements:

a. All iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects must be produced in the United States, unless otherwise exempt or subject to an approved waiver in accordance with 2 CFR 184([BABA information](#)). In addition, all contracts must include BABA language.

## BABA Language:

Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, 11

of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the “Buy America Preference” or “BAP”) for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD.

BABA requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. Developer is responsible for documenting compliance and ensuring that all contractors and subcontractors provide the required information to document compliance. Additional details on fulfilling the BABA requirements can be found at <https://www.hud.gov/baba>.

## *E. Subcontracts*

Should a Subrecipient find it necessary to subcontract in order to meet its obligations under its agreement with the City, it must enter into a written agreement with those individuals or organizations providing services.

## 1. Provisions Required in Subcontracts

- a. Name, address, phone number, social security number, and UEI number of subcontractor

- b. A termination clause requiring a 20-day notice by which either party may terminate the agreement
- c. A clause releasing the City from any liability for any breach of the subcontract by either party
- d. A scope of services
- e. The total dollar amount of the subcontract
- f. A termination date no later than the end of the current CDBG or HOME program year
- g. A clause requiring the contractor to comply with stated "Conditions of Federal Funding"
- h. An independent contractor clause stating that the subcontractor is an independent contractor or employee of the Subrecipient. Subcontractor is not an agent or employee of the City, and as such waives any claims to any rights or benefits, which accrue to employees of the City.
- i. Signature of person authorized by Subrecipient's Board of Directors to execute agreements
- j. Signature of person authorized by subcontractor to execute agreements

## 2. Review of Subcontracts by City

All Subrecipients must submit all subcontracts valued at more than \$500 to the City for review and approval prior to execution.

All subcontracts requiring review and approval by the City must be submitted at least 14 business days prior to an effective date. The Grants Administrator will respond to the request for approval within ten (10) working days. Subcontracts must be approved prior to execution by any of the parties.

### **3. Required Subcontract Documentation**

The Subrecipient shall maintain the following documentation in its files:

- a. Summary of bids and proposals received
- b. Justification for any non-competitive procurement of contract services and reasons for the selection of the subcontractor
- c. Justification for the selection of other than the lowest bidder in a competitive procurement
- d. Copy of Davis-Bacon wage decision, if applicable
- e. Wage reports, if applicable
- f. Section 3 compliance documentation, if required

#### **4. Required Contract Provisions**

All CDBG-HOME subcontracts must include all contract provisions required by CD and 2 CFR 200.326. Prior to posting any bid requests, contact your Grants Administrator to receive a copy of these required contract provisions.

## 5. Types of Subcontracts Covered Under This Section

a. Construction

- b. Professional services
- c. Bookkeepers and auditors
- d. Contractual personnel services (those not on the Subrecipient's payroll)
- e. Office equipment rental
- f. Office space rental
- g. Rental of vehicle (van, bus, etc.) to be used on a regular basis for carrying clients of the Subrecipient

## 6. Types of Subcontracts Not Covered Under This Section

- a. Extension of above contracts if dollars per hour/month/year do not change
- b. Vehicle rental to take program's clients to a particular event. (Requests for travel related to trips outside of Missoula County are required under the agreement with the City.)
- c. Maintenance agreements for office equipment
- d. Janitorial services for office space

## ***F. Conflict Of Interest***

Conflicts of interest (or appearance thereof) can plague activities supported with federal funds. The general rule is that any employee, board member, officer, agent, consultant, Subrecipient or family of those individuals with an agency which is receiving funds under a CDBG or HOME assisted program or who have responsibilities with respect to the CDBG or HOME activities or who participate in decision making process or have access to inside information with regard to the activities may not obtain a personal or financial interest or benefit from a CDBG or HOME assisted activity during their tenure or for one year thereafter, as outlined in [24 CFR 570.611](#) (CDBG) and [24 CFR 92.356](#) (HOME).

Agencies should maintain a written code of standards of conduct governing the purchase of materials, product, supplies, services, and the awarding and administering of Subrecipient contracts.

Personnel involved in the procurement process must be trained to recognize situations that create real, or the **appearance** of a conflict of interest. The agency personnel should:

1. Be familiar with the agency's code of ethics and potential conflict of interest issues
2. Not take gifts or gratuities from persons or organizations associated with the procurement process
3. Assure the proposal evaluators or member of their immediate families do not have financial interest in the companies

## IX. Reimbursements

City CD staff will review each request for reimbursement submitted by Subrecipient. Questionable or ineligible expenses will be identified, and the Subrecipient will be requested to submit clarifications, corrections, or additional information.

### ***A. General Programs and Public Services***

Requests for reimbursement for eligible expenses shall be submitted in a timely manner. A Draw Request form must be submitted on City forms and must be signed by two authorized representatives of the Subrecipient. Reimbursement requests received, in most cases, will be paid within 30 days. Proper documentation – including proof of payment, time allocations, payroll records, or other required materials – must be submitted with all requests for reimbursement.

### ***B. Request for Funds Form***

The Draw Request form, provided by the Community Development division, itemizes your grant expenses by City account number. The total on this form should equal the total on the general ledger or accounts payable list for all CDBG or HOME eligible expenses.

It is the Subrecipient's responsibility to redact any personal, confidential information of clients served, such as social security numbers, from draw requests.

**The Subrecipient should mail or email the original reimbursement form with accompanying copies to justify expenses to the City of Missoula. The mailing address is:**

City of Missoula  
Community Development Division  
435 Ryman  
Missoula, MT 59802  
[ILisumk@ci.missoula.mt.us](mailto:ILisumk@ci.missoula.mt.us) or [bowerL@ci.missoula.mt.us](mailto:bowerL@ci.missoula.mt.us)

While CD endeavors to process all reimbursement requests in a timely manner, it may take as much as thirty (30) days to process.

### ***C. Other Reporting Requirements***

Quarterly reports are due 15 days after the close of each quarter during the program year, typically October 15<sup>th</sup>, January 15<sup>th</sup> and April 15<sup>th</sup>. A final report is due 15 days after the end of the program year, typically on July 15<sup>th</sup>. The report explains the progress the program has made in relation to the goals and performance indicators outlined in the contract Scope of Work as well as financial reporting.

## X. Monitoring and Documentation

### A. Monitoring Reviews

The City of Missoula is responsible for ensuring that Subrecipients comply with all regulations and requirements governing their administrative, financial, and programmatic operations. This includes assuring that performance goals are achieved within the scheduled time frame, budget and when necessary, taking appropriate actions when performance problems arise. Monitoring is not a "one-time-event." The five basic steps to the formal monitoring visit include:

1. Notification Call or Letter - Explains the purpose of the visit, confirms date, scope of monitoring and outlines the information that will be needed to conduct the review.
2. Entrance Conference - Introduces monitoring visit purpose, scope and schedule.
3. Documentation and Data Gathering - The City will review and collect data and document conversations held with staff, which will serve as the basis for conclusions drawn from the visit.
4. Exit Conference - At the end of the visit, the City will meet again with the key agency representatives to present preliminary results, provide an opportunity for the agency to correct misconceptions and report any corrective actions already in the works.
5. Follow-Up Letter - The City will forward a formal written notification of the results of the monitoring visit pointing out problem areas and recognizing successes. The agency will be required to respond in writing to any problems or concerns noted.

### B. Monitoring Process

#### 1. Purpose

City CD staff will conduct an ongoing monitoring process in order to review the programmatic and financial aspects of the Subrecipient's activities. CD staff will review draw requests and quarterly reports submitted by the Subrecipient for compliance with federal regulations regarding the use of federal funds and the implementation of the program.

The monitoring process is oriented towards resolving problems, offering technical assistance, and promoting timely implementation of programs. To this end, CD staff may require corrective actions of the Subrecipient. Following are examples of significant problems, which will trigger corrective action by the Subrecipient:

- a. Services are not documented
- b. Goals are not met
- c. Program files are not in order
- d. Complaints by clients
- e. Non-compliance with federal regulations
- f. Use of CDBG and/or HOME funds on ineligible activities
- g. Required reports are not submitted in a timely manner

## **2. Monitoring Plan**

Each year, CD will develop a monitoring plan for both CDBG and HOME. Monitoring will take various forms ranging from desk reviews to on-site monitoring visits.

