



DAYTON

**City of Dayton, Division of Community Development
Community Development Block Grant
Policies and Procedures Manual**

101 W. Third Street
Dayton, Ohio 45402

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Implementation of CDBG Policies and Procedures

This document has been reviewed and approved for implementation by the City of Dayton Department of Planning and Community Development to guide the City of Dayton's compliance in the implementation, management, and oversight of annual CDBG allocations, projects, and activities. To the best of the City's ability, this document has been updated to reflect the current policies, procedures, laws, and regulations governing the Community Development Block Grant program administered by the U.S. Department of Housing and Urban Development.

Division Manager Signature: *Cin M. Jeffries* Date: Jul 31, 2020

Department Director Signature: *Todd M. Kinsky* Date: Jul 31, 2020

I. General Information

Purpose

This manual details the policies and operating procedures for the City of Dayton's Community Development Block Grant (CDBG) Program. The manual and its contents are meant to work in conjunction with CDBG regulations and shall not substitute or circumvent any existing regulations or reference materials.

The policies outlined in each section of this manual are followed by the City of Dayton's procedures used to meet these policies. Procedures are delineated with **bold face** and the following symbol:



Updates

Information provided in this manual may be updated due to changes in federal policy and regulations, internal City policies and preferences, and interpretation or clarification of federal regulations.

The July 31, 2020, update represents a comprehensive organization-wide effort to catalog all federal requirements applicable to the CDBG program and to align internal policies and procedures with CDBG regulations.

IDIS

The Integrated Disbursement and Information System (IDIS) is the online reporting system for HUD's CDBG, ESG, HOME, and HOPWA programs. This system is utilized by grantees and HUD to track and draw down Entitlement grant funding and program income, and to record the accomplishments and outcomes from Entitlement grant-funded activities. The City of Dayton uses IDIS to track, draw down, and report on the City's CDBG, HOME, and ESG programs. The City's policies and procedures pertaining to the use and management of IDIS in the CDBG Program are interspersed throughout this document.

Overview

The CDBG Program was enacted in 1974 under the Housing and Community Development Act of 1974, and is an effective tool to help fund local community and economic development needs. The primary objective of the CDBG program is to develop viable urban environments through the provision of decent housing, a suitable living environment, and expanded economic opportunities for predominately low- and moderate-income (LMI) persons (at or below 80% of the Area Median Income).

The City of Dayton is funded as an urban entitlement jurisdiction under the CDBG Entitlement Program and is allocated annual funding through a formula basis developed and implemented by the U.S. Department of Housing and Urban Development (HUD).

Key Definitions for CDBG Entitlement Program

Key definitions for the CDBG Program can be found in Section 1.3 of [Basically CDBG for Entitlements, Chapter 1](#).

II. National Objectives

To meet the primary objectives of the CDBG program, proposed activities must meet one of three National Objectives set by HUD:

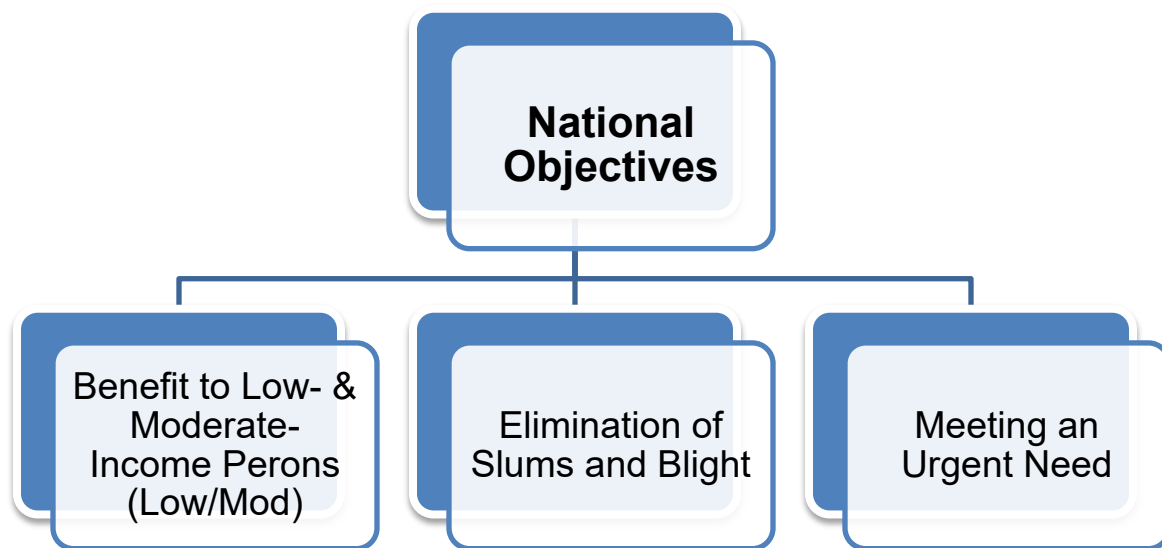


Table 2.1 CDBG National Objectives

The three National Objectives include multiple subcategories that more specifically categorize how activities may meet the wider objectives. A [table detailing the compatibility of National Objectives](#) with eligible activities can be found in Appendix A.

Benefit to Low- & Moderate-Income Persons (Low/Mod)

The CDBG Program is structured to primarily benefit LMI persons and households and includes a requirement that of the CDBG funds spent on activities other than program administration, 70% must be spent on activities that benefit LMI persons and households.



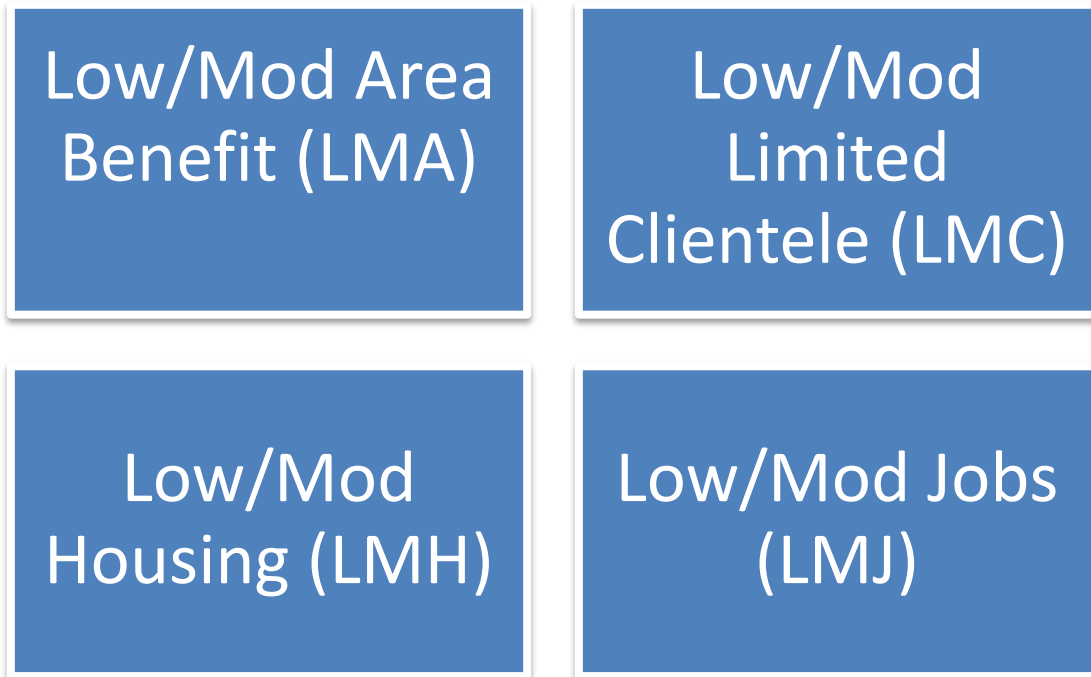
Procedure

The City of Dayton reports annual progress toward meeting the 70% LMI Benefit requirement to HUD through the Consolidated Annual Performance Evaluation Report (CAPER). The annual percentage of funds spent on activities focused on LMI persons and households is calculated on the PR-26 report in IDIS.

The City of Dayton ensures that at least seventy percent (70%) of its annual allocation benefits LMI persons and/or households. Annually, all City of Dayton CDBG activities, EXCLUDING Nuisance Abatement which is categorized as slum and blight, meet the LMI National Objective. CD staff ensures that the minimum 70% toward LMI benefit is met through the implementation of its Annual Action Plan. During the annual city budget process and the development of the Annual Action Plan, the City generates a Resource Allocation Summary to summarize the activities that will be supported through the Action Plan. Through this summary, the City calculates and monitors the percent of the grant that is scheduled to meet the LMI National Objective. Should an allocation change or an Action Plan be substantially amended, the City revisits this summary to ensure the Annual Action Plan is still compliant with the 70% LMI requirements, and adjustments are made to internal programming to ensure that the level of funding allocated to activities not directly benefitting LMI persons and households does drop below the required 70%.

The 70% LMI requirement is tracked by the Planning and Community Development Grants Administrator for the CDBG Program.

There are four subcategories for how an eligible activity may meet the Low/Mod Benefit National Objective:



Low/Mod Area Benefit (LMA)

LMA activities benefit all residents of a particular area that is comprised of 51% or more LMI households and is also primarily residential. The benefits of this type of activity are available to all residents in the area regardless of income. Once the service area is determined, the City can determine if the area is comprised of at least 51% LMI residents by using the Census Method or Survey Method.

The first step to determine if an activity can meet the LMA National Objective is to determine the service area. The inclusion or exclusion of a particular portion of the City can significantly impact the percentage of LMI residents in the service area.

Although service areas do not need to be coterminous with census tracts or other officially recognized boundaries, it is useful if the service area reasonably coincides with such boundaries because of the need to consider census data in the area. It is critical, however, that the service area determined by the City be the entire area served by the activity. In accordance with §570.208(a)(1)(v), HUD will generally accept the City's determination unless the activity's nature or location raises serious doubts about the claimed service area.

For example, a public park improvement must consider all those who will benefit from the improvement. If the public park is a large, citywide, or regional park, then the service area would be much larger than if the park was a small, neighborhood or pocket park. If the neighborhood park is used by, for example, all residents within a one mile radius, the City must include all census tracts and block groups that fall within that radius, even if it includes a combination of Low/Mod and non-Low/Mod areas.

Procedure

To determine the service area for an LMA activity, the following steps must be taken:

- A. Map the location of the proposed activity;**
- B. Determine, based on the location and nature of the activity, which residents will use or benefit from the activity; and**
- C. Map the surrounding areas determined to benefit from the proposed activity (usually represented in a radius drawn around the proposed activity).**

The regulations at §570.208(a)(1)(vi) provide that, for purposes of determining whether a particular area contains a sufficient percentage of LMI people to qualify an activity under the area benefit criteria, available information from the latest Decennial Census shall be used to the fullest extent feasible. The HUD-provided census data commutates the number of persons that resided in each tract/block group at the time of the last census and the percentage of such persons who were LMI at that time. Using this information, the City (and HUD) can compute the percentage of LMI people residing in any combination of tracts/block groups in the City.

Using Census Data is the most common way of determining whether or not a particular service area contains a sufficient percentage of LMI people to qualify as an LMA.

Procedure

To determine if a service area will meet the LMA National Objective using the census method, the following steps must be taken:

- A. Determine all of the block groups contained in the service area**
- B. Add the total amount of persons residing in all block groups**
- C. Add the total number of low/mod persons residing in all block groups**
- D. Divide the total number low/mod residents by the total number of residents to determine the percentage of low/mod persons residing in the service area.**
- E. If the percentage of low/mod persons residing in the service area at least 51%, the activity meets the LMA National Objective.**

If the City believes that the available census data does not reflect current relative income levels in an area, or where the area does not coincide sufficiently well with census boundaries, the City may conduct a survey of the residents of the area. The City must obtain HUD's approval of the survey instrument and other methodological aspects of the survey for this purpose. HUD will approve the survey where it determines that it meets standards of statistical reliability that are comparable to that of the Decennial Census data for areas of similar size.

It should also be noted that a grantee cannot use a survey of the income of the users of a particular facility or improvement to qualify it under the LMC National Objective if the facility or improvement provides a benefit that is available to all the residents of an area. This limitation derives from the statutory provision at section 105(c) concerning activities that serve an area generally. Notwithstanding this prohibition, a grantee may want to survey the users of an existing facility or improvement to determine where the users live, for purposes of helping the grantee determine the area served by the facility/improvement.



Procedure

To determine if a service area will meet the LMA National Objective using the survey method, the following steps must be taken:

- A. Make a written determination or finding that the available census data does not reflect the current relative income levels in the service area.**
- B. Develop a survey method or instrument to collect the number of low/mod residents in the service area.**
- C. Submit to and receive HUD approval of the survey method or instrument to be used.**
- D. Conduct the survey, usually involving a door-to-door and/or mail survey to certify each household's income in the service area.**
- E. Analyze the results of the survey, ensuring a minimum level of participation was received.**
- F. If the percentage of low/mod persons residing in the service area is determined to be at least 51% as a result of the survey, submit the survey results to HUD for approval.**
- G. HUD will issue a determination on whether or not the activity meets the LMA National Objective**

Procedure

The CDBG project manager must maintain documentation that adequately identifies the service area and percentage of LMI individuals within the service area. Documentation must include a description of the service area boundaries and the basis used to determine the boundaries, and a description of the percentage of LMI individuals in the service area, including an explanation of whether the census or survey method was used in calculating the percentage.

All analysis, calculations, and service area designations must be completed by the CDBG Grant Administrator BEFORE CDBG funding is committed to a subrecipient or project through an agreement or assigned to an activity in IDIS.

This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement.

Low/Mod Limited Clientele (LMC)

Activities benefitting low/mod limited clientele (LMC) provides benefits to a specific group that utilizes the CDBG-funded activity rather than everyone within a geographic space. To meet the LMC Objective, at least 51% of the beneficiaries are low- to moderate-income, and meet one of the following subcategories:

- Beneficiaries are exclusively presumed to be low income;
 - Any activity meeting a “presumed benefit” must exclusively benefit one or more of the groups specified at 24 CFR 570.208 (a) (2) (i) (A): elderly persons, homeless persons, abused children, bettered spouses, severely-disabled persons, illiterate adults, persons living with AIDS, and migrant farm workers.
 - Example: Homelessness outreach or senior programming

Procedure

As a part of the project file, the CDBG project manager must retain documentation indicating the presumed status of beneficiaries, such as copies of identification showing the age of beneficiaries or an activity summary indicating beneficiaries are living in emergency shelters or areas not suited for human habitation. This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement. (24 CFR 570.208 (a) (2) (i) (A))

- Beneficiaries qualify based on family size and income

- Example: After-school programming

Procedure

As a part of the project file, the CDBG project manager must retain documentation indicating that at least 51% of the beneficiaries have a household income at or below the moderate-income limit for their household size. Income from all household members should be considered in this calculation, and proof may include paystubs, SSI benefits, tax returns, alimony payments, etc. This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement. (24 CFR 570.208 (a) (2) (i) (B) & (C))

- Activities that are of such nature and location that they are presumed to serve LMI beneficiaries
 - Example: Neighborhood School Site Coordinator funding for a school where all students qualify for free & reduced lunch and the residents served by the school are over 51% LMI

Procedure

As a part of the project file, the CDBG project manager must retain documentation indicating that at least 51% of the beneficiaries are low- to moderate-income individuals. Documentation includes a narrative that specifically describes how it can be reasonably concluded that beneficiaries will be predominately LMI. This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement. (24 CFR 570.208 (a) (2) (i) (D))

- Activities that remove architectural barriers to accessibility
 - ADA modifications to a facility, curb, or gutter

Procedure

As a part of the project file, the CDBG project manager must retain documentation indicating that the removal of an architectural barrier to accessibility directly benefits limited clientele beneficiaries such as elderly individuals or individuals that are severely disabled. Documentation must include proof that the barrier was fully remediated and/or removed and how, as much as possible, the benefit was limited to specific LMC beneficiaries. If the benefit cannot be documented as limited to specific LMC beneficiaries, the activity may be better categorized under another Low/Mod subcategory. This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement. (24 CFR 570.208 (a) (2) (ii))

Low/Mod Housing (LMH)

The Low- to Moderate-Income Housing (LMH) subcategory utilizes households as the beneficiary instead of individuals. Section 105(c)(3) of the authorizing statute requires that an activity which assists in the acquisition, construction, or improvement of permanent, residential structures (including homeownership assistance) may qualify as benefiting LMI Households only to the extent that the housing is occupied by LMI Households.

Thus, the LMH subcategory described at §570.208(a)(3) only satisfies the LMI National Objectives if the housing will be occupied by an LMI Household upon completion of the activity. The housing can be either owner- or renter-occupied and can be either a single-family or multi-unit. When the housing is to be rented, the unit must be occupied by an LMI Household at affordable rents. The City is responsible for establishing the criteria it will use to determine rent affordability and must make these criteria public.

Occupancy of an assisted housing activity by LMI Households under the LMH subcategory is determined using the following general rules:

- A. All assisted single unit structures must be occupied by LMI Households,
- B. An assisted two-unit structure (duplex) must have at least one unit occupied by an LMI Household, and
- C. An assisted structure containing more than two units must have at least 51% of the units occupied by LMI Households.

Procedure

The CDBG project manager and subrecipient must maintain documentation that adequately identifies the specific households and incomes for those served. Documentation must include:

- A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-unit structure assisted and the number of those units which will be occupied by Low/Mod Income Households.
- Total activity cost, including both CDBG and non-CDBG funds.
- For each unit claimed to be occupied by a Low/Mod Income Household, the size and combined income of the household.
- For rental housing only:
 - The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and
 - Information as necessary to show the affordability of units occupied (or to be occupied) by Low/Mod Income Households pursuant to criteria established and made public by the grantee.
- For each property acquired on which there are no structures, evidence of commitments ensuring that the above criteria will be met when the structures are built.
- Where applicable, records documenting that the activity qualifies under the special conditions regarding the new construction of nonelderly, multi-family housing that will have Low/Mod Income occupancy of less than 51%.
- Where applicable, information showing that the housing units assisted, although located in different structures, are authorized to be considered to be located in a single structure under one of the special situations described previously.

This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement. (24 CFR 570.506 (b) (4))

Low/Mod Jobs (LMJ)

An LMJ activity creates or retains permanent jobs, at least 51% of which, on a full-time equivalent (FTE) basis, are either held by LMI people or is considered to be available LMI people. The LMJ National Objective is usually associated with economic development activities.

- A. In counting the jobs to be used in the calculation for determining the percentage that benefit L/M income persons, the following policies apply:
- B. Part-time jobs must be converted to full-time equivalents (FTE) (e.g., a job that will require only working half time would count as only one-half a job);
- C. Only permanent jobs count; temporary jobs may not be included;

- D. Seasonal jobs are considered to be permanent for this purpose only if the season is long enough for the job to be considered as the employee’s principal occupation;
- E. All permanent jobs created or retained by the activity must be counted even if the activity has multiple sources of funds; and
- F. Jobs indirectly created or retained by an assisted activity (i.e., “spin off” jobs) may not be counted.



The CDBG project manager and subrecipient must provide documentation that indicates the number of jobs that were created and retained through the activity. Documentation should also include whether the job was held by, taken by, or made available to LMI individual, and job reporting should be stated in full-time equivalency. This requirement is indicated through the national objective and reporting requirements listed in the City’s CDBG subrecipient agreement.

Elimination of Slums and Blight

Stemming from the Urban Renewal program, the Slum/Blight objective is utilized to eliminate slum and blight conditions in areas that have been designated as a slum and/or blighted area or in specific instances outside of a slum/blight area. Under this objective, there are three subcategories: area basis, spot basis, and urban renewal area.

Slum and Blight Area Basis

To qualify under the national objective of slums/blight on an area basis, an activity must meet all of the following criteria:

- A. The area must be officially designated by the grantee and must meet a definition of a slum, blighted, deteriorated or deteriorating area under state or local law. (For these purposes, it is not necessary to follow the formal procedures under State law for designating a slum or blighted area.)
- B. The area must exhibit the following physical signs of blight or decay:
 - 1. There must be a substantial number of deteriorated or deteriorating buildings throughout the area. As a “safe harbor,” HUD will consider this test to have been met if either:
 - a) The proportion of buildings in the area that are in such condition is at least equal to that specified in the applicable State law for this purpose; or
 - b) In the case where the applicable State law does not specify the percentage of deteriorated or deteriorating buildings required to qualify the area, then at least one quarter of all the buildings
 - c) The area must be deteriorated or deteriorating; or
 - d) The public improvements throughout the area must be in a general state of deterioration. (For this purpose, it would be insufficient for only one type of public improvement, such as a sewer system, to be in a

state of deterioration; rather, the public improvements taken as a whole must clearly exhibit signs of deterioration.)

- C. Documentation must be maintained by the grantee on the boundaries of the area and the conditions that qualified the area at the time of its designation.
- D. Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions that contributed to the deterioration of the area. (Note that this does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.)

Slum and Blight Spot Basis

Pursuant to §570.208(b)(2), the elimination of specific conditions of blight or deterioration on a spot basis is designed to comply with the statutory objective for CDBG funds to be used for the prevention of blight, on the premise that such action(s) serves to prevent the spread to adjacent properties or areas. To comply with the national objective of elimination or prevention of slums or blight on a spot basis, i.e., outside a slum or blighted area, an activity must meet the following criteria:

- A. The activity must be designed to eliminate specific conditions of blight or physical decay not located in a designated slum or blighted area; and
- B. The activity must be limited to one of the following:
 - 1. Acquisition;
 - 2. Clearance;
 - 3. Relocation;
 - 4. Historic Preservation; or
 - 5. Rehabilitation of buildings, but only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

Slum and Blight Urban Renewal Area

To qualify under the national objective of addressing slums/blight on the basis of urban renewal completion, an activity must:

- A. Be located within an Urban Renewal project area or Neighborhood Development Plan (NDP) action area; i.e., an area in which funded activities were authorized under an Urban Renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and
- B. Be necessary to complete the Urban Renewal plan, as then in effect. (This includes the initial land redevelopment called for by the plan.)

Meeting an Urgent Need

Pursuant to §570.208(c), to comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the grantee certifies:

- A. Pose a serious and immediate threat to the health or welfare of the community,
- B. Are of recent origin or recently became urgent,
- C. The grantee is unable to finance the activity on its own, and
- D. Other resources of funding are not available to carry out the activity.

A condition will generally be considered of recent origin if it is developed or became critical within 18 months preceding the grantee's certification.



The CDBG project manager and subrecipient must retain documentation indicating evidence that an urgent need was addressed through the activity. Documentation must include a description of the nature and severity of the threat from the condition or conditions that were addressed, a certification that the activity addresses an urgent need, data regarding the development of the severity of the urgent need, and proof that other resources and funding were not available to assist in alleviating the urgent need. This requirement is indicated through the national objective and reporting requirements listed in the City's CDBG subrecipient agreement.

III. Eligible Activities

The CDBG program has a variety of eligible uses that span housing activity, public facilities, public services, infrastructure improvements, planning and administration, economic development activity, and more. This section is a brief description of eligible activities. To be considered eligible, an activity funded by CDBG must fall within one of the eligible activities listed below and must meet one of the National Objectives detailed in Section II – National Objectives. More specific eligibility information can be found in HUD's Basically CDBG Manual.

Housing Activities

CDBG funds may be used for the rehabilitation of owner or renter housing that is occupied by LMI households. For rental properties, at least 51% of the units on the property must be rented to LMI households. Eligible costs include:

- Labor and materials,
- Replacement of principal fixtures and components of existing structures;
- Water and sewer connections;
- Installation of security devices, including smoke detectors; and
- Initial homeowner warranty premium;
- Hazard insurance premium (except when a grant is provided);
- Flood insurance premium;
- Conservation costs for water and energy efficiency;
- Landscaping, sidewalks, garages, and driveways when accompanied with other rehabilitation needed on the property; and
- Evaluating and treating lead-based paint.

Homeowner Rehabilitation

Homeowner rehabilitation is one of the most common community development programs administered nation-wide. CDBG funds provide a wide range of flexibility with rehabilitation of projects and design considerations. The City of Dayton administers a variety of homeowner rehabilitation projects, including emergency repair programs and spot rehabilitation.

Additional information on eligible homeowner rehabilitation programs is found in Basically CDBG for Entitlements, Chapter 4, Section 4.1.

Homeownership

Funds under this program may be used for the rehabilitation and/or new construction of homeownership units that must be sold to households earning incomes at or below 80% of AMI. Homeownership assistance using CDBG funds may be provided to an LMI household to purchase an existing or newly constructed home. Eligible costs include:

- Up to 50% of required down payment;
- Reasonable closing costs;
- Principal write-down assistance;
- Interest rate subsidy (buy down);
- Acquisition financing; and
- Acquisition of guarantees for mortgage financing from private lenders (i.e., assist homebuyers with private mortgage insurance).

Rental Housing

CDBG funds can be used to acquire, rehabilitate, or construct rental housings. There are tenant income requirements and rent restrictions for projects. The City of Dayton may provide assistance in the form of loans, grants, loan guarantees, interest subsidies, and other forms of assistance for rental housing rehabilitation and acquisition/rehabilitation projects.

Additional information on eligible rental housing activities is found in Basically CDBG for Entitlement, Chapter 4, Section 4.3.

New Construction

New construction of housing is generally ineligible; however, the City may assist the new construction of housing by providing ancillary support for the development, including:

- Acquisition by public or nonprofit entities;
- Site clearance and assemblage; and
- Site improvements (if in public ownership).