CD will utilize a risk analysis tool to identify those CDBG Subrecipients that may require more in-depth and on-site monitoring. CD staff utilizes Chapter 5 of the [Managing CDBG](#) guidebook as guidance for CDBG monitoring.

In accordance with HOME guidance, CD will utilize the following monitoring schedule for HOME-assisted activities. These monitoring visits involve both physical inspections as well as program/project file reviews:

<b>Activity</b>	<b>Required Frequency of Onsite Monitoring Visits</b>
For any activity administered by a Subrecipient, while contract is in effect	Annually
Tenant-based rental activity	Annually
Project development activities during all phases of the project through to occupancy and project completion; provided that development has begun.	At least annually, but may occur more frequently
Post completion, for rental projects with 1-4 total units in the project	Every 3 years until period of affordability expires
Post completion, for rental projects with 5-25 total units in the project	Every 3 years until period of affordability expires
Post- completion, for rental projects with 26 or more total units in the project	Every 3 years until period of affordability expires

## **3. Programmatic Monitoring**

- a. Subrecipients will submit a report detailing the implementation and administration of the activity or program. The programmatic report shall include the following:
  - 1) Progress in meeting stated goals and objectives
  - 2) Changes in staff or Board of Directors
  - 3) Problems encountered and steps taken to resolve them
  - 4) Other general information as appropriate
  - 5) A “Subrecipient Client Summary.” This report shall identify the income, ethnicity, and household status of clients receiving CDBG- or HOME-funded assistance within the reporting period.
- b. This report is due at CD no later than 15 days after the completion of the quarter.

## **4. Financial Monitoring**

- a. Subrecipients will submit a report concerning the financial and accounting status of the activity or program in conjunction with the status report per section X.C. The financial report shall include the following:
  - 1) Summary of all disbursements of CDBG or HOME funds
  - 2) Summary of all requests for reimbursement of CDBG or HOME funds
  - 3) Report on percentage of CDBG or HOME funds expended and remaining by cost category
- b. This report is due in the City CD office as outlined in section X.C.

## **5. On-Site Visits**

CD may conduct on-site visits with all Subrecipients, even for those with strong past performance.

Based on monitoring results, City CD staff may hold discussions with Subrecipients whose performance does not appear to be sufficient to meet the goals and achievements as outlined in the agreement. An on-site visit may occur to discuss the service activity shortfall.

On-site monitoring visits may be conducted to ascertain that eligible clients for whom the program was intended are being served and that in the event of an audit, the required client information is being maintained.

## **6. Intervention and Sanctions**

The City is responsible for ensuring that problem areas are corrected. Every effort will be made to work with the agency to find solutions. However, agencies will be held accountable for the performance standards outlined in the agency contract and this manual. The City will use three increasingly serious stages to identify and address Subrecipient problem areas:

### **Stage One – Early Intervention**

The City may plan a strategy with the Subrecipient and provide training and technical assistance and more frequent and thorough reporting and monitoring reviews.

### **Stage Two - Intervention (*More Serious or Persistent Problems*)**

The City may restrict payment requests, disallow expenses, require repayment, or impose probationary status.

### **Stage Three - Sanctions**

The City may temporarily suspend the Subrecipient from participation in the program, not renew the agency's contract for next program year, terminate the contract or initiate legal action.

## **C. Client Documentation by Subrecipient**

Each Subrecipient is required to maintain documentation on clients benefiting from activities and programs funded through the CDBG or HOME program. As a condition of receiving the HUD grant, the City, and in turn the Subrecipient, must certify that low- and moderate-income persons are being served. HUD also requires information on the race and ethnic background of the clients, how many are female heads of households, how many are elderly, residency in the City and the number by income level, and other areas. City CD staff and HUD must also have access to the names of the clients. Any information regarding applicants for services funded through federal monies shall be held in strict confidence.

### **1. Required Documentation**

All Subrecipients shall obtain and maintain the following information on each client served:

- a. Client name and address
- b. Gender
- c. Ethnicity/race

- d. Household type
- e. Income

This information shall be submitted with the Subrecipient's draw requests and/or quarterly reports, as appropriate.

## **2. Exceptions to Maintaining Required Documentation *for Income ONLY***

For CDBG only, when using the Low-to-moderate-income clientele national objective, income documentation is preferred, but not required, for the following groups: children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS and migrant farm workers.

While income documentation may not be required, Subrecipients should maintain documentation that the beneficiary qualifies as a member of one of these groups. All other documentation is required. In unusual circumstances and with prior written authorization from the City, other required client documentation may be waived.

## ***D. Programmatic Close-Out***

Programmatic close-out will consist of, but will not be limited to the following:

1. Review and verification of annual client statistical and narrative report due 15 days after the end of the program year. Subrecipient's July report with year-to-date client totals, along with a program narrative will suffice.
2. Review of Subrecipient records, including, but not limited to:
  - a. Activity documentation
  - b. Personnel files
  - c. Inventory control files
3. Evaluation of activity and program accomplishments.
4. For Housing development activities, project close-out will only occur when units are leased or sold to a sufficient number of eligible low-to-moderate income households based on the HOME and/or CDBG requirements for that development. A Certificate of Occupancy must also be provided to CD. CD will remit to the Subrecipient the 10 percent retainage of funds only after this task is completed.

## ***E. Financial Close-Out***

Financial close-out will consist of, but will not be limited to the following:

1. Review and verification of information submitted in the final drawdown request
2. Review of Subrecipient records:
  - a. Accounting records and ledgers
  - b. Source documentation (invoices, time cards, canceled checks, etc.)
  - c. Budget documentation (modifications, etc.)
  - d. Equipment purchases
3. Evaluation of activity financial accomplishment

## ***F. Construction Project Close Out***

At completion of construction, agency is required to submit to the assigned Grants Administrator a copy of the Certificate of Occupancy, provided by the City of Missoula prior to final disbursement of funds.

## **G. Loan Forgiveness**

The City of Missoula has a loan forgiveness policy in place for HOME and CDBG loans older than 10 years. Contact your Grants Administrator for more information.

## ***H. Real Property Disposition***

Real property is defined as land, including land improvements and buildings. Any real property acquired or improved in whole or in part with CDBG or HOME funds in excess of \$25,000 must continue to meet the national objective of the project for a minimum of five (5) years after expiration of the contract, or for a period of time as deemed appropriate by the City in an executed Montana Trust Indenture.

The City reserves the right to file a Montana Trust Indenture on any CDBG or HOME project that includes a period of affordability; the trust indenture will stay in effect until project close-out, period of affordability, or longer as determined by the City.

If not used as such, the Subrecipient must sell the real property in a manner that results in the reimbursement of the federal grant funds for the amount of the current fair market value of the property less any portion of the value attributable to expenses of non-federal funds for purchase or improvement to the property. This reversion of the real property will not be required after such period of time deemed appropriate by the City.

## ***I. Equipment Disposition***

All equipment with a cost of \$500 or more purchased with HUD grant funds shall revert to the City of Missoula at the close of the activity. If a Subrecipient wishes to continue utilizing the equipment, and is **not** funded the following year, a letter must be submitted to CD requesting approval and describing how, through the continued use of the equipment, the grant objectives will be met. The City reserves the right to refuse any request. Equipment shall be depreciated on a 5-year, straight-line basis, as is the accounting standard used for the City of Missoula in its financial management. A Subrecipient is required to maintain records of the HUD funded equipment purchases and report to the City during the 5-year depreciation period. If the property is disposed of prior to the 5-year depreciation period, the City shall provide the Subrecipient with disposition instructions upon request. If the property is disposed of for cash during this period, it constitutes Program Income, which must be reported.