Additional information on eligible rental housing activities is found in Basically CDBG for Entitlement, Chapter 4, Section 4.4.

Housing Activity Services

CDBG funds may be used to pay costs in support of activities eligible for funding under the CDBG and HOME programs, including project delivery costs, housing counseling programs, HOME program administration, and management of tenant-based rental assistance programs.

Additional information on eligible services in connection with housing is found in Basically CDBG for Entitlements, Chapter 4, Section 4.5.

Ineligible Activities

CDBG funds cannot be used for the following activities:

- To subsidize or assist the new construction of housing, unless carried out by a CBDO, as part of certain kinds of projects. Note that activities, which support the development of housing for LMI households (e.g., clearance, site improvements, and public facilities), are eligible for CDBG assistance under other eligibility categories.
- To guarantee mortgage financing directly, and grantees may not provide such guarantees directly.

- To provide on-going income payments such as paying for a tenant’s rent or a household’s mortgage. The only exceptions to this are:
 - Income payments that are provided as a loan; or
 - Income payments that are emergency in nature and do not exceed three consecutive months.

The purchase of construction equipment is generally ineligible. However, the purchase of tools to be part of a “tool-lending” rehabilitation program is eligible. Compensation for the use of construction equipment through leasing, depreciation or other use allowances is allowable provided the activity is otherwise eligible.

Other Real Property Improvements

Additional types of real property improvements not yet mentioned are eligible for CDBG funding. Policy descriptions and considerations for the subcategories listed below will be added to the document in future revisions. In the meantime, please refer to Basically CDBG for Entitlements, Chapter 5.

Acquisition

Disposition

Clearance

Tax Foreclosed Housing (IN Rem)

Code Enforcement

Lead-Based Paint Hazard Evaluation and Reduction

Historic Preservation

Renovation of Closed Buildings

Handicapped Accessibility

Energy Efficiency

BrownfieldsPublic Facilities and Improvements

The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements are eligible pursuant to §570.201(c) and may be carried out by the City, a subrecipient or other nonprofit. The facilities may only be owned by the City, a subrecipient or other nonprofit.

Eligible public facilities and improvements include:

- | | |
|---|---|
| <ul style="list-style-type: none"> • Senior centers; • Handicapped centers; • Homeless facilities; • Youth centers; • Neighborhood facilities; • Parks and recreational facilities; | <ul style="list-style-type: none"> • Parking facilities; • Solid waste disposal improvements; • Flood drainage improvements; • Water/sewer improvements; • Street improvements; • Sidewalks, curbs and gutters; |
|---|---|

- Child care centers;
- Tree planting;
- Fire station / equipment;
- Health facilities;
- Abused/neglected children facilities;
- Asbestos removal; and
- Facilities for AIDS patients.

Costs associated with energy efficiency improvements, handicapped accessibility improvements (including improvements to buildings used for the general conduct of government), and architectural design features and other treatments aimed at improving the aesthetic quality of the facility such as sculptures or fountains are eligible.

Special Assessments

Special assessments are used to recover the capital costs of a public improvement through a fee levied or a lien filed against a parcel of real estate, as a direct result of the benefit derived from the installation of a public improvement or as a one-time charge made as a condition of access to an improvement.

Additional policy considerations are found in Basically CDBG for Entitlements, Chapter 6, Section 6.2.

Privately-Owned Utilities

Privately-owned utilities are those owned by a private company rather than a public agency and may be assisted with CDBG funds under certain conditions. Please refer to Basically CDBG, Chapter 6, Section 6.3.

Economic Development

Pursuant to the CDBG Regulations at §570.203, CDBG funds may be used for activities related to economic development, such as those discussed below.

Special Economic Development

CDBG funds may be used to undertake certain special economic development activities such as:

- Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions.
 - These are economic development projects undertaken by the City or by nonprofits;
- Assisting a private, for-profit business, including grants, loans, loan guarantees, and technical assistance; and
- Providing economic development services in connection with otherwise eligible CDBG economic development activities.

Community-Based Development Organizations

Economic development may also be undertaken by Community Based Development Organizations (CBDOs) to assist in neighborhood revitalization or community economic development. To be eligible, the CBDO must be carrying out neighborhood revitalization, community economic development or energy conservation projects. The following restrictions apply when a CBDO undertakes an activity:

- CBDOs may not carry out otherwise ineligible activities (i.e., general government buildings or expenses, or political activities); and
- CBDOs cannot carry out special economic development activities that do not meet the City’s underwriting guidelines for such projects and HUD’s mandatory public benefit standards.

CBDOs are authorized to carry out public services that exceed the 15% public services cap when the services are specifically designed to increase economic opportunities through job training/placement and other employment support services. CBDOs may also provide public services of any type outside of the public services cap if the services are undertaken as part of a HUD-approved Neighborhood Revitalization Strategy Area (NRSA). CBDOs may not carry out program administration or planning activities that would result in the City exceeding the 20% limit on such expenditures.

Technical Assistance to Businesses

The City or a subrecipient may provide technical assistance to businesses. This activity involves providing technical assistance and training on topics such as business planning or accounting. This activity may be undertaken under several different eligibility categories, assuming that the activity will meet a national objective:

- As a part of a special economic development project;
- To the owner of a microenterprise;
- As a public service; and
- By a CBDO as a part of an eligible project.

Microenterprise Development

Microenterprise development activities are designed to foster the development, support, and expansion of microenterprise businesses. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise. A “person developing a microenterprise” refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business that will be a microenterprise at the time it is formed. Eligible microenterprise activities include the provision of:

- Grants, loans, loan guarantees and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;
- Technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
- General support to owners of microenterprises and persons developing microenterprises including child care, transportation, counseling and peer support groups; and
- Training and technical assistance or other support services to increase capacity of the City or subrecipients to carry out microenterprise activities.

Commercial Rehabilitation

These activities bring commercial structures up to code or improve their facades. If the structure is owned by a private, for-profit entity, the following limitations apply:

- Rehabilitation is limited to the exterior of the building and the correction of code violations; and

- Any other improvements are carried out under the special economic development activities category discussed above.

Public Facilities and Improvements

These are public works that support economic development endeavors. Public works facilities and improvements include infrastructure projects such as off-site water, sewer, roads, drainage, railroad spurs and other types of public facilities or improvements.

Job Training

Job training involves providing skill building classes to employees or potential employees and can be an important part of an economic program. This activity can be undertaken:

- As a part of a special economic development project;
- As a public service;
- By a CBDO as a part of an eligible project; or
- As a part of microenterprise assistance package to the owner of a micro business for his or her employees.

It is important to note the following restrictions:

- Job pirating is prohibited under Section 588 of the Quality Housing and Work Responsibility Act of 1998. Job pirating refers to the use of federal funds to lure or attract a business and its jobs from one labor market to another.
- CDBG funds may not be used to assist for-profit businesses, including expansions, as well as infrastructure improvement projects or business incubator projects designed to facilitate business relocation if:
 - o The funding will be used to assist directly in the relocation of a plant, facility or operation; and
- The relocation is likely to result in a significant loss of jobs in the labor market area from which the relocation occurs.
- Labor Market Area: A Labor Market Area is an economically integrated geographic area where individuals can live and work within a reasonable distance or can readily change employment without changing their place of residence.
- Operation: A business operation includes, but is not limited to, any equipment, production capacity or product line of the business.
- Significant Loss of Jobs: A loss of jobs is significant if the number of jobs to be lost in the Labor Market Area in which the affected business is currently located is equal to or greater than one-tenth of 1% of the total number of persons in the labor force of that Labor Market Area, or in all cases, a loss of 500 or more jobs. A job is considered to be lost due to the provision of CDBG assistance if the job is relocated within three (3) years of the provision of assistance to the business. Notwithstanding the above definition, a loss of 25 jobs or fewer does not constitute a significant loss of jobs.

The following are definitions to assist in determining if a business location falls under these provisions:

- Before directly assisting a business with CDBG funds the City shall include appropriate language in the written agreement with the assisted business to ensure that no pirating

has occurred. In addition to other programmatic clauses, the written agreement shall include:

- A statement from the assisted business as to whether the assisted activity will result in the relocation of any industrial or commercial plant, facility, or operation from one Labor Market Area to another, and, if so, the number of jobs that will be relocated from each Labor Market Area.
- If the assistance will not result in a relocation covered by this section, a written certification from the assisted business that neither it, nor any of its subsidiaries, have plans to relocate jobs at the time the agreement is signed that would result in a significant job loss as defined in this rule; and
- The agreement shall provide for reimbursement of any assistance provided to, or expanded on behalf of, the business in the event that assistance results in a relocation prohibited under this section.

Public Services

The CDBG Regulations found at §570.201(e) permit the use of CDBG funds for a wide variety of public services, including but not limited to:

- Employment services (e.g., job training);
- Crime prevention and public safety;
- Child care;
- Health services;
- Substance abuse services (e.g., counseling and treatment);
- Fair housing counseling; Education programs;
- Energy conservation;
- Services for senior citizens;
- Services for homeless persons;
- Welfare services (excluding income payments);
- Down payment assistance (refer also to Housing section); and
- Recreational services.

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

To utilize CDBG funds for a public service, the service must be either:

- A new service; or
- A quantifiable increase in the level of an existing service which has been provided by the City or another entity on its behalf through state or local government funds in the 12 months preceding the submission of the City's Annual Action Plan to HUD.
- HUD may grant an exception to this requirement if HUD determines that any decrease in the level of a service was the result of events not within the control of the local government. This provision was put into place to ensure that CDBG did not supplant local or state monies to fund essential services typically offered by the local government. This provision is applied as follows: If a service is new, it may be funded.
- If a service is existing, determine whether it was provided by or on behalf of the unit of local government with local or state funding.
- If it was not provided by or on behalf of the local government with funding from the local government, it may be funded.

- If it was provided by or on behalf of the local government with funding from the state or local government, the City must determine whether the proposed service will be a quantifiable increase in the level of service. If it can be documented that the service is a quantifiable increase in the level of service, it may be funded.
- The regulations do not prohibit a grantee from continuing to provide funding for a public service at the same or decreased level in subsequent program years.

Income payments to an individual or family, which are used to provide basic services such as food, shelter (including payment for rent, mortgage, and/or utilities), or clothing are generally ineligible, unless provided as a loan. Additionally, income payments provided as a grant are eligible only under the following conditions:

- The income payments do not exceed three consecutive months; and
- The payments are made directly to the provider of such services on behalf of an individual or family.

Other Eligible Activities

Additional types of programs and activities not yet mentioned are eligible for CDBG funding. Policy descriptions and considerations for the subcategories listed below will be added to the document in future revisions. In the meantime, please refer to Basically CDBG for Entitlements, Chapter 9.

Interim Assistance

Relocation

Loss of Rental Income

Technical Assistance

Special Activities by CBDOs

Other Miscellaneous Activities

Planning and Grant Administration

Planning and Grant Administration Limits

The CDBG Program states that the amount of CDBG funding allocated to planning and administration activities during a program year may not exceed twenty percent (20%) of the grantee's annual CDBG allocation plus program income received during the prior program year (24 CFR 570.200 (g)).



Procedure

The City of Dayton ensures that its annual allocation for planning and administrative activities does not exceed the 20% cap through the implementation of its Annual Action Plan. During the annual city budget process and the development of the Annual Action Plan, the City generates a Resource Allocation Summary to summarize the activities that will be supported through the Action Plan. On this summary, the City calculates the percent of the grant that goes toward planning and administration, and ensures that the calculation does not exceed 20%. Should an allocation change or an Action Plan Amendment occur, the City revisits this summary to ensure the Annual Action Plan is still compliant with the 20% cap, and adjustments are made to internal programming to ensure that the level of funding allocated to planning and administration activities does not exceed 20% of the annual grant.

Eligibility Documentation and Review


The City of Dayton requires activity reports and time certification sheets to record the eligibility of work and activities expended for Planning and Grant Administration.