When equipment has been fully depreciated, and the equipment is sold, the Subrecipient may retain such funds provided that the City is notified in writing and the funds are used for the exclusive benefit of the previously HUD funded program.

*J. City Internal Audit Reviews*

The City reserves the right to have its Fiscal Office review all Subrecipient records and transactions. Audit findings resulting in monetary repayment to the City will be collected by the City from the Subrecipient's non-federal funded resources. City Auditors review

CD's Subrecipient monitoring/account reviews to begin their single audit reviews; reports containing findings are sent to both CD and the Subrecipient for compliance. Progress on the compliance is also monitored. Failure to rectify findings within the given time frame may result in suspension, termination of grant agreement, and/or disbarment from future grant funding.

#### ***K. Requirement***

CD requires all Subrecipients to comply with audit requirements detailed at [2 CFR 200 subpart F](#). According to 2 CFR §200.501(a), a "non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part." Subrecipients are encouraged to review 2 CFR 200 subpart F (linked to below) in its entirety to become familiar with all audit requirements.

## XI. Exhibits

### A. Lead-Based Paint Poisoning Prevention in Certain Residential Structures

All CDBG and HOME-supported activities are subject to [24 CFR Part 35](#) Lead-Based Paint Poisoning and Prevention in Certain Residential Structures. CD will not process reimbursements for CDBG or HOME funds until Subrecipients have met these requirements.

As a guide, all CDBG and HOME Subrecipients should review the pamphlet entitled "[Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work](#)".

All CDBG and HOME Subrecipients should also make available to their beneficiaries the "[Protect Your Family from Lead in Your Home](#)" brochure. Additional resources are available on the HUD [About Lead-based Paint](#) webpage.

In order to comply with these requirements, Subrecipients must take the following steps.

1. Provide documentation to CD that the proposed activity does not involve any habitation of humans in dwelling units. Dwelling units is broadly defined to include permanent housing, transitional housing, shelters, emergency housing, and other similar dwellings that provide habitation for humans. ***If no dwelling units are involved, Subrecipient may stop here.***
2. When dwelling units are involved, Subrecipient must provide documentation to CD as to the date in which the dwelling or building was constructed. Subrecipients may use the [Montana Cadastral](#) to document the year the building was built. ***A residential property for which construction was completed on or after January 1, 1978 is exempt from 24 CFR Part 35. If this is the case, the Subrecipient may stop here.***
3. If the dwelling or building was built prior to January 1, 1978, the Subrecipient must submit documentation to CD if the property meets one of the following exemptions detailed at <https://www.ecfr.gov/current/title-24/section-35.115>. ***If an eligible exemption exists, the Subrecipient may stop here.***
  - a. A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.
  - b. Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of "housing for the elderly" and "expected to reside" in [§ 35.110](#)).
  - c. Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with [§ 35.1320\(a\)](#) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.
  - d. Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §§ 35.1320, 35.1325 and

35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

- e. An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.
- f. A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.
- g. If any project involves rehabilitation only, and the rehabilitation does not disturb a painted surface.
- h. For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or beyond, such emergency actions.
- i. If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §§ 35.210 and 35.215 shall not apply to the property.
- j. The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.
- k. Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.
- l. Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with § 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with § 35.1355.

4. If the activity meets none of the exemptions detailed above, then the Subrecipient must work with CD to (a) provide all beneficiaries with the "Protect Your Family from Lead in your Home" pamphlet and the appropriate notifications and reports, and (b) arrange for a certified inspector to conduct a lead-based paint inspection in accordance with [§ 35.1320](#), (c) and abate any lead-based paint issues identified through the inspection and achieve clearance in accordance with §§ 35.1320,

35.1325 and 35.1340. Subrecipient must submit documentation of abatement and clearance to CD.

## ***B. Conditions of Federal Funding (Citations are for CDBG/HOME)***

### **1. Religious Activities**

24 CFR 570.200(j)/24 CFR 92.257

As a general rule, in accordance with First Amendment Church/State Principles, CDBG or HOME assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities, except as cited at 24 CFR 570.200(J)(1)(2)(3) or 24 CFR 92.257.

### **2. Political Activities**

24 CFR 570.207

Subrecipient will comply with this section, which prohibits the use of CDBG or HOME funds 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.

HATCH ACT

CHAPTER 15, TITLE 5, U.S. CODE

Subrecipient further agrees that none of the personnel employed in the administration of the within defined Project shall be in any way or to any extent, engaged in the conduct of political activities in contravention of Chapter 15, Title 5, U.S. Code.

### **3. Program Income**

24 CFR 570.500/24 CFR 92.503

Subrecipient agrees that program income, as defined in 24 CFR 570.500 and 24 CFR 92.503, includes, but is not limited to, the following:

- a. Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG or HOME funds;
- b. Proceeds from the disposition of equipment purchased with CDBG or HOME funds;
- c. Gross income from the use or rental of real or personal property acquired by Subrecipient with CDBG or HOME funds, less costs incidental to generation of the income;
- d. Gross income from the use or rental of real property, owned by Subrecipient, that was constructed or improved with CDBG or HOME funds, less costs incidental to generation of the income;
- e. Payments of principal and interest on loans made using CDBG or HOME funds, except as provided in 24 CFR 570.500(a)(3); and
- f. Interest earned on program income pending its disposition.

### **4. Disposition of Program Income**

24 CFR 570.504/24 CFR 92.503

Program income shall be recorded separately and returned to the City for disposition. Upon approval by the City, income from the Project may be retained by Subrecipient.

Such income will be subject to guidelines for use of such income in accordance with HUD regulations.

## **5. Applicability of Uniform Administrative Requirements**

24 CFR 570.502/24 CFR 92.505

Subrecipient shall comply with the requirements and standards of 2 CFR 200 "UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS."

## **6. Other Program Requirements**

24 CFR 570 SUBPART K/24 CFR 92 SUBPART H

Subrecipient shall carry out its activities in compliance with all Federal laws and regulations as described in 24 CFR 570 Subpart K or 24 CFR 92 subpart H, except that Subrecipient will not assume the City's environmental responsibilities described at 24 CFR 570.604 or 24 CFR 92.252, nor the City's responsibility for initiating the review process under the provisions of 24 CFR Part 58.

### **a. General--24 CFR 570.600**

Subrecipient agrees to comply with such laws and Program requirements as are applicable to grants made under section 106 of Title I of the Housing and Community Development Act of 1974.

### **b. Title VI of the Civil Rights Act of 1964--24 CFR 570.601/24 CFR 92.350**

FAIR HOUSING ACT

EXECUTIVE ORDER 11063

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964, P.L. 88-352; the Fair Housing Act; and Executive Order 11063, as amended by Executive Order 12259; and HUD regulations at 24 CFR Part 1, providing for non-discrimination on the grounds of race, color, creed, sex, familial status, disability, or national origin under any activity receiving Federal funds and also obligating Subrecipient to use Federally-funded property for the purpose for which the Federal funds were awarded.

### **c. Section 109 of the Act--24 CFR 570.602/24 CFR 92.350**

AGE DISCRIMINATION ACT of 1975

SECTION 504 OF THE REHABILITATION ACT OF 1973

This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, which requires that no person in the United States shall, on the grounds of age, race, color, national origin, disability, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development Block Grant funds.

### **d. Labor Standards and Davis Bacon Act**

24 CFR 570.603/24 CFR 92.354

Labor standards apply to non-volunteer labor financed in whole or in part with assistance provided under the Act. The Contract Work Hours and Safety Standards Act also applies. Contractors or subcontractors on construction work shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

**e. Environmental Standards**

24 CFR 570.604/24 CFR 92.352

This Agreement is subject to the National Environmental Policy Act of 1969.

**f. National Flood Insurance Program**

24 CFR 570.605/24 CFR 92.508

This Agreement is subject to the Flood Disaster Protection Act of 1973, and the regulations in 44 CFR Parts 59 through 79.