Under 2 CFR 225, Appendix B, Section 8(h) (4-5), the City must document the distribution of employee salaries and/or wages when the employee works on multiple cost distributions and activities. This includes employees working on more than one Federal award, a Federal award and non-Federal award, both indirect and direct cost activities, two or more indirect cost activities with differing allocation bases, and/or any indirect or direct cost and an unallowable activity. This distribution is recorded on an activity report that is submitted on a bi-weekly basis to the Community Development Manager during the week following the end of a pay period. **Activity reports detail all activities completed during a pay period, and must be completed by employees working on multiple grants (ie. CDBG and HOME project managers and grant administrators), employees working on grant and non-grant activities (ie. Lot Links and CDBG project management), and employees with costs that can be divided between general grant administration and project delivery costs.** All activity reports must reflect an after-the-fact

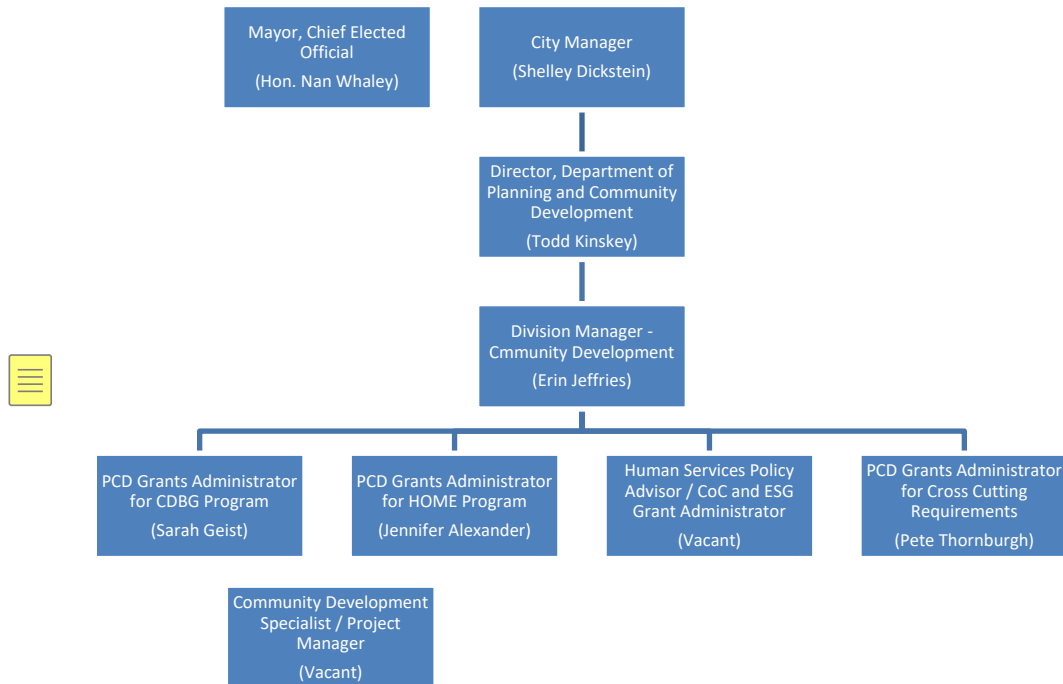
distribution of the actual activity of each employee, must account for the total activity for which each employee is compensated, must coincide with one or more pay periods, and they must be signed by the employee. Time documentation on activity reports may be reported down to one-tenth of an hour, and must accurately represent all activities completed by an employee. A copy of the current activity report can be found in [Appendix B – Activity Reports and Time Certification Sheets](#).

Once an activity report is submitted to the Community Development Manager, the report is reviewed for accuracy and certified. The Community Development Manager then prepares a monthly summary sheet of cost distributions for all eligible salaries, due to the CDBG Community Development Grant Administrator no later than the 7th day of each month. The cost distribution sheet must details all activities that should be charged project delivery costs, any ineligible costs, and any distribution of salaries and wages that must be allocated to other Federal grants. The CDBG Grant Administrator will then utilize this summary of monthly activity report data in preparation of monthly fund reconciliations and draw downs.

For employees working solely on one Federal award or cost objective, 2 CFR 225, Appendix B, Section 8(h) (3) requires a time certification sheet be submitted to document an employee’s work and the eligibility of their salaries and wages. Time Certification Sheets must be submitted by employees monthly, within the first week of the following month, and must be signed by both the employee and manager. This certification verifies that all activity completed within the prior month was eligible under the CDBG program, and that no additional or ineligible activities were completed during this timeframe. Should an employee accustomed to reporting via a Time Certification Sheet complete ineligible activities, work associated with another Federal award, and/or work associated with additional cost objectives, the employee will be required to complete activity reports for the pay periods in which such activity occurs. A copy of the current Time Certification Sheet can be found in **Appendix B – Activity Reports and Time Certification Sheets**.

 <p>Procedure</p>	<p>City of Dayton staff paid via the CDBG grant must provide either an activity report or time certification sheet to their supervisor (or manager when applicable) based upon their work plan and grant-based assignments as indicated above.</p>
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Programmatic Processes: Community Development Organizational Chart and Staff Responsibilities



The Community Development Division is made up of six key staff who oversee the management, compliance, and disbursement of the CDBG, ESG, CoC, and HOME programs from the U.S. Department of Housing and Urban Development. The overall responsibilities of the key staff are outlined below.

Division Manager – Community Development

The Division Manager – Community Development provides general oversight of all Community Development Division grant activity. The Division Manager establishes annual budgets for all Entitlement grant funds and assists the grant administrators with generation of the Resource Allocation Summaries for each Annual Action Plan. For the CDBG program, the Division Manager provides guidance on City policy as it relates to ongoing CDBG activities, reviews and approves all legislation and agreements pertaining to the CDBG program for submission to the City Commission, reviews all policy updates and internal policy changes requested by the CDBG Grant Administrator, and approves all drawdown vouchers for CDBG activities in IDIS.

Planning and Community Development Grants Administrator for the CDBG Program

The PCD Grants Administrator for the CDBG Program is responsible for the overall maintenance of the CDBG program, draws and financial management through IDIS, eligibility verification for all activities, maintenance of the Consolidated Plan and Annual Action Plan documents and amendments, preparation of Grant Agreements, preparation of the Annual CAPER and PR-26, on-site monitorings of CDBG subrecipients, and evaluation of changes to Federal guidelines, requirements, and policies pertaining to the operation and management of the CDBG Program. The PCD Grants Administrator for CDBG is the City’s primary point of contact for HUD for the CDBG program.

On a monthly basis, the PCD Grants Administrator for CDBG prepares a draw packet summarizing the funds that were disbursed through invoice processing and activity that has occurred within the City’s financial management system Banner. This packet includes reconciliation for CDBG funds where activity occurred, based on active agreements and projects, and details the amount of expenditures, applicable credits, draws, program income, and transfers that occurred. The reconciliation includes information about the fund and activity numbers, fund balances, any

necessary notations about the funds. Once generated, the CDBG Grant Administrator submits the reconciliations to the appropriate CDBG Project Manager for confirmation and signature.

Additionally, the packet includes a summary sheet detailing draw amounts and the Banner pay-in code for each activity, and a monthly financial report to assist the Finance Department in preparing the quarterly FFRs. After preparing and executing the fund reconciliations and preparing the summary and monthly financial report, the CDBG Grant Administrator then utilizes this packet to create the vouchers in IDIS for each IDIS Activity that needs to be drawn and add a signed and dated copy of each voucher to the packet. These packets are then submitted to the CD Division Manager so that draws can be approved in IDIS. Once an approved copy of the voucher is signed and dated, the full packet is organized by Banner fund then a copy of the final packet is submitted to the Department of Finance so that incoming ACH transfers from HUD can be assigned to the proper CDBG funds in Banner.

The PCD Grants Administrator for the CDBG Program oversees the CDBG project management functions of other staff in the Community Development Division.

Community Development Specialist / Project Manager

The CD Specialist position is responsible for the day-to-day management of subrecipient agreements for all three Entitlement Grants. As a CDBG Project Manager, the CD Specialist is responsible for correspondence with subrecipients, invoice processing, desk monitorings, beneficiary data collection, file upkeep and creation, and agreement generation and oversight. The position reports directly to the Division Manager – Community Development. CDBG project management functions are overseen by the PCD Grants Administrator for the CDBG Program.

As of July 31, 2020, this position is vacant and project management duties are divided between PCD Grants Administrators and the Human Services Policy Advisor/CoC and ESG Grant Administrator. The Department plans to fill this position by early 2021 and add an additional position in 2021.

Human Services Policy Advisor/CoC and ESG Grant Administrator

Along with the Community Development Specialist / Project Manager, the Human Services Policy Advisor/CoC and ESG Grant Administrator acts as a project manager, specifically for CDBG projects related to health and human services. The Human Services Policy Advisor/CoC and ESG Grant Administrator is responsible for management, compliance, and disbursement of the ESG and CoC grants as well. Daily tasks include correspondence with subrecipients, invoice processing, desk monitoring, beneficiary data monitoring, file maintenance and completion, and agreement generation and oversight. The position reports directly to the Division Manager – Community Development. CDBG project management functions are overseen by the PCD Grants Administrator for the CDBG Program.

This position is currently vacant. Responsibilities are currently being performed by a Planner I staff member from the Planning Division in the Department of Planning and Community Development.

Planning and Community Development Grants Administrator for the HOME Program

In relation to the CDBG program, the Planning and Community Development Grants Administrator for the HOME Program acts as a project manager, specifically for CDBG housing programs. Daily tasks include correspondence with subrecipients, invoice processing, desk monitoring, beneficiary data monitoring, file maintenance and completion, and agreement generation and oversight.

Planning and Community Development Grants Administrator for Cross-Cutting Requirements

The Planning and Community Development Grants Administrator for Cross-Cutting Requirements provides oversight of the Environmental Review (ER) and other cross-cutting requirements for the City's Entitlement Grant programs. This includes review and compliance of the City's ER process with current Federal regulations, proper publication and public notice, all environmental review steps, and submission of executed ER documentation to HUD for approval.

Financial Processes: Organizational Chart and Staff Responsibilities

IV. Subrecipient Management

Subrecipient Training & Technical Assistance

The City of Dayton will provide training sessions and technical assistance to address specific and general subrecipient requirements, to provide assistance with ongoing programs, and to enhance subrecipient performance while reducing inefficiencies.

Individuals and businesses interested in applying for CDBG funds through the City are encouraged to attend training sessions that will be offered during the Request for Proposal (RFP) process. The RFP process is the method by which the City will publicly announce the availability of CDBG-funded grants to the community. Local individuals and businesses will have to opportunity to apply for funding opportunities that address area development and economic improvement within the region. Informational training sessions will be held during the application process to inform applicants of the grant's purpose, requirements and guidelines.

Training – The City will develop regularly scheduled training opportunities for the public and subrecipients to provide more information on specific HUD or CDBG topics. The training opportunities will be designed to review program requirements and should assist with program enhancement.

Technical Assistance – Prior to submitting an application, all applicants are required to consult with the City's Planning and Community Development staff. Contact information and contact methods will be included in the RFP documents. The City will work with applicants to ensure that proposed activities are not developed in contradiction with the City's policies and plans, and so as not to duplicate existing services. Technical assistance may also be provided to subrecipients, post-award of CDBG funds if the City identifies the need for performance improvement



Annual Competitive Process

Procedure

The City of Dayton's Annual Competitive Process is typically released in the late spring/early summer once Federal Entitlement Grant allocations are released by HUD.

Potential applicants are notified via email, press release, notification on the City's website, and social media announcements. A copy of all application material is provided via the City's website, and the 2019 RFP and application can be found at: <https://www.daytonohio.gov/822/CDBG-Competitive-Process>

The application and RFP clearly states all required information, documentation, and the minimum standards that will be accepted as a complete application. Organizations that submit an application after the stated deadline or an application deemed to be incomplete will be notified of their rejection from the CDBG Annual Competitive Process.

To encourage capacity building and strengthening of potential subrecipients, the City will be adding a technical review submission deadline to the competitive process. Should applicants decide to submit their application a week early, the CDBG Grant Administrator will review the application for project eligibility and technical completion. Though no substance beyond eligibility and completion will be evaluated during this period, this will provide newer or less experienced organizations the opportunity to correct any technical deficiencies.

The application process is open for approximately five weeks, which provides all applicants, including those who choose to utilize the early technical assistance deadline, a full month to compile the necessary documentation for their proposal.

Subrecipient Audits

Single Audit – In accordance with OMB A-133 Circular, all non-Federal entities that expend \$500,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act of 1984 and OMB Circular A-133 as referenced at 24 CFR 84.26 and 85.26. For purposes of determining the amount of Federal assistance expended, all Federal assistance shall be considered, including that which is received directly from a Federal agency, or passed through a state or local government, or through non-profit organizations, or any combination thereof. The audit must, generally, be completed within nine months after the end of the audit period.

Other Audit Requirements – If subrecipients expend less than \$500,000 in a year they are exempt from Federal audit requirements, but must make records available for review or audit by Federal agencies or the City if requested.

Audit Reports – Following the completion of an audit, an opinion on the subrecipient's financial statements will be completed by the independent auditor. The report should provide an overview of

the subrecipient's financial status, the subrecipient's internal controls, compliance in regards to Federal laws and programs, and a schedule of findings or questioned costs. The subrecipient should keep audit reports on file for a period of four years and should provide the City with a copy of all final audit reports and corrective action plans, when applicable, within 30 days of receipt of the auditor's report. The City will keep a record of the receipt and review of subrecipient audit reports, and will follow up with the subrecipient on any identified findings that impact Federal funding.



The subrecipient audit is a required attachment for applications submitted through the Annual Competitive Process.

For subsequent audit years, the subrecipient is required to submit the new audit reports to their project manager within 30 days of receipt.