**g. Displacement, Relocation, Acquisition, and Replacement of Housing**

24 CFR 570.606/24 CFR 92.353

Subrecipient shall assure that all reasonable steps have been taken to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of activities pursuant to 24 CFR 570.606/24 CFR 92.353. Relocation of displaced persons shall be provided in conformance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. The City of Missoula's policy regarding URA and Section 104(d) can be found at <http://www.ci.missoula.mt.us/2601/Funding-Guidelines-Documents>.

**h. Employment and Contracting Opportunities**

24 CFR 570.607/24 CFR 92.508

Subrecipient shall comply with Executive Order 11246, as amended by Executive Order 12086, which provides for Equal Employment Opportunity, and Section 3 of the Housing and Urban Development Act of 1968, with implementing regulations at 24 CFR Part 75. Section 3 requires that employment and other economic development opportunities arising in connection with housing rehabilitation, housing construction, or other public construction projects shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be given to low- and very low-income persons.

**i. Lead-Based Paint**

24 CFR 570.608/24 CFR 92.355

This Agreement is subject to the regulations at 24 CFR Part 35, prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with assistance provided pursuant to 24 CFR 570.608 or 24 CFR 92.355; notification of hazards of lead-based paint poisoning; and elimination of lead-based paint hazards.

**j. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients**

24 CFR 570.609/24 CFR 92.350

This Agreement is subject to the requirements set forth in 24 CFR Part 5, in which is incorporated 24 CFR Part 24, which provides for the listing of debarred and suspended participants, participants declared ineligible, and participants who have voluntarily excluded themselves from participation in covered transactions pursuant to Part 24.

#### **k. Uniform Administrative Requirements and Cost Principles**

##### **24 CFR 570.610/24 CFR 92.505**

Subrecipient shall comply with the requirements and standards of 2 CFR 200 "UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS," as they relate to the acceptance and use of Federal funds pursuant to Part 570.610. The applicable sections of 24 CFR Parts 84 and 85 are set forth at Part 570.502.

#### **I. Conflict of Interest**

##### **24 CFR 570.611/24 CFR 92.356**

This Agreement is subject to the general rule that no person who is an employee, agent, consultant, officer, or elected official or appointed official of the City as Recipient, or of any designated public agencies, or of Subrecipient who exercise or have exercised any functions or responsibilities with respect to CDBG or HOME activities assisted pursuant to 24 CFR 570.611 or 24 CFR 92.356, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG or HOME-assisted activity, or have a financial interest in any contract, subcontract, or Agreement with respect to a CDBG or HOME-assisted activity, or with respect to the proceeds of the CDBG or HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

#### **7. Drug-Free Workplace**

As a Subrecipient of CDBG or HOME funds, and in connection with public services offered, the Subrecipient agrees that it shall comply with the provisions of the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F, which requires that Subrecipient shall maintain a facility free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.

## **C. Section 504**

Nondiscrimination Based on Handicap in Programs Funded by the Department of Housing and Urban Development (HUD)

### **Definitions**

Section 504 of the Rehabilitation Act of 1974, As Amended - Prohibits discrimination based on handicap in information, participation, services, housing, employment, building accessibility or any other aspects of a program funded by HUD. Regulations issued in 1988 assure compliance with the Act.

Americans with Disabilities Act of 1990 (ADA) - Prohibits discrimination based on disability by all public/private employers, discrimination in public services by state or local governments, discrimination in places of public accommodations (restaurants, hotels, parks, schools, etc.). This Law became effective in 1992.

Individuals with Disabilities - This includes persons who have: 1) mobility impairments; 2) hearing impairments; 3) visual impairments; 4) developmental disabilities; and, 5) persons who remain in-home or institutionalized care settings.

### **Requirements for HUD-Funded Agencies**

#### **1. General Requirements**

- a. No qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program funded by HUD.
- b. An agency may not deny the opportunity, provide less of an opportunity or otherwise limit qualified individuals with disabilities from participating in or receiving services and benefits. This includes participating as a member of the planning or advisory boards or occupying a housing unit provided by the agency.

#### **2. Communications**

- a. Appropriate auxiliary aids shall be provided where necessary or reasonably requested (e.g., telecommunication devices for deaf persons) for applicants, clients, and employees of the agency. This does not include wheelchairs, hearing aids, or other devices of a personal nature.
- b. Procedures shall be in place to ensure that individuals with disabilities can obtain information on services and their location. This may include the provision of printed materials in Braille, large type, cassette, or disk.
- c. Agencies shall provide proper notification (e.g., in brochures and general printed information) to applicants, clients, and employees of the agency, including those with impaired vision or hearing, that the agency does not discriminate based on disability.
- d. The above notifications should include a telecommunications device number for deaf persons (TDD).

#### **3. Employment**

- a. An agency may not discriminate in its hiring practices against qualified individuals with disabilities. Discrimination in employment also applies to promotions, tenure, transfers, terminations, rates of pay, job assignments, leaves of absence, sick leave, fringe benefits, and any other terms of employment.

- b. An agency shall make reasonable accommodations to the known physical or mental limitations of an otherwise qualified applicant or employee with disabilities. This may include the provision of equipment or devices, job relocation, job restructuring, or facilities modifications.

#### **4. Building and Program Accessibility**

- a. New Construction - Non-housing facilities shall be designed and constructed to be readily accessible to individuals with disabilities in conformance with the Montana Building Code.
- b. Rehab or Alterations - Rehabilitation of non-housing facilities shall be made to be readily accessible to individuals with disabilities in conformance with the Montana Building Code. Rehab does not include re-roofing, interior decorations, or changes to mechanical systems. However, rehab shall not be performed in such a manner that it reduces accessibility.
- c. Existing Non-Housing Facilities - An agency shall locate and operate each program receiving HUD assistance so the program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. An agency may achieve accessibility through methods such as the following:
  - Location of programs or services to accessible facilities or accessible portions of facilities
  - Assignment of aides to assist beneficiaries
  - Home visits
  - The addition or redesign of equipment or furnishings
  - Acquisition or construction of additional facilities
  - Rehab or alterations to facilities on a selective basis

#### **5. Self-Evaluation**

- a. Each agency shall conduct a review and self-evaluation of its programs, policies procedures, communications, employment practices, facilities, and other aspect of its programs to determine compliance with regulations concerning accessibility and non-discrimination on the basis of disability. Your Grants Administrator will provide one for you to complete and keep as part of your records.
- b. The evaluation should cover the four basic categories described previously. The Accessibility Questionnaire may be used for reviewing the accessibility of the agency's facility.
- c. Any practices or policies that do not meet accessibility requirements shall be modified to achieve accessibility, and any discrimination revealed by the self-evaluation shall be corrected.
- d. An agency employing 15 persons or more shall do the following:
  - Maintain the results of the above self-evaluation on file and make it available for three years.
  - Designate an employee to coordinate compliance with HUD disability regulations.
  - Adopt grievance procedures for people with disabilities.

- Provide proper notices that the agency does not discriminate based on disability.

## **6. Additional Requirements Applicable Only to Housing Projects**

- a. New housing projects shall be designed and constructed to be readily accessible to and usable by individuals with disabilities in conformance with the City of Missoula building code.
- b. Renovation to housing projects shall be, to the maximum extent feasible, readily accessible and usable by individuals with disabilities in conformance with the City of Missoula building code. Once five percent of the dwelling units are readily accessible, with an additional two percent accessible for sensory disabilities, additional units do not need to be accessible, but are encouraged.

## **D. HOME Recapture, Resale and Repayment Provisions**

Below is a description of the guidelines that the City of Missoula will use for the resale or recapture of Home Investment Partnerships Program (HOME) funds when used for homebuyer activities as required by rules published in the Code of Federal Regulations as specified by 24 CFR 92.254

**When the City of Missoula awards HOME funds for homebuyer activities, the following will apply if a sale or transfer of the property is made during the period of affordability:**

- A. **Recapture** provisions will apply when a homebuyer or subrecipient receives direct HOME assistance to purchase the affordable home (i.e., for a downpayment, closing costs, or other HOME assistance).
- B. **Resale** provisions will apply when HOME assistance is provided for development subsidies, acquisition of existing units by housing organizations, and homes placed in community land trusts.