The project manager will send each audit report to the Department of Procurement, Management, and Budget for review by the internal auditor. The internal auditor will determine whether the results and findings in the audit report are sufficient for the subrecipient to manage CDBG funding.

A copy of the audit report and the internal auditor's determination will be stored in the project file.

Cost Allocability – Timesheets (External)

Subrecipient reimbursement requests for personal services, including salaries and fringes, for employees' services should be reasonable for the services rendered in relation to CDBG activities. Expenses should conform to the organization's written policies and expenses should be allocated consistently to Federal and non-Federal activities.

As per 2 CFR 200.403, costs should meet the following criteria to be considered allowable for Federal funding:

- A. Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- B. Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- C. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- D. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- E. Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- F. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- G. Be adequately documented.

Procedure

The subrecipient is required to submit adequate documentation to support personnel and administrative expenses charged to the CDBG program.

For personnel and administrative expenses, subrecipients must provide a summary of the work completed in substantial enough detail that City staff can determine all billed work is an eligible expense under the CDBG program. Invoicing materials must include the number of hours worked on the program/project funded, and a detailed summary of work performed by the employee during the time for which payment was made. The detailed summary should include a description of each activity/action performed by the personnel as well as a total of the amount of invoiced time spent working on that activity/action. This documentation can be provided in detailed timesheets and activity logs or a time certification sheet, and should include details about the work completed during the hours billed to the grant. For employees who are funded through multiple grants or funding sources, subrecipients shall require submission of a detailed timesheet and activity log. For employees billing all of their time to the project, subrecipients shall require submission of a time certification sheet.

An example [subrecipient timesheet/activity log](#) and [time certification sheet](#) is included in Appendix A.

Noncompliance with proper personnel allocability documentation will prevent the City from processing or approving personnel charges on invoices submitted under an agreement. Subrecipients will be given opportunity to correct any issues with submitted documentation materials, but may experience a delay in invoice processing due to noncompliance. Noncompliance may lead to a finding during desk and on-site monitorings.

For all positions charged to the CDBG project in part or in whole, the subrecipient must submit and the project manager must review and approve these documents prior to contract execution:

- Job description
- Organizational chart for all positions charged to the program, including each position's supervisor and subordinates
- Wage rate determinations for each position, including fringe and benefits

Protection of Personal Identifiable Information

The City and all subrecipients may receive personally identifiable information (PII) while implementing grant and program activities. This information may include applicant or beneficiary

names, addresses, income verification documents, disability status, employment status, etc. The City and its subrecipients must work to ensure the confidentiality and integrity of PII. In order to protect PII, the City recommends the following:

- A. Maintain hard copies of PII records in locked file cabinets or locked offices
- B. Password protect electronic folders and/or files containing PII
- C. Establish parameters for the electronic transmission of PII (email encryption, file sharing services)
- D. Information and passwords should be shared with staff only, or with other agencies, like auditors or Federal agencies, after verifying their identity
- E. Properly and securely dispose of hard and electronic copies of documents if after the retention period
- F. Develop protocols should a breach of data occur

Subrecipient Record Keeping

For subrecipients, there are three main categories of records that must be maintained:

- Administrative Records – Administrative records document the overall administration of the CDBG program
 - Administrative records would include income eligibility guidelines/calculations; criteria for low/moderate income activities or activities to prevent or eliminate conditions of slum or blight;
- Financial Records – Financial records document the financial transactions of the subrecipient, both generally and related to CDBG expenditures, and indicate the financial wellbeing and activities of the subrecipient.
 - Financial records must include expenditure/revenue reports, payroll records, litigation records, audits, real property and equipment acquisition records, indirect cost rates, etc.
- Project Files – Project files provide information about specific beneficiaries and activities undertaken with the CDBG funding.
 - Project files must include documentation of how the activity meets a national objective, activity performance records, and reports, application documents, and contracts/written agreements

Subrecipient files must be accurate, complete, orderly, and easily accessible. The records listed above should describe the activity in detail, including the activity's location, documentation of funding allocated and proof of disbursement, proof of the methodology used to determine CDBG eligibility (income verification, geographic location, LMC status, etc.), documentation of compliance with all CDBG regulations pertaining to the activity, all policies and procedures required through the CDBG program, and all additional requirements set forth through 24 CFR 570 Subpart K.

Subrecipients shall maintain all books, documents, papers and records which are directly pertinent to a subrecipient's contract with the City. Required records should be retained for a period of at least five years after notification of project closeout. As noted in the subrecipient agreement, at the expiration or cancellation of an agreement, a copy of all pertinent records must be provided to the City of Dayton's PCD Grant Administrator overseeing the CDBG Program.

Procedure

To ensure subrecipient record-keeping requirements are met, the City of Dayton completes annual desk or on-site monitorings of all subrecipients. A portion of each monitoring includes file review and record-keeping verification that is adjusted to meet the requirements and beneficiary data of each individual activity. The City of Dayton implemented updates to its record-keeping and retention requirements for subrecipient agreements in 2019. This updated language ensures subrecipients agree to the necessary record-keeping and retention requirements via agreement signature, and explains the types of records that are required to be kept. Additionally, the City added language to its agreements that requires subrecipients to submit a full copy of all project files (financial and programmatic) to the City of Dayton at the time of contract expiration and/or project completion. Non-compliance with this stipulation may result in future funding delays, monitoring findings, and/or repayment from a subrecipient.

Contracting and Written Agreements

Prior to disbursing any CDBG funds to a subrecipient, the City of Dayton must enter into a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income. Amendments may be made to existing agreements, and said amendments must be executed in writing and must be signed by the subrecipient and the City. The City may, at its discretion, amend an agreement to conform to federal, state or local governmental guidelines, policies, available funding amounts or other reasons. Contracts and written agreements shall include, at minimum, provisions concerning the following items:

Statement of Work – The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

Records and Reports – The City of Dayton shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements. Additional information can be found in section [Record-Keeping and Record Retention](#) of the policies.

Per 24 CFR 570.206, the City of Dayton, and its subrecipients as needed, will be required to maintain, at minimum the following records:

- A. Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location and address, the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C of 24 CFR 570 under which it is eligible.
- B. Records demonstrating that each activity undertaken meets one of the criteria set forth in 24 CFR 570.208 (See 24 CFR 570.506 (b) for additional information regarding records where information on income by family size is required.) Such records shall include information outlined in 24 CFR 506(a) – (j).
- C. Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210,

and 570.309.

- D. Records which demonstrate compliance with § 570.505 regarding any change of use of real property acquired or improved with CDBG assistance.
- E. Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients.
- F. Records which demonstrate compliance with the requirements in § 570.606 regarding acquisition, displacement, relocation, and replacement housing.
- G. Fair housing and equal opportunity records containing information as identified in 24 CFR 506(g)(1) – (7).
- H. Financial records, in accordance with the applicable requirements listed in 24 CFR 570.502, including source documentation for entities not subject to 24 CFR Parts 84 and 85. The City shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.
- I. Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in § 570.513; and
- J. Records required to be maintained in accordance with other applicable laws and regulations set forth in subpart K of this part.

Reports that must be completed in accordance with Federal regulations include the following:

- *Performance and Evaluation Reports:* The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91 for Entitlement Grant recipients. The report shall be submitted no later than October 31 for all grants executed before April 1 of the same calendar year. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year. Reports should reflect program activity from the execution of the grant through September 30 for the first year, and then should reflect activity during October 1 through September 30 of each subsequent year until the completion of grant activities. Reports are also required no later than 90 days after the criteria for grant closeout, see 24 CFR 570.509, has been met. Copies of the report should be made available to Dayton citizens, allowing sufficient time for comments prior to the reports submission to HUD.
- *Equal Employment Opportunity Reports:* For recipients of Entitlement Grants or HUD-administered Small Cities Grants, a report (HUD/EEO-4) shall be submitted to HUD each year on the City of Dayton's employment, containing data as of June 30.
- *Minority Business Enterprise Reports:* For recipients of Entitlement Grants, HUD-administered Small Cities Grants, or Urban Development Action Grants, the City of Dayton shall submit to HUD, by April 30, a report on contracts and subcontract activity during the first half of the fiscal year and by October 31 a report on such activity during the second half of the year.

- *Other Reports:* Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

Program Income – The agreement shall include the program income requirements set forth in 24 CFR 570.504(c), as outlined in section [Fiscal Policies and Procedures](#). The agreement shall also specify that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

Uniform Administrative Requirements – The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in 24 CFR 570.502.

Other Program Requirements The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart K of 24 CFR 570, except that:

- The subrecipient does not assume the City of Dayton’s environmental responsibilities described at 24 CFR 570.604; and
- The subrecipient does not assume the City of Dayton’s responsibility for initiating the review process under the provisions of 24 CFR part 52.

Suspension and Termination – The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

Reversion of Assets – The agreement shall specify that upon its expiration the subrecipient shall transfer to the City of Dayton any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that 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:

- Used to meet one of the national objectives in 24 CFR 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 of Dayton; or
- Not used in accordance with previous paragraph in which event the subrecipient shall pay to the City of Dayton 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 of Dayton. (No payment is required after the period of time specified in the prior paragraph.)

Real Property

The standards described in this section apply to real property within the City’s and subrecipient’s control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient’s participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

- A. A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:
 1. The new use of such property qualifies as meeting one of the national objectives in 24 CFR 570.208 and is not a building for the general conduct of government; or
 2. The requirements in paragraph (B) of this section are met.
- B. If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under 24 CFR 570.208, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.
- C. If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 24 CFR 570.504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.
- D. Following the reimbursement of the CDBG program in accordance with paragraph (B) of this section, the property no longer will be subject to any CDBG requirements.

The City and subrecipient's must have an effective real property inventory system to track the property, including the ownership and use. If the City or subrecipient used CDBG funds to acquire the real property with structures that are being demolished, then it must retain the property for a public use or dispose of the property for an eligible use that meets a national objective. The City and subrecipients must maintain documentation demonstrating compliance with 24 CFR 570.505, 570.506(d), 570.503(b) (7), and 570.489(j) respectively, regarding all disposition costs and any change of use of real property acquired or improved with CDBG assistance.

If required, both State and Entitlement grantees can safeguard HUD-assisted real property and ensure that the property is used solely for authorized CDBG purposes by placing a lien against the property documenting the change of use requirements (or additional grantee-imposed use conditions or time limits). The City and its subrecipients must also comply with applicable fair housing and civil rights requirements, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Section 109 of Title I of the Housing and Community Development Act of 1974.

Activity Closeout/Completion

Performance Reports and Evaluations

The City of Dayton will regularly monitor the performance of a subrecipient's approved activities by way of subrecipient reporting and evaluations to assess the productivity and the impact of identified activities. The subrecipient shall submit monthly Progress Reports to the City that contain identified performance and outcome measures that outline with the applicable National Objectives and any additional objectives identified by the City. The City shall review the reports to track progress provide feedback, and when necessary, provide technical assistance.

Progress Report: The Progress Report will consist of a written report to be submitted on the fifteenth (15th) day of each month. The report should provide the City with an update on agreed-upon objectives, activity progress, expenditures and any additional feedback deemed important by the subrecipient from the prior month. A subrecipient's contract will specify the required information to be submitted to the City.

Cumulative Report: The subrecipient shall submit an annual Cumulative Report to the City, for the period January 1 to December 31, by January 15 of the year following each year they receive CDBG funds. Additionally, the subrecipient will be responsible for submitting a final Cumulative Report to the City within 60 days following the expiration or termination of their contract/written agreement. The final report shall detail all sources and uses of funds, as well as all activities and outcomes related to activities undertaken or services provided throughout the course of the contract period.

Evaluations: Subrecipients shall meet with the City and/or its designees at such times designated by the City to review and discuss the subrecipient's performance. The City will work with the subrecipient to conduct on-site inspections, test and monitor the subrecipient's financial, personnel and employment activities, and the subrecipient shall agree to cooperate with the City in all respects concerning the review and monitoring of performance measures.

Monitoring Overview

The City of Dayton maintains responsibility for the day-to-day management of the Federal CDBG funds, and must ensure that funds are used in accordance with program requirements. The City may utilize subrecipients or subcontractors to implement CDBG activities, but this does not relieve the City of their monitoring obligation. The monitoring process is designed so that CDBG projects and activities receive periodic performance and compliance reviews.


The following types/methods of monitoring will be used by the City of Dayton:

Administrative and Financial Monitoring – to ensure that the subrecipient is administering the program properly (i.e. using funds from authorized sources, tracking funds, using proper methods of recordkeeping and managing finances appropriately).

Program Monitoring – to ensure the operations and management of subrecipients for efficiency, effectiveness, compliance, etc. This kind of monitoring focuses on overall program performance of subrecipients.

Project monitoring – to ensure that projects are in compliance with CDBG and other Federal standards. This kind of monitoring focuses on compliance of an individual project or activity.

The monitoring process involves the three primary goals:

- A. Ensure production and accountability
- B. Ensure compliance with CDBG and other Federal requirements
- C. Evaluate organizational and project performance 

HUD requires the City to monitor the performance of subrecipients and their compliance with program requirements, at minimum, on an annual basis. Monitoring is an ongoing process designed to review and improve performance, as well as work to mitigate potential subrecipient issues or errors. Monitoring is not to be confused with an audit, as monitoring focuses on the program supported by CDBG funds. To ensure full compliance with the regulations, the City takes a proactive approach to monitoring, including desk monitoring and on-site monitoring that involves several tasks throughout the program year.

- A. Administrative and Financial Monitoring: The City will monitor subrecipients on the following requirements:
 - 1. Accounting Standards: Ensure adherence to the accounting principles and procedures identified with 24 CFR 84.21-28
 - 2. Cost Principles: Ensure that all direct and indirect costs are in compliance with 2 CFR Part 230 or 2 CFR Part 220 as applicable.
 - 3. Procurement: Ensure compliance with the CDBG's current equipment purchasing policies and guidelines for maintaining inventory records of all non-expendable personal property. All program assets (unexpended program income, property, equipment, etc.) shall revert to HUD/CDBG upon termination of the written agreement. Unless specified otherwise with the written agreement, the subrecipient shall procure all materials, property or services in accordance with the requirements of 24 CFR 84.40-48.
- B. Program Monitoring: The City's program monitoring practices will cover the following two areas:
 - 1. City must ensure compliance with their CDBG funded programs to ensure they meet program eligibility, objectives, and goals. This form of monitoring can be completed by the following methods: comparing funded programs to the Consolidated Plan and ensure that they address community development needs; comparing funded programs to the national objectives and CDBG eligible activities; and ensuring that funding is stopped or the Consolidated Plan is modified if the program is deemed ineligible.
 - 2. The City must monitor its subrecipients program implementation by ensuring that subrecipients' program descriptions meet program eligibility goals, the City's objectives and by reviewing overall performance.
- C. Project Monitoring: Monitoring begins when activities are selected for CDBG funding and continues through project completion. Project monitoring can be accomplished through regular project reporting, ongoing meetings and/or site visits.



Monitoring Plans & Risk Assessment

The City does not consider monitoring to be a “one-time event”, rather it is an ongoing process of planning, implementation, communication and follow-up. The City is responsible for developing a monitoring plan at the beginning of each program year, which aligns with the City’s available resources and the needs of subrecipients. With limited staff and resources, the City may not be able to monitor all subrecipients as frequently and thoroughly as needed but the City will ensure that all recipients receive monitoring services with some subrecipients requiring more in-depth monitoring.

Monitoring plans can include the following:

- A. Objectives of the monitoring plan
- B. Standardized procedures for reporting by subrecipients
- C. Standardized procedures for review and monitoring
- D. How risk areas will be identified and addressed
- E. Frequency of meetings, monitoring reviews and inspections.
- F. Pre-monitoring preparation
- G. Use and scheduling of staff and other resources for monitoring
- H. CDBG program and project portfolio
- I. Monitoring checklists
- J. Sample monitoring letters

The City will perform a risk assessment to identify which subrecipients require comprehensive and thorough monitoring. Risk indicators will be established by the City, and may vary based on a subrecipient’s experience with HUD/CDBG programming, presence of issues or if new regulations require programming changes. The City is committed to ensuring accountability with regards to program requirements for all subrecipients, whether new or experienced. High risk subrecipients may include those that are:

- A. New to the CDBG program
- B. Experiencing turnover in key staff positions or a change in goals direction
- C. Encountering complaints and/or bad press
- D. Previous compliance or performance problems, including failure to meet schedules, submit timely reports or clear monitoring/audit findings
- E. Carrying out high risk activities (e.g., economic development)

Undertaking multiple CDBG-funded activities for the first time Desk Monitoring

Each of the Desk Monitoring tasks correspond with other sections of this Procedural Manual. Proper documentation of the implementation of the Desk Monitoring tasks in the CDBG activity files will demonstrate to HUD that the City is actively engaged in compliance monitoring throughout the entire grant process. The Desk Monitoring process also serves to inform the City’s risk assessment that is used to determine which subrecipients will receive an on-site monitoring visit.

Desk Monitoring is one of two ways the City may complete program and project monitoring. The City may utilize desk monitoring to examine a subrecipients information and materials as a means to track performance and identify potential problem areas. Subrecipients will be required to submit progress reports, compliance reports and financial information to the City for review. The City will typically request these three reports:

- Drawdown Requests: This should include information on a project's budgeted funds, funds received in drawdowns to date, funds obligated in the most recent period and to date, funds expended in the most recent period and to date, cash on hand (including program income) and previous drawdowns requested but not yet received.
- Regular Progress Reports: Monthly or quarterly reports that track actual accomplishments, obligations and spending patterns against planned operations and accomplishments:
- CAPER Data: Data collection of the following: the activity's **name**, matrix code, description, and location; the national objective being met; the amount expended during the program year; the total cost of each multi-unit housing and 570.203(b) economic development activity, the amount of unliquidated obligations for each public service and planning and **administration** activity if CDBG funds are not disbursed during the 90 days after the end of the program year; and activity status and specific units of accomplishments, including compliance with the national objective.

On-site monitoring

The on-site monitoring visit is a collaborative effort between the subrecipient and Citystaff. The City monitoring team generally consists of the assigned project manager and the PCD Grants Administrator for CDBG.

The on-site monitoring process begins with a telephone call or an e-mail to the subrecipient from the project manager indicating that the subrecipient has been selected for on-site monitoring. The purpose of the call is to coordinate the date and time of the on-site monitoring visit, to provide information on the nature and scope of the review, and to confirm that key subrecipient staff will be available for the date and time selected.

Subsequent to the introductory telephone call or e-mail, the project manager will prepare the Intent to Monitor Letter (see Forms and Documents section of this manual). This letter is addressed to the Chief Executive Officer of the subrecipient with copies to key programmatic and financial staff.

The Intent to Monitor Letter indicates the purpose of the monitoring visit as well as the date, time and location of the monitoring visit. To assist the subrecipient in preparation for the on-site monitoring visit, the applicable CDBG monitoring exhibits are condensed into an activity-specific checklist that is enclosed with the Intent to Monitor Letter. The checklist creates a cohesive list of all required documentation and steps that pertain to the subrecipient, but also references all applicable CDBG monitoring exhibits for subrecipients to review in their entirety.



Intent to Monitor Letter:

- Task: Prepare and mail the Intent to Monitor Letter
- Timeframe: 30 days prior to monitoring visit
- Preparer: Project manager
- Approval: PCD Grants Administrator for CDBG
- Retention: CDBG File Folder (activities)

For each on-site monitoring visit, the City of Dayton CDBG Monitoring Checklist shall be available to the City in the CDBG activity file and should be reviewed by the monitoring team prior to the visit include:

- Subrecipient application for funding;
- Eligibility Review;
- CDBG written agreement;
- Performance Reports;
- Reimbursement Requests;
- Correspondence;
- Prior monitoring reviews; and
- Copies of subrecipient's most recent audits.

Entrance Conference – Introduction monitoring visit purpose, scope and schedule



The on-site monitoring visit begins with an entrance conference between the City's monitoring team and key subrecipient staff (including CFO, programmatic and financial staff). The purpose of the entrance conference is to ensure that the subrecipient has a clear understanding of the purpose, scope and schedule for the monitoring. The monitoring team lead will collect a sign-in sheet to document participation in the entrance conference. Subsequent to the entrance conference, the monitoring team conducts its assessment of subrecipient file documentation to address assigned sections of the Monitoring Tool.

Generally, the review will result in a determination that the subrecipient complied with a given section or that a finding of concern is identified. A finding is a condition where the subrecipient has violated an applicable regulatory provision. A concern is a condition that if not corrected, may lead to findings or may result in deficient program performance. Where appropriate, copies of documentation should be obtained to support any findings or concerns identified. Subrecipient staff should be interviewed during the assessment phase of the on-site monitoring visit to test their depth of understanding of the regulations and the terms and conditions of the CDBG written agreement. Staff interviews are the City's opportunity to assess how well the subrecipient knows the CDBG program regulations and how those regulations are applied in the implementation of the activity. The assessment of documentation and the information gained from staff interviews will assist City staff in determining whether or not additional technical assistance to the subrecipient is required in order to ensure proper implementation of each CDBG- funded activity.

At the conclusion of the assessment phase of the on-site monitoring visit, an exit conference should be conducted with the same attendees as the entrance conference. The purpose of the exit conference is to:

- Present the preliminary results of the monitoring, including findings that will require additional consultation with the Community Revitalization Specialist in order to close the monitoring review;
- Secure additional information to solidify or resolve any preliminary findings or concerns;
- Provide an opportunity for the subrecipient to correct any misconceptions or misunderstandings;
- Establish timeframes for the resolution of any findings; and
- If applicable, provide an opportunity for the subrecipient to report on steps the organization may already be taking to address areas of noncompliance or nonperformance.

Subsequent to the on-site monitoring visit, any findings or concerns identified will be transmitted to the subrecipient in writing via e-mail with requests for corrective actions to be undertaken (see *Forms and Documents of this manual*). The resolution of findings occurs informally between the subrecipient and the Community Revitalization Specialist prior to the issuance of the Monitoring Results Letter (see Forms and Documents section of this manual). Generally, the Community Revitalization Specialist should be in a position to draft the Monitoring Results letter for review and signature by the Community Revitalization Coordinator within 60 days subsequent to the on-site monitoring visit.

Corrective Actions

Following program and project monitoring, if the subrecipients received noticed of issues or areas of concern that they must address, the subrecipient and the City will work together to create a corrective action plan. A written agreement outlining the areas of concern, and the subrecipients' plan for correcting each issue, will be established between the City and each subrecipient. The following, graduated, levels of intervention will be utilized by the City to address areas of noncompliance.

- Stage 1: Low Level Intervention – The City will address a subrecipient's noncompliance with one of the following methods: clearly identify problem areas and required corrective actions, develop a plan with the subrecipient to include training or technical assistance, require more frequent or more thorough reporting or conduct more frequent monitoring reviews.
- Stage 2: Moderate Level Intervention – These steps may be undertaken if the low-level interventions was unsuccessful, and may include the following: restriction of payment requests, disallowance of certain expenses, requesting the repayment of disallowed spending or imposing a probationary status.
- Stage 3: High Level Intervention – At this stage in the process, the City will take serious action to stop any noncompliance issues. The City may take the following actions during this step: temporary suspend the subrecipient from participation in the CDBG program, not renewing the subrecipient or their activity for the next program year, terminate the subrecipient or their activity during the current year, or initiate legal action.

Debarment and Suspension

Federal funds granted through the U.S. Department of Housing and Urban Development may not be utilized to directly or indirectly employ, award contracts, or otherwise employ the services of any contractor or subrecipient that is in a period of debarment, suspension, or issues a status of ineligibility (Executive Order 12549). Prior to entering into an agreement, the City of Dayton must determine the status for all contractors, subcontractors, consultants, and subrecipients by way of the federal System for Award Management (SAM). The debarment, suspension, or eligibility status

of organizations can be found at <https://www.sam.gov/SAM> by entering the organization's DUNS number.

A suspension is typically issued during an investigation or legal proceeding, and the outcome may lead to debarment. Debarment indicates that an individual, organization, and/or its affiliates are prohibited (excluded) from conducting business with any Federal Agency for a period of approximately three years or longer.

For all external projects and activities indicated on the Annual Action Plan, the City of Dayton must check the eligibility of every entity prior to executing an agreement and disbursing funds. Additional information regarding contracting and debarment and/or suspension may be found in 24 CFR 570.607 and 24 CFR 570.609.

Procedure

To check the suspension and debarment status of an organization/entity, the CDBG project manager should:

1. Go to <https://www.sam.gov/SAM>;
2. Select the "Search Records" tab under the "SAM System for Award Management" header;
3. Type in the DUNS number provided by the organization/entity and click the Search button;
4. Confirm that the organization/entity is registered with active status, the organization's/entity's information is correct, and that the organization/entity does not have any Active Exclusion records which would exclude the entity from doing business with Federal Agencies;
5. Printout the organization's SAM page; and
6. Sign and date the printout and include it in the proper portion of the CDBG file folder.

Procedure

Before entering into an agreement, the City of Dayton confirms the eligibility of organizations by collecting their DUNS number and entering it into the database located at <https://www.sam.gov/SAM>. The City requires all organizations to register their entity through Sam.gov, with their assigned DUNS number, before a contract is executed. If an organization or entity is not listed on SAM, the CDBG project manager provides the entity's point of contact with links to both the DUNS and SAM registration websites and informs the potential subrecipient that these steps must be completed prior to the execution of an agreement.