### **Definitions**

**DEVELOPMENT SUBSIDY:** A development subsidy is generally financial assistance given to the developer, who can then offer the home at a lower sales price and reduce the homebuyer's housing costs. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.

**DIRECT HOMEBUYER SUBSIDY:** A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise directly subsidizes the purchase (i.e., downpayment or closing cost assistance, subordinate financing).

**HOMEBUYER INVESTMENT:** The homebuyer's investment consists of the portion of initial downpayment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer's funds, and any loan principal paid down during the homebuyer's period of ownership.

**NET PROCEEDS:** The sales price minus loan repayment (other than HOME funds) and closing costs. Under no circumstances can the City recapture more than is available from the net proceeds of the sale (i.e., voluntary sales including short sales, and involuntary sales including foreclosures).

**NONCOMPLIANCE:** Failure to comply with the resale or recapture requirements means that:

- The HOME-assisted homebuyer no longer occupies the unit as their principal residence (i.e., unit is rented or vacant); or
- The home is voluntarily or involuntarily transferred in a transaction changing ownership without proper notice and the appropriate provisions were not enforced.

**PERIOD OF AFFORDABILITY:** The number of years that resale and recapture policies will be in effect when HOME funds are used. The minimum number of years is determined by the amount of the investment.

HOME Investment Per Unit	Length of Compliance / Affordability Period
Less than \$15,000	5 years
\$15,000-\$50,000	10 years
\$50,000+	15 years

**SUBRECIPIENT:** A subrecipient is a public or private nonprofit agency, authority, or organization that receives HOME funds to undertake eligible HOME activities (e.g., provide downpayment or closing costs assistance, or homeowner rehabilitation).

## RECAPTURE PROVISIONS

*Used when HOME assistance is provided to a homebuyer purchasing a regular market home*

Homebuyers/subrecipients who are awarded HOME funds for direct homebuyer assistance (downpayment assistance, closing costs, interest subsidies, or other HOME assistance) must follow the recapture guidelines if the property is sold or transferred during the affordability period.

Depending on the level of homebuyer assistance provided, the affordability period may be five years (less than \$15,000 in direct assistance), ten years (\$15,000 or more but less than \$50,000), or fifteen years (\$50,000 or more).

When the home is sold or transferred during the period of affordability, the homebuyer/subrecipient must repay the City the full amount of HOME funds received through downpayment assistance, closing costs, or other HOME assistance provided directly to them, and any financial assistance that reduced the purchase price from fair market value to an affordable price.

### ***Example***

*The City provides \$75,000 in HOME development funds to a developer who sells the property for fair market value at \$60,000. The homebuyer is also provided HOME down payment assistance in the amount of \$5,000. The City uses the recapture option to ensure affordability. The period of affordability for this property is five years because the property was sold for fair market value and the direct assistance to the homebuyer is therefore \$5,000.*

*Alternately, if the fair market value of this same property was \$75,000, and the developer sold the property to the homebuyer for \$60,000, the period of affordability would be ten years because the assistance that enables the homebuyer to purchase the unit is \$20,000 (\$15,000 subsidy to write down the purchase price plus the \$5,000 down payment assistance).*

The HOME-assisted homebuyer is allowed to sell the home to any willing buyer at any price as long as the HOME debt remaining on the property is repaid.

If the net sales proceeds are inadequate to fully repay the City's HOME loan, the City accepts the net proceeds as full and final payoff of the note. The City is never permitted to recapture more than is available from net proceeds of the sale (i.e., voluntary sales including short sales, and involuntary sales including foreclosures).

The net proceeds of a sale are the sales price minus non-HOME loan repayments and any closing costs. When the net sales proceeds exceed the City assistance, the HOME-assisted homebuyer retains all remaining net proceeds after repaying the HOME loan balance. The City reserves the right to determine that the sales price reflects fair market value.

If the City receives payment, the City will record the funds as "recaptured funds" and will use the funds for other HOME-eligible activities. Or the City may agree to a written agreement that specifies that the subrecipient keeps the recaptured funds for use for other HOME-eligible activities. Any time recaptured funds are reused to assist a subsequent homebuyer, a new period of affordability will start.

Lien documents, deed restrictions, covenants that run with the land, or other similar mechanisms will be used to impose recapture provisions. Documents containing these provisions will be executed at the closing of the home purchase and will be recorded at that time. In addition, the City will execute a written agreement between the homebuyer and the City, which will clearly explain:

- amount and use of the loan;
- length of the affordability period based on the dollar amount of City funds invested;
- requirement that the property be the primary residence of the household throughout the period of affordability;
- recapture provisions based on net proceeds available from sale, transfer or foreclosure of the home.

## RESALE PROVISIONS

***Used when HOME assistance is provided as a development subsidy; and when homebuyer assistance is provided for a home that will be put into a community land trust.***

When HOME funding is provided directly to a developer to reduce development costs, thereby making the price of the home affordable to the homebuyer, the funds are not repaid by the

developer to the City but remain with the property for the length of the affordability period. This keeps HOME-assisted units affordable over the entire affordability period.

**Example:**

*A homebuyer purchases a home that is property in a community land trust, and the homebuyer's sale price of the home is reduced \$30,000 in the form of a subsidy to make the sale affordable and attainable. The period of affordability is 10 years.*

*If the homebuyer receives \$15,000 in down-payment assistance in addition, the Resale Provision would still apply, but the period of affordability would increase to 15 years.*

Under the resale option, if the homeowner decides to sell the home during the period of affordability ...

- The sale price must be affordable to a range of subsequent low-income owner-occupied households.
- Subsequent homebuyers must be income-qualified under the HOME program and must occupy the home as their principal residence.
- The homeowner must be provided a fair return on investment when applicable (i.e., the downpayment plus capital improvements made to the house), while ensuring that the home is sold to another income qualified household.
  - In some cases, it may be necessary for the City to provide HOME assistance to the subsequent homeowner to ensure that the original homeowner receives a fair return and the unit is affordable to the defined low-income population. The resale price cannot be set based upon what is affordable to a specific homebuyer.

**FAIR RETURN ON INVESTMENT.** The homeowner may receive the money they invested into the property back from the sale proceeds.

The **value of the homeowner investment** is calculated by adding ...

- The homeowner's investment (i.e. downpayment and/or closing costs) at the time of initial purchase,
- The principal paid on the senior debt during the period of ownership, and
- Capital improvements (any individual improvements made specifically to the structure or major system of the HOME assisted housing unit in which the cost was more than \$3,000.00 and where applicable, the work was properly permitted, inspected locally, and documented with third party receipts).

The **homeowner's fair return on investment** is measured by using ...

- A formula that allows 1.5% annum simple interest for the number of years of ownership

**-OR- (whichever is the lesser of the two calculations)**

- The Consumer Price index, calculated from the month and year of purchase of the home to the month and year of the Intent-to-Sell Notice or other event triggering the Resale Option. The calculation shall be derived from the Bureau of Labor statistics online calculator or any successor: <https://data.bls.gov/cgi-bin/cpicalc.pl>

The total return at sale, assuming the price at sale permits the homeowner to realize a full return on the investment, would be the lesser of the two calculations.

**EXAMPLE**

*HOME funds were used for the construction of a single-family homebuyer unit. The homeowner provided \$5,000 for a downpayment and undertook a \$9,000 kitchen renovation in the last year. The homeowner has now decided to sell the home in year 3 of the period of affordability and is able to realize a full return on the investment.*

***The Base Price plus simple interest at a rate of 1.5% annum simple interest for 3 years of ownership would result in a fair return on investment of \$14,630.***

- $(\$5,000 + \$9,000) \times [1 + (.015 \times 3)] = \$14,630$  total return to the homeowner at sale

**-OR-**

*The average change in the Consumer Price Index over the homeowner's period of ownership is determined to be 3.5% and would result in a fair return on investment of \$14,490.*

- $(\$5,000 + \$9,000) \times .035 = \$490$
- $\$5,000 + \$9,000 + \$490 = \$14,490$  total return to the homeowner at sale.