If an entity is debarred or suspended, the CDBG project manager alerts both the CDBG Grant Administrator and Community Development Manager, thereby escalating the issue so that more information regarding the situation around debarment can be explored. Entities found to be excluded from participation in business with the Federal government are alerted of the finding in writing, and any work toward generating a draft agreement is halted.

An initialed and dated printout of the entity's SAM.gov registration is kept in the file folder for each activity.

Requesting Reimbursement/Invoices

Payments from the City of Dayton to Subrecipients

The City of Dayton will make CDBG funds available to subrecipients on a reimbursement basis only, unless advance payments are expressly permitted by the City, when proper documentation of the subrecipient's actual incurred and paid expenses is submitted to the City. A contract or written agreement, including a line item budget, between the City and the subrecipient must be fully executed prior to the release of funds. Subrecipient expenditures must be consistent with the approved budget, have occurred within the timeframe identified in the entity's contract or written agreement with the City and include proper documentation and/or receipts for proof of payment. Payments will be adjusted by the City in accordance with program income or advance balances available in subrecipient accounts, when applicable.

Invoicing: Subrecipient expenditures must also be consistent with approved activities, and not prohibited as per Federal guidance. When requesting reimbursement for approved activities, subrecipients should submit an invoice to the City of Dayton with the following information:

- A. City contract number
- B. Invoice number
- C. Period/date range that the invoice covers
- D. Work done/accomplishment summary
- E. Written documentation verifying that weekly payroll reports were reviewed and comply with the approved wage determination
 1. Payroll reports should include the number of hours worked on the funded activity
 2. A detailed summary of the work performed by the employee(s) with a description of each action/activity undertaken
 3. Reports should identify personnel expenses by employee and by each activity undertaken, and the sum of all personnel expenses should match the requested reimbursement on the invoice
- F. Total amount requested for reimbursement
- G. List of enclosed documents (all receipts, proof of purchase, or other applicable documentation)
 1. Reimbursement requests for supplies and materials should include an invoice from the vendor or supplier utilized by the subrecipient, detailing the items/services purchased
 2. A copy of the subrecipient's check, showing that the vendor was paid for the invoiced/serviced goods should be included
- H. Agreement funding balance
- I. Other information that the subrecipient desires to communicate to the City's Project Coordinator
- J. Signature of the subrecipient's Chief Financial Officer
- K. Monthly Progress Reports (see [Performance Reports and Evaluations](#))



In order to appropriately track expenses and program income, subrecipients should have a financial system that allows for, at minimum, the following capabilities for each activity supported with CDBG funds:

- A. Funds budgeted
- B. Funds received by the City of Dayton
- C. Reimbursements received to-date
- D. Funds obligated in the most recent period and to-date
- E. Funds expended in the most recent period and to-date
- F. Cash on hand (including program income)
- G. Previous reimbursements requested but not yet received

Project Closeout/Activity Completion

A subrecipient's obligation to the City of Dayton shall not end until all closeout requirements are completed. In addition to the closeout activities identified below, subrecipients, in coordination with the City, will be responsible for submitting final payment documentation, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances and accounts receivable to the City), and determining the custodianship of records.

Criteria for Closeout

Per 24 CFR 570.509, grants will be closed out when HUD, in consultation with the City of Dayton, determines that the following criteria have been met:

1. All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.
2. With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.
3. Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

Closeout Actions

The following actions will be completed by the City of Dayton, in conjunction with its subrecipients as needed, during the closeout process:

1. Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in 24 CFR part 91. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.
2. Based on the information provided in the performance report and other relevant information, HUD, in consultation with the recipient, will prepare a closeout agreement.
3. HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

4. Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR part 44. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

Closeout Agreement

Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the City of Dayton. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

1. Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;
2. Identification of any unused grant funds to be canceled by HUD;
3. Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;
4. Description of the recipient's responsibility after closeout for:
 - a. Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;
 - b. Use of real property assisted with CDBG funds in accordance with the principles described in § 570.505;
 - c. Compliance with requirements governing program income received subsequent to grant closeout, as described in § 570.504(b)(4) and (5); and
 - d. Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;
5. Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.

V. Planning and Reporting

Consolidated Planning Process

In order for the City of Dayton to receive its annual CDBG entitlement grant, we must submit a consolidated plan in accordance with 24 CFR part 91. It includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process (570.302).

The City of Dayton must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

Consolidated Plan

The Consolidated Plan is a strategic plan that describes the city's community development priorities and multiyear goals based on an assessment of housing and community development needs, an analysis of housing and economic market conditions and available resources.

Citizen Participation Plan

The Citizen Participation Plan is a part of the Consolidated Planning Process the purpose of which is to set the city's policies and procedures for citizen participation and engagement both in the process of developing and reviewing the Consolidated Plan and other related plans.

Annual Action Plan

The Consolidated Plan is carried out through Annual Action Plans, which provide a concise summary of the actions, activities, and the specific federal and non-federal resources that will be used each year to address the priority needs and specific goals identified by the Consolidated Plan.

CAPER

Community Development staff prepare a Consolidated Annual Performance Evaluation Report (CAPER) using the provided HUD template annually. The CAPER provides clear and correct financial and beneficiary information showing how the City is carrying out its housing and community development strategies, activities, and projects. The draft CAPER is made available for a 30-day public review and comment period at the end of each program year, followed by a City Council Public Meeting. The City submits the final CAPER to HUD, no later than ninety days following the close of the program year.

Procedure

Prepare and Submit the CAPER

- **Timeframe:** Due within 90 days of the end of the program year and Draft is available 30 days of the end of the program year for public view
- **Preparer:** CDBG Administrator
- **Approval:** Director of Planning and Community Development
- **Document:** HUD Template
- **Retention:** CDBG File Folder

The CAPER must have narratives that address:

- **Assessment of Three- to Five-Year Goals and Objectives:** addresses the grantee's progress toward meeting their strategic plan and high priority needs;
- **Affirmatively Furthering Fair Housing:** describes efforts toward this area including an analysis of impediments to fair housing choice, summary of impediments, and actions taken;
- **Affordable Housing:** evaluates progress toward meeting its objectives toward the provision of affordable housing by income level;
- **Continuum of Care:** evaluates progress toward meeting its objectives toward homeless and special needs populations;
- **Other Actions indicated in the Grantee's Strategic and Action Plans:** includes actions such as overcoming barriers to affordable housing and community development activities, improving public housing initiatives, reducing and eliminating lead based paint hazards, and efforts to reduce the number of persons living below the poverty line.
- **Leveraging Resources:** describes other public and private resources used toward the provision of affordable housing and community development activities;

- Citizen Comments: describes any public comments received in regard to the program; and
- Self-evaluation: focuses on results on programs and projects funded by the grantee and their impact on their community.
- Nature and reasons for any changes in program objectives;
- Efforts of the grantee to carry out planned activities described in its Action Plan;
- If applicable, why the use of CDBG funds did not meet one of three national objectives;
- Activities involving acquisition, relocation and displacement;
- Economic development activities not resulting in jobs held by LMI persons;
- Presumed limited clientele activities;
- Activities generating program income;
- Rehabilitation activities; and
- If applicable, progress against Neighborhood Revitalization Strategy Area benchmarks.

Annual Action Plan Amendments

Other HUD Reports

IDIS Cash on Hand Report

Fair Housing

MBE/FBE Reporting

Section 3 Reporting

Transparency Reporting

Performance Reports and Evaluations

Revitalization Areas – NRSA

Overview

NRSA Preparation and Submission

NRSA Funding

HUD Review of NRSA

NRSA Amendment Process

Local Target Areas

VI. Financial Management and Internal Controls

Financial Management Overview

Internal Controls

Internal controls include a combination of procedures, specified job responsibilities, qualified personnel, and records that together create accountability in an organization’s financial system and safeguard its cash, property, and other assets. Such controls ensure that (1) resources are used for

authorized purposes and in a manner consistent with applicable laws, regulations and policies; (2) resources are protected against waste, mismanagement, or loss, and, (3) reliable information on source, amount and use of resources are updated and recorded.

Additionally, internal controls will ensure that no one individual has authority of an entire financial transaction. Specifically, an organization must have a separation of power for the following three responsibilities: (1) authorization to execute a transaction, (2) recording of the transaction, and (3) custody of the assets involved in the transaction. This type of separation of responsibilities will create a system of checks and balances for grant and general organization expenditures.

Administrative Costs

Cost activities that are required to meet federal regulations include grants management, monitoring, financial statements, reporting, etc., are considered administrative costs. Within specific programs; management, financial report, compliance and monitoring requirement costs that span multiple projects are classified as administrative costs.

Fiscal Policies and Procedures

Administrative and Planning Costs

CDBG funds can be used for administrative and planning activities.

Administrative Activities

Administrative activities can include general management, oversight and coordination, Fair Housing activities, indirect costs, and submission of applications for Federal programs. With respect to determining the amount of staff costs to charge to program administration, the City has two options:

1. Include the entire salary, wages and related costs of each individual whose primary responsibility involves program administration assignments; or
2. Determine the pro rata share of each person's salary, wages and related costs whose job includes any program administration assignments.

Planning Activities

Planning activities can include comprehensive plans, community development plans (including the Consolidated Plan), functional plans, other plans and studies, and policy planning, management and capacity building activities.

CDBG assistance may also be used to fund activities intended to improve the City's capacity (including subrecipients) to plan and manage programs and activities. However, under this category, CDBG funds may not be used for the following activities: engineering, architectural and design costs related to a specific project or other costs of implementing plans.

CDBG funds expended for administration, planning and capacity building costs are considered to address the national objectives for the CDBG program as a whole, thus, the City is not required to provide documentation.

Planning and Administrative Cap

Planning and administrative costs are capped at 20 percent of the sum of the grant plus program income that is received during the program year. The City will be considered to be in compliance if total obligations charged under planning and administration during the most recently completed program year are no greater than 20 percent of the sum of the entitlement grant for the program year, and the program income received during that program year by the City and its subrecipients.

Conflict of Interest

Per 2 CFR 200.318, non-Federal entities (grantees, subrecipients, contractors, subcontractors, etc) must maintain written standards of conduct covering conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supposed by a Federal award if he or she has a real or apparent conflict of interest.

“Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.”

In relation to the CDBG Program, “no person who exercises any functions or responsibility pertaining to CDBG activities, or who are in a position to participate in decision-making processes or gain inside information regarding such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year after their tenure ends.”



The City of Dayton requires all employees to agree to the City’s Code of Ethics, Policy HR 2.04. The policy provides guidance on the ethical behaviors of public servants, and ensures that employees do not participate in activities or functions that may create a conflict of interest. A copy of the City’s Employee Policies and Procedures Manual is available in electronic format via the Human Resources Department.

Members of the Community and Neighborhood Development Advisory Board that oversees the use of HUD grant funds are required to complete an annual Conflict of Interest form. Board members take part in the evaluation of annual applications for funding. The form requires board members to certify their ethical obligation to report any personal and/or professional connections that may pose a conflict of interest.

Subrecipients are required to create, maintain, and adhere to a conflict of interest policy as a part of their CDBG program. This requirement is addressed through the Subrecipient agreement and is evaluated during desk and on-site monitorings. Non-compliance is addressed through the monitoring process and procedures.

Pre-Award Costs

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

CDBG grantees and their subrecipients (under certain conditions) may incur costs prior to the effective date of the CDBG grant agreement with HUD. The grantee or subrecipient may then pay those costs (including reimbursing itself if it used its own funds to pay the costs) after the effective date of the grant agreement, provided that it complies with the pre-award regulations at 24 CFR §570.200(h). The effective date of the grant agreement is the program year start date, or the date that the consolidated plan is received by HUD, whichever is later. Grantees can incur any eligible cost provided it meets certain conditions:

- The activity for which the costs are being incurred is included in a consolidated plan action plan, an amended consolidated plan action plan, or a Section 108 loan guarantee application prior to the costs being incurred;
- Citizens are advised of the extent to which these pre-award costs will affect future grants;
- The costs and activities funded are in compliance with the CDBG regulations and the environmental review requirements;
- The activity for which payment is being made complies with the statutory and regulatory provisions in effect at the time the costs are paid for with CDBG funds;
- CDBG payment will be made during a time no longer than the next two program years following the effective date of the grant agreement or amendment in which the activity is first included; and
- The total amount of pre-award costs to be paid during any program year is no more than 25% of the grant amount for that year or \$300,000, whichever is greater.

Upon the written request of the grantee, the HUD field office may authorize payment of pre-award costs for activities that do not meet the above requirement for a two-year payback or where the total amount exceeds 25% of the grant amount. (NOTE: An exception to any of the other criteria requires a waiver.)

The factors HUD will consider in granting exceptions to the period of repayment or the dollar threshold include:

- Whether granting the authority would result in a significant contribution to the goals and purposes of the CDBG program;
- Whether failure to grant the authority would result in undue hardship to the grantee or beneficiaries of the activity;
- Whether granting the authority would not result in a violation of a statutory provision or any other regulatory provisions;
- Whether circumstances are clearly beyond the grantee's control; and
- Any other relevant considerations.