*Total return at sale, assuming the price at sale permits the homeowner to realize a full return on the investment in this instance would be \$14,490 -- based on the Consumer Price Index (the lesser of the two calculations).*

**Note, that in certain circumstances, such as a declining housing market** where home values are depreciating, the homeowner may not receive a return on their investment because the home sold for less or the same price as the original purchase price.

**EXAMPLE**

*A homeowner puts a \$5,000 downpayment on a \$150,000 home. One year later the homeowner invests \$9,000 in kitchen improvements. The homeowner decides to sell the home three years later. Assuming the PJ used a 3.5 percent increase in the consumer price index to calculate fair return, the homeowner would expect to receive a \$490 return on investment (see example immediately above).*

*Since the homeowner purchased the home four years ago, the local housing market declined significantly. The fair market value of the home is now \$140,000. Because there is a \$10,000 loss on the sale, it is not possible to*

*provide the homeowner's \$490 fair return on investment or return any portion of the \$14,000 investment.*

**RESALE PROCESS:** When a Resale is triggered during the Period of Affordability, the HOME-assisted homeowner **must notify the City of Missoula in writing no less than 60 days prior to such sell or transfer** (the "Intent-to-Sell Notice").

In order to ensure that all resale requirements are met, the City will ...

- agree to the new sale price with consultation from the contracted agency and written third party appraisal
- confirm the Fair Return calculation to the HOME-assisted homeowner, and equity amounts to the homeowner, developer and the City
- review the income eligibility of the subsequent homebuyer
  - Subsequent homebuyer must be low-income as defined by HOME
  - Sales price must be affordable to the subsequent homebuyer; affordable is defined as limiting the Principal, Interest, Taxes and Insurance (PITI) amount to no more than 30% of the subsequent homebuyer's gross monthly income.
- ensure the subsequent homebuyer will use the property as their principal residence
- determine whether the subsequent homebuyer will continue the Period of Affordability in effect (if new HOME funds are invested for the subsequent low-income homebuyer, the period of affordability will be extended according to HOME regulations)

**HOME PROGRAM QUALIFIED.** Once the City determines that all resale process requirements are met, a written agreement will be executed between the subsequent homebuyer and the City, which will clearly explain:

- amount and use of the loan;
- length of the affordability period based on the dollar amount of City funds invested;
- requirement that the property be the primary residence of the household throughout the period of affordability;
- conditions and obligations of the subsequent homebuyer should they wish to sell before the end of the affordability period

**CONTINUED AFFORDABILITY.** To provide continued affordability of the property, the City will ensure that the sales price not exceed what is affordable to households below 80% of area median income (AMI). The City of Missoula defines "affordable price" as a price that is at or below an amount that will allow a low-income family to pay no more than 30% of their monthly income to pay for mortgage principal and interest, property taxes, and insurance. In no case will the price exceed the HOME Program purchase price limits as defined by HUD.

**ENFORCEMENT OF RESALE PROVISIONS.** The HOME-assisted homeowner will be responsible for notifying the City to ensure that resale provisions are followed if properties are sold or transferred during the period of affordability. To accomplish this, lien documents, deed restrictions, covenants running with the land, or other similar mechanisms will be used to guarantee the period of affordability. Documents containing these provisions will be executed at the closing of the home purchase and will be recorded at that time.

## FORECLOSURE AND TRANSFER IN LIEU OF FORECLOSURE

The City may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. In the subsequent sale, ...

- the sale price must be affordable to a range of low-income owner-occupied households.
- the subsequent homebuyer must be income-qualified under the HOME program, occupy the home as their principal residence, and agree to assume the remainder of the original affordability period.

## REPAYMENT

If homebuyer violates compliance requirements during the period of affordability, the City may enforce a Repayment provision in which homebuyer is responsible for repaying to the City the entire HOME investment.

*This policy is intended to implement the HUD HOME program requirements concerning resale, recapture and repayment. In the event there is ambiguity in this policy, or in the event this policy does not address a specific question, the City will look to HUD regulations, guidance documents, and program notices as persuasive authority on such questions.*

## ***E. Securing Investments***

### **CDBG Funds Used Solely For Authorized Purposes**

In awarding CDBG program funds for project investments, the City of Missoula has adopted policy as specified by 24 CFR 570.502 and described in detail below. This policy is intended to ensure that CDBG-assisted real property is used solely for authorized CDBG purposes, and that no transfer to another entity would result in the real property being used for an unauthorized purpose.

Upon expiration of an agreement, the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration and any amounts receivable attributable to use of CDBG funds. In addition, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the Subrecipient in the form of a loan) in excess of \$25,000 is either:

1. Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the City; or
2. Not used in accordance with the above paragraph, in which event the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the City. (No payment is required after the period of time specified in the above paragraph.)

### **CDBG Projects that Include Periods of Affordability**

While not required by CDBG regulations, in an effort to promote long-term affordable housing, CD will require that CDBG-supported housing developments, homeowner rehabilitation, and homebuyer assistance have periods of affordability based on the level of CDBG assistance per unit. CD will follow the same guidelines that apply to the HOME program based on CDBG subsidy per affordable unit. See HOME Recapture, Resale, and Repayment Provisions, XI. Exhibits, Part D.

The City reserves the right to file a Montana Trust Indenture on any CDBG or HOME project that includes a period of affordability; the trust indenture will stay in effect until project close-out, period of affordability, or longer as determined by the City.

### **HOME Projects that Include Periods of Affordability**

In awarding HOME program funds for Rental Housing or Homeownership, the City of Missoula has adopted policy as specified by 24 CFR 92.252, 92.254 and described in detail below.

HOME funded projects must meet all period of affordability requirements for not less than the applicable period, beginning after project completion. The period of affordability is based on the total amount of HOME funds invested in the housing. See HOME Recapture, Resale, and Repayment Provisions, XI. Exhibits, Part D.

According to HUD regulations, affordability requirements:

1. Apply without regard to the term of any loan or mortgage, repayment of the HOME investment, or the transfer of ownership;
2. Must be imposed by deed restrictions, covenants running with the land, or other HUD approved mechanisms, but may terminate upon foreclosure or transfer in lieu of foreclosure; and

3. Must be recorded in accordance with State recordation laws.

The City may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure in order to preserve affordability.

The City reserves the right to file a Montana Trust Indenture on any CDBG or HOME project that includes a period of affordability; the trust indenture will stay in effect until project close-out, period of affordability, or longer as determined by the City.

## ***F. Displacement and Relocation Assistance***

All projects that include acquisition, rehabilitation, demolition, or conversion and that include federal funds at any phase of the project must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and/or Section 104(d) unless specifically exempted by the federal agency. URA is one of the most important and potentially most costly of HUD regulations. The City of Missoula's policies regarding URA and Section 104(d) can be found at <https://www.ci.missoula.mt.us/3071/HUD-Grants>.

## ***G. Terms and Acronyms Defined***

**ADA** Americans with Disability Act

**ADDI** American Dream Downpayment Assistance

**Affordable housing** accommodations that require no more than 30% of a household's income

**AIDS** Acquired Immunodeficiency Syndrome

**AMI** Area Median Income

**AP** Action Plan

**APR** Annual Performance Report

**ARRA** American Recovery and Reinvestment Act of 2009

**BROWNFIELDS** a program that addresses assessment, cleanup and redevelopment of sites that either are or are perceived to be environmentally contaminated

**CAPER** Consolidated Annual Performance and Evaluation Report

**CBDO** Community-Based Development Organization

**CD** Community Development Division

**CDBG** Community Development Block Grant

**CDBG-R** Community Development Block Grant Recovery

**CFR** Code of Federal Regulations

**CHDO** Community Housing Development Organization

**CP** Consolidated Plan

**CPD** (Office of) Community Planning & Development (HUD)

**EA** Environmental Assessment

**EC** Entitlement City (CDBG)

**EEO** Equal Employment Opportunity

**EIS** Environmental Impact Statement

**EMSA** Eligible Metropolitan Statistical Area

**EPA** Environmental Protection Agency

**ERR** Environmental Review Record

**ESG** Emergency Shelter Grant

**ESL** English as a Second Language

**FFY** Federal Fiscal Year (Oct.-Sept.)

**FHEO** Fair Housing/Equal Opportunity

<b>FMR</b> Fair Market Rents	<b>NAHRO</b> National Association of Housing and Redevelopment Officials
<b>FY</b> Fiscal Year (July – June)	<b>NSP</b> Neighborhood Stabilization Program
<b>GIS</b> Geographical Information Systems	<b>OMB</b> Office of Management and Budget
<b>GPR</b> Grantee Performance Report	<b>PHA</b> Public Housing Authority
<b>HOME</b> Home Investments Partnership Program	<b>PI</b> program income
<b>HQS</b> Housing Quality Standards	<b>PJ</b> Participating Jurisdiction (HOME)
<b>HUD</b> (Department of) Housing and Urban Development	<b>PY</b> Program Year (July – June)
<b>IDIS</b> Integrated Disbursement and Information System	<b>RFP</b> Request for Proposal
<b>LIHTC</b> Low-Income Housing Tax Credits Program	<b>RFQ</b> Request for Qualifications
<b>LIHTF</b> Low-Income Housing Trust Fund	<b>RLF</b> Revolving Loan Fund
<b>LMI</b> Low/moderate income	<b>RTC</b> Resolution Trust Corporation
<b>MBE/WBE</b> Minority/Women Business Enterprise	<b>SBA</b> U. S. Small Business Association
<b>MCA</b> Montana Code Annotated	<b>Section 202</b> elderly housing
<b>MDOC</b> Montana Department of Commerce	<b>Section 504</b> accessibility provision of housing law
<b>Median Income</b> the midpoint of all incomes in the community (half earns more than the median, half earns less) It is not an average.	<b>SHP</b> Supportive Housing Program
<b>MOU</b> Memorandum of Understanding	<b>SHPO</b> State Historic Preservation Office
<b>MSA</b> Metropolitan Statistical Area	<b>SRO</b> Single Room Occupancy
	<b>Subrecipient</b> a nonprofit or public agency delivering all or a portion of a housing program on behalf of the PJ and/or Entitlement Community
	<b>URA</b> Uniform Relocation Act

## ***H. City of Missoula HOME-CDBG Required Contract Supplemental Conditions***

The following supplemental Conditions are hereby made a part of the contract to which they are appended, thereby supplementing that contract and superseding any of its articles that are in conflict with the Conditions contained herein.

1. **INDEPENDENT CONTRACTOR.** It is understood by the parties hereto that the Contractor is an independent contractor and as such neither it nor its employees, if any, are employees of the HOME/CDBG Subrecipient for purposes of tax, retirement system, or social security (FICA) withholding. It is further understood that pursuant to Section 39-71-401, *Montana Code Annotated* (MCA), the Contractor has obtained, and will maintain at its expense for the duration of this Contract, coverage in a workers' compensation plan for its principles and employees for the services to be performed hereunder.
2. **CONTRACTOR REGISTRATION.** Under the provisions of Section 39-9-201, *Montana Code Annotated*, each construction contractor shall register with the Department of Labor and be issued a Certificate of Registration upon compliance with registration requirements. Independent contractors without employees and architects, civil or professional engineers licensed in Montana and acting solely in a professional capacity are exempt from registering (Section 39-9-211, MCA). An independent contractor may voluntarily elect to register.
3. **ELIGIBILITY.** The Contractor certifies that the Contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded, or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension" [2 CFR 200.213].
4. **CONFLICT OF INTEREST.** The Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the HOME/CDBG project that would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that, in the performance of this Contract, it will employ no person who has any such interest.
5. **DOCUMENTS INCORPORATED BY REFERENCE.** The Grantee's HOME and/or CDBG application(s) to the City of Missoula for HOME and/or CDBG funding, dated \_\_\_\_\_, 20\_\_\_\_\_, and all applicable federal and state statutes and regulations are incorporated into this Contract by this reference and are binding upon the Contractor.
6. **COMPENSATION.** Neither the cost plus a percentage of cost method nor the percentage of construction cost method will serve as the basis for compensating the Contractor for its services provided under this Contract.
7. **PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.** This Contract will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is the 4<sup>th</sup> Judicial District in and for the County of Missoula, State of Montana.
8. **BREACH OF CONTRACT.** (Applicable to contracts in excess of \$100,000; otherwise remove paragraph) In the event of breach of Contract by the Contractor, the HOME/CDBG Subrecipient may at its option, engage the services of another contractor to complete the work and deduct the cost of the completion from the amount due to the Contractor. In the event if either the HOME/CDBG Subrecipient or

Contractor do not fulfill performance under this agreement, then the affected party may pursue all legal remedies available for breach of contract.

9. **TERMINATION OF CONTRACT.** This Contract may be terminated as follows:
  - a. **Termination due to loss of funding.** This Contract will terminate, in whole or in part, at the discretion of the HOME/CDBG Subrecipient in the event that the City of Missoula reduces or terminates payments under the HOME/CDBG Program so as to prevent the HOME/CDBG Subrecipient from paying the Contractor with HOME/CDBG funds. In this event, the HOME/CDBG Subrecipient will give the Contractor advance written notice which sets forth the effective date of the termination and explains that the termination is due to a loss or reduction of the HOME/CDBG Program grant.
  - b. **Termination for cause.**
    - 1) If the HOME/CDBG Subrecipient determines that the Contractor has failed to comply with the terms and conditions of the Contract, it may terminate this Contract in whole or in part at any time before the date of completion. If the Contractor fails to comply with any of the terms and conditions of this Contract, the HOME/CDBG Subrecipient may give notice, in writing, to the Contractor of any or all deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If all defaults are not cured and corrected within a reasonable period to be specified in the notice, the HOME/CDBG Subrecipient may, with no further notice, declare this Contract to be terminated. The Contractor will thereafter be entitled to receive payment for those services reasonably performed to the date of termination, less the amount of reasonable damages suffered by the HOME/CDBG Subrecipient by reason of the Contractor's failure to comply with this Contract.
    - 2) Notwithstanding the above, the Contractor is not relieved of liability to the HOME/CDBG Subrecipient for damages sustained by the HOME/CDBG Subrecipient by virtue of any breach of this Contract by the Contractor, and the HOME/CDBG Subrecipient may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the HOME/CDBG Subrecipient from the Contractor is determined.

10. **CIVIL RIGHTS ACT OF 1964 [42 U.S.C. 2000d].** The Contractor will abide by the provisions of the *Civil Rights Act of 1964* which states that under *Title VI*, no person may, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

11. **EQUAL EMPLOYMENT OPPORTUNITY.**

Contractors, subcontractors, sub-grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Equal Opportunity Policy and Title 49 Montana Code Annotated, entitled "Human Rights," or forfeit the right to continue such business dealings.

The City's Equal Opportunity Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an action plan to provide all persons equal opportunity for

employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, to the extent practical, shall ensure that subcontractors and vendors comply with this policy and the City's non-discrimination and equal opportunity requirements found at Chapter 9.64 of the Missoula Municipal Code. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds or future contracting opportunities.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of equal employment for the City of Missoula, its employees, program participants, trainees and applicants.8.4 Indemnification: Contractor shall indemnify and hold the City of Missoula, the City of Missoula Police Department and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the Contractor's negligence or breach of any of its obligations while performing these services.

**12. NONDISCRIMINATION AND EQUAL OPPORTUNITY.** The Contractor will abide by the Federal requirements set forth in 24 CFR 5.105(a), *Nondiscrimination and equal opportunity*, as these apply to the HOME/CDBG program and activities:

- a. requirements of the *Fair Housing Act* [42 U.S.C. 3601-20] and *Executive Orders 11063* and *12259* (regarding Equal Opportunity in Housing);
- b. prohibitions against discrimination on the basis of age under the *Age Discrimination Act of 1975* [42 U.S.C. 6101-07];
- c. prohibitions against discrimination against an otherwise qualified individual with a physical or mental disability, as provided in *Section 504 of the Rehabilitation Act of 1973* [42 U.S.C. 794]; and
- d.

**13. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 [12 U.S.C. 1701u].** The Contractor will ensure that, to the greatest extent feasible, opportunities for training and employment arising in connection with this HOME/CDBG-assisted project will be extended to lower income project area residents. Further, Contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the awarding of contracts and purchasing of services and supplies.

**14. 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.**

The Contractor will take affirmative steps to assure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firm are used when possible as sources of supplies, equipment, construction and services. Additionally, the Contractor must document all affirmative steps taken to solicit the participation of minority and women-owned businesses and will forward this documentation (along with the names of the minority subcontractors and suppliers) to the HOME/CDBG Subrecipient.

In accordance with 2 CFR 200.321 the Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(a) When possible, the recipient or subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

(5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

15. **NONDISCRIMINATION.** The Contractor will not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

16. **LOBBYING PROVISIONS.** The Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

17. **OWNERSHIP AND PUBLICATION OF MATERIALS.** All reports, information, data, and other materials prepared by the Contractor pursuant to this Contract are to be the property of the HOME/CDBG Subrecipient and the City of Missoula Community Development division (CD) which have nonexclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. Any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Contractor. No material produced in whole or in part under this Contract may be subject to copyright or patent in the United States or in any other country without the prior written permission of the HOME/CDBG Subrecipient and CD.

18. **REPORTS AND INFORMATION.** The Contractor will maintain accounts and records, including personnel, property and financial records, which are adequate to identify and account for all costs pertaining to this Contract; and such other records as may be deemed necessary by the HOME/CDBG Subrecipient to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the HOME/CDBG Subrecipient or its authorized representative, and will be retained by the Contractor for five years after the expiration of this Contract.

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

19. **ACCESS TO RECORDS.** It is expressly understood that the Contractor records relating to this Contract will be available during normal business hours for inspection by the HOME/CDBG Subrecipient, City of Missoula Community Development division (CD), the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and, when required by law, the Montana Legislative Auditor.

20. **INDEMNIFICATION.** The Contractor waives any and all claims and recourse against the HOME/CDBG Subrecipient, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to the Contractor's performance of this contract, except for liability arising out of concurrent or sole negligence of the HOME/CDBG Subrecipient or its officers, agents or employees. Further, the Contractor will indemnify, hold harmless, and defend the HOME/CDBG Subrecipient against any and all claims, demands, damages, costs, expenses or liability arising out of the Contractor's performance of this Contract except for liability arising out of the concurrent or sole negligence of the HOME/CDBG Subrecipient or its officers, agents or employees. In the event that the HOME/CDBG Subrecipient is named as a co-defendant in any action relating to activities to be performed by the Contractor or a subcontractor under this Contract, the Contractor will notify the HOME/CDBG Subrecipient of this fact and will represent the HOME/CDBG Subrecipient in the legal action unless the HOME/CDBG Subrecipient undertakes to represent itself as a co-defendant, in which case the HOME/CDBG Subrecipient will bear its own litigation costs, expenses, and attorneys' fees.

21. **LEGAL FEES.** In the event either party incurs legal expenses to enforce the terms and conditions of this Contract, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

22. **MODIFICATION AND ASSIGNABILITY OF CONTRACT.** This Contract contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in the written Contract, are valid or binding. This Contract may not be enlarged, modified or altered except upon written agreement. The Contractor may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent of the HOME/CDBG Subrecipient. Any subcontract or assignee will be bound by the terms and conditions of this contract.

23. **COPELAND ANTIKICKBACK ACT.** The Contractor shall not induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any 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 (s)he is entitled under contract of employment.

24. **ACCESSIBILITY REQUIREMENTS.** All design specifications for the construction of any building shall comply with the applicable accessibility requirements of the *Fair Housing Amendments Act of 1988 (Fair Housing Act)*; the *Uniform Federal Accessibility Standards* adopted by HUD in 24 CFR Part 8 (implements Section 504 of the Rehabilitation Act of 1973); and the accessibility requirements of the *Americans with Disabilities Act*.

25. **CERTIFICATION OF COMPLIANCE WITH FEDERAL CLEAN AIR AND WATER ACTS.** (Applicable to federally assisted construction contracts and related sub-contracts exceeding \$100,000; otherwise remove paragraph) During the performance of this contract, the contractor and all subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended.. Violations must be reported to the

Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

26. **PRECONSTRUCTION CONFERENCE.** After the construction contract(s) for the project contemplated by this Contract have been awarded, but before the start of construction, a conference will be held for the purpose of familiarizing the successful bidder with the federal and State requirements which apply to projects funded in whole or in part by a HOME/CDBG Grant. Additionally, discussions will take place on such matters as project supervision, coordination with city or county officials, on-site inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The Contractor may be responsible for conducting this conference. The contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated.
27. **FEDERAL LABOR STANDARDS PROVISIONS.** *(required for construction contracts which include 12 or more HOME-assisted units or 8 or more total housing units when CDBG funding is involved; otherwise remove.)*  
*(Attach and Reference [HUD-4010](#) form that by this reference is made a part hereof, if applicable.)*
28. **SCHEDULE OF MINIMUM HOURLY WAGE RATES.** *(required for construction contracts which include 12 or more HOME-assisted units or 8 or more units when CDBG funding is involved; otherwise remove.)*  
*(Attach and Reference Davis-Bacon Wage Determination that by this reference is made a part hereof.)*
29. **BUILD AMERICA, BUY AMERICA.** The subrecipient must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (77 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver. *(required for construction and rehab projects whose total project cost from all funding sources is \$250,000 or more)*

## ***I. Required Contract Clauses***

1. **EMPLOYMENT OF CONTRACTOR.** (*Grantee name*) agrees to engage the Contractor and the Contractor agrees to provide the following services:
2. **SCOPE OF SERVICES.** The Contractor will perform the following services: *(Here, or in an exhibit to the contract, explicitly and completely list the services and products the grant recipient expects of the Contractor, including the timetable for completion of key tasks. Consult with your HOME liaison as to the specific services that may be appropriate for each grant category.)*
3. **LIAISON.** The Grantee's designated liaison with the Contractor is \_\_\_\_\_ . The Contractor's designated liaison with the Grantee is \_\_\_\_\_ .
4. **EFFECTIVE DATE AND TIME OF PERFORMANCE.** This Contract takes effect on \_\_\_\_\_ . The services to be performed by the Contractor will be completed no later than \_\_\_\_\_ .
5. **COMPENSATION.** For the satisfactory completion of the services to be provided under this Contract, the Grantee will pay the Contractor a sum not to exceed \$ \_\_\_\_\_ , which the Grantee agrees to pay as set forth on the attached Attachment \_\_\_\_\_ which by this reference is made a part hereof.  
Compensation for services will be provided in installments, based on actual work performed. Payment will be based upon the completion of key components of the adopted project implementation schedule *(and/or on the basis of a set hourly rate)*. Contractor requests for payment may be submitted monthly, and must be accompanied by a written narrative report which adequately describes and documents the work performed during that period relative to the adopted implementation schedule for the project. *(The exhibit should describe the maximum amount payable under the contract, the procedures for approving payment, the terms of payment, and the performance measures to be used to determine contractor compliance.)*
6. **CONDITIONAL AGREEMENT.** *(only if applicable)* It is expressly understood by the parties hereto that this Contract is dependent and conditional upon the receipt by the Grantee of Home Investment Partnership Program (HOME) Grant funds from the City of Missoula, and that in the event that said funds are not provided, the Grantee incurs no responsibilities or liabilities under this Contract.