The HUD review begins at the Field Office level, but when a waiver is necessary, it is referred to the Assistant Secretary's office.

Cost Allocability – Timesheets (Internal)

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.

Compensation for personnel services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in §200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

1. Is reasonable for the services rendered and conforms to the established written policy of the City consistently applied to both Federal and non-Federal activities;
2. Follows an appointment made in accordance with the City's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
3. Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
4. Be incorporated into the official records of the City;
5. Reasonably reflect the total activity for which the employee is compensated by the City, not exceeding 100% of compensated activities;
6. Encompass both federally assisted and all other activities compensated by the City on an integrated basis, but may include the use of subsidiary records as defined in the City's written policy;
7. Comply with the established accounting policies and practices of the City
8. Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity

Payments from HUD to the City of Dayton

2 CFR 200.302 (b) (6) requires that non-federal grantees must provide written procedures to implement the requirements of 2 CFR 200.305 "Payment."

The Department of Planning and Community Development's Division of Community Development is responsible for administering the Community Development Block Grant (CDBG) Program.

The CDBG Program shall operate on a reimbursement basis as its preferred method of payment from the U.S. Department of Housing and Urban Development (HUD). Draws will be made from the Integrated Disbursement and Information System (IDIS) based on the previous month's expenditure activity for each given CDBG program or activity through the Division of Community Development's Reconciliation Process.

During the month of December, in order to ensure that full reimbursement is drawn down and paid in before December 31 of each year, the Division of Community Development may request advance payment from IDIS. The following minimum requirements must be met in order to request advance payment:

- 1) For invoices from external vendors 
 - a. Invoice has been received from subrecipient, contractor, or developer

- b. Project manager has reviewed and verified the invoice for payment, confirming that the expenses are allowable per the grant agreement and the contract between vendor and City of Dayton
 - c. Invoice will be sent to Finance for processing and payment within 2 days of draw request from IDIS
- 2) For payroll expenses
- a. Employees included in payroll expenses complete bi-weekly timesheets and/or monthly certifications attesting to their work plan eligibility per CDBG regulations
 - b. Paychecks will be issued within 7 calendar days of draw request from IDIS

Cost Allowability

2 CFR 200.302 (b) (7) requires that non-federal grantees must provide written procedures for cost allowability in accordance with Subpart E – Cost Principles and the terms and conditions of the CDBG award.

Division of Community Development Staff will review and approve costs for CDBG programs, through the budget included in the subrecipient/contractor agreement and during review/approval of invoices, based at a minimum upon the following factors.

1. Costs must be necessary and reasonable for the performance of the CDBG program. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Consideration shall be given to the following factors:
 - a. Whether the cost is of a type generally recognized as ordinary and necessary for City of Dayton operations or proper and efficient CDBG award performance.
 - b. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; federal, state, and local laws; CDBG grant agreement terms and conditions.
 - c. Market prices for comparable goods or services for the geographic area.
 - d. Whether the individuals concerned acted with prudence.
 - e. Whether the grantee, subrecipient, or contractor significantly deviates from its established practices and policies regarding costs, which may unjustifiably increase the cost allocated to CDBG.
2. Costs must conform to any limitations or exclusions in 2 CFR 200 and in the CDBG grant agreement from HUD.
3. Costs must be consistent with City of Dayton policies and procedures that apply uniformly to all funding sources.
4. Costs cannot be allocated to CDBG as a direct cost if the costs have already been allocated to CDBG as an indirect cost.
5. Costs cannot be used to meet cost sharing or matching requirements of other federal programs.
6. Costs must be adequately documented through source documentation, including but not limited to:
 - a. Itemized receipts
 - b. Payroll disbursement records

- c. Timesheets and activity reports
- d. Approved indirect cost plans
- e. Proof of payment (ACH wires, canceled checks, etc.)

Procedure

The CDBG Grant Administrator reviews cost allowability during contract development through project budget evaluation. CDBG project managers ensures allowability compliance during invoice review by completing the invoice checklist and ensuring source documentation is provided.

Revolving Funds

Revolving loan funds are specifically allowed with the CDBG program. Many CDBG grantees use revolving funds in conjunction with single family rehabilitation programs, as well as for other activities such as microenterprise loans.

A revolving fund is a separate fund (independent of other CDBG program accounts) set up for the purpose of carrying out the same types of activities. Program income that is held in a revolving fund does not have to be used before grant funds are drawn down for a different type of CDBG project. However, program income in a revolving fund must be used before additional grant funds are drawn down for revolving fund activities.

Requirement of CDBG-funded revolving funds include:

1. Revolving funds must be held in interest bearing accounts and
2. Interest earned on revolving fund balances must be remitted to the U.S. Treasury not less than annually (NOTE: Interest paid by borrowers of CDBG-funded loans made from the revolving fund is considered program income and subject to the CDBG program income requirements)

Lump Sum Draw Downs

Grantees may draw down funds from HUD in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing eligible rehabilitation activities. The reason grantees may want to establish such a fund is to receive benefits (described below) from the lending institution with which it places the lump sum.


The regulations governing lump sum draw downs, which are located at 570.513, stipulate that:

The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or other uses approved by HUD.

The fund may not be used for making grants, except when grants are made to leverage non-CDBG funds.

Lump sum draw downs are subject to the following limitations:

1. Deposits to a rehabilitation fund cannot exceed the grant amount that the grantee reasonably expects will be required based on either the prior level of rehabilitation activity or rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities;

-  2. No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities; and
3. Rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum draw down.

The following standards apply to all lump sum draw downs of CDBG funds for rehabilitation:

Grantees must execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement must specify:

- a. The obligations and responsibilities of the parties;
- b. The terms and conditions on which CDBG funds are to be deposited and used or returned;
- c. The anticipated level of rehabilitation activities by the financial institution;
- d. The rate of interest and other benefits to be provided by the financial institution in return for the lump sum deposit;
- e. The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two (2) years; and
- f. Such other terms as are necessary for compliance with the provisions of this section.

The lump sum deposit shall be made only after the agreement is fully executed.

Upon execution of the agreement, a copy must be provided to the HUD Field Office for its record and use in monitoring. Modifications made during the term of the agreement must also be provided to HUD.

The CDBG regulations include time limits on the use of funds deposited:

- a. The use of funds for rehabilitation financing assistance must start (i.e., the first loan must be made, subsidized or guaranteed) within 45 days of the deposit; and
- b. Substantial disbursements from the fund must occur within 180 days of the receipt of the deposit.

Deposited funds or program income derived from deposited funds may be used to subsidize or guarantee repayments of rehab loans made with non-CDBG funds but the rehabilitation activity would be considered to be CDBG-assisted and subject to the requirements applicable to the type of activity undertaken. (NOTE: The repayment of the non-CDBG funds is not considered program income.)

The private financial institution receiving the lump sum deposit must provide specific consideration to the grantee in exchange for such deposits. The minimum requirements for such benefits are as follows:

1. Grantees shall require the financial institution to pay interest on the lump sum deposit;
2. The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity;

3. When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed;
4. The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity;

In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

1. Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;
2. Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk, or with longer than normal repayment periods; or
3. Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

Interest earned on lump sum deposits and payments on loans made from such deposits is considered program income. During the period of the agreement, program income must be used for rehabilitation activities in accordance with the requirements covering the rehabilitation fund.

Grantees must provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before the distribution occurs.

Change of Use

The standards described in this section apply to real property within the grantee's control (including activities undertaken by subrecipients) that was acquired or improved, in whole or in part, using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after final close-out of the grant from which assistance to the property was provided.

A grantee may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the grantee provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

- The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or
- The grantee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify as meeting a National Objective, it may retain or dispose of the property for the changed use if the grantee's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

Following the reimbursement of the CDBG program, the property no longer will be subject to any CDBG requirements.

Timeliness

Timeliness refers to how quickly the grantee is able to commit and expend CDBG funds. Since federal program budgets are tight all across the government and since there is a huge need for community development programs, it is vital that CDBG grantees make every effort to quickly use their funds.

The entitlement program rule for timeliness is that 60 days prior to the end of the program year, a grantee cannot have more than 1.5 times its annual allocation sitting in its line of credit at the U.S. Treasury.

If the grantee chronically has more than 1.5 times its grant in its line of credit, HUD can withhold future grants until the grantee effectively spends its existing resources.

Ensuring CDBG Subrecipient Timeliness - Guidelines for Grantee Selection, Management, and Oversight in the Community Development Block Grant Program

- http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12898.pdf

Keeping CDBG Funds Moving Guidelines for managing your overall Community Development Block Grant Program in a timely manner

- <http://www.hud.gov/offices/cpd/communitydevelopment/library/keepfundsmoving.pdf>

Program Income

Program income is the gross income received by the grantee and its subrecipients directly generated from the use of CDBG funds.

Program income includes:

- Proceeds from the sale or lease of property purchased or improved with CDBG funds;
- Proceeds from the sale or lease of equipment purchased with CDBG funds;
- Gross income from the use or rental of real or personal property acquired, constructed or improved by the grantee (or a subrecipient), less costs incidental to the generation of income;
- Payments of principal and interest on loans made using CDBG funds;
- Proceeds from the sale of loans or obligations secured by loans made with CDBG funds;
- Interest earned on program income pending its disposition (NOTE: interest earned on CDBG funds held in revolving loan funds is not program income and must be remitted to the U.S. Treasury at least annually); and
- Funds collected through special assessments on properties not owned and occupied by LMI households in order to recover the CDBG portion of a public improvement.

Program income does not include:

- Income earned from the investment of initial proceeds of a grant advance from the U.S. Treasury; interest earned on loans or other forms of assistance with CDBG funds that are used for activities that are determined by HUD to be ineligible; interest earned on the investment of amounts reimbursed to the program account prior to the use of the reimbursed funds for eligible activities;

- Any income received in a single program year by the grantee and its subrecipients, that does not exceed \$25,000;
- Income generated by certain Section 108 activities (refer to 570.500(a)(4)(ii));
- Proceeds from subrecipient fundraising activities;
- Funds collected through special assessments to recover non-CDBG outlays of public improvements; and
- Proceeds from the disposition of real property by a subrecipient or the grantee, that was acquired or improved with CDBG funds, when the disposition occurs after the time period specified in 570.503(b)(7) for subrecipient-owned property (generally five years after the expiration of the subrecipient agreement) or the time period required under 570.505 for grantee-owned property.

The calculation of the amount of program income for the grantee's CDBG program as a whole (comprising activities carried out by the grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on CDBG-funded loans received from grantees if such payments are made using program income received by the subrecipient.

Remittance of Program Income: The CDBG regulations require that, at the end of each program year, a grantee must determine whether it has excess program income on hand and return any excess to its line of credit. Excess program income is calculated by:

1. Assessing the aggregate amount of program income held by the grantee and its subrecipients.
2. Subtracting the following from the aggregate amount:
 - a) Any funds needed for immediate cash needs (i.e., needed within the next 30 days to pay outstanding bills);
 - b) Revolving loan fund balances;
 - c) Lump sum draw down balances; and
 - d) Cash or investments held as security for Section 108 loan guarantees.
3. Any amount remaining after the deductions that is in excess of one-twelfth of the grantee's most recent entitlement grant must be remitted to the grantee's line of credit as soon as practicable after the excess amount is determined.

Procurement

The City of Dayton's Procurement Policies and Procedures are followed by all CDBG programs. The Procurement Policies and Procedures are included in Appendix B.

Reconciliation and Draws

P&CD staff shall draw down funds from the U.S. Treasury to reimburse the City for its expenditure of funds for CDBG activities. Drawdowns shall be conducted not less than quarterly, within 90 days of the end of each quarter, and may be conducted more frequently to meet business needs.

Staff should analyze HUD IDIS reports monthly to reconcile balances and timeliness amounts. A review and approval process of all reconciliations and investigation of unusual reconciling items by an official who is not responsible for receipts and disbursements, including recording evidence of the review and approval by signing the reconciliation. In cases where discrepancies are found, corrective action must be taken to resolve such discrepancies

Audit Requirements:

The City is required to complete the following for the CDBG program:

- Ensure an audit it is properly performed and submitted when due by the Auditor of State's Office or an audit is requested by any other Federal Agency.
- Prepare appropriate financial statements, including the schedule of expenditures of Federal Awards for the CDBG program.
- Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan for the CDBG program as mentioned in 2 CFR §200.511. If the City does not agree with the audit findings or believes corrective action is not required, then the plan must include an explanation and specific reasons.
- Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information from the CDBG program as needed for the auditor to perform the audit required.

The CDBG program is subject to audit under 2 CFR §200.501, which is completed on an annual basis for the Audit of State's Office.

For auditing purposes, the CDBG program must maintain all monitoring controls of contractors, to verify they are in compliance with the outlined requirements in 2 CFR §200.330 and §200.331, to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of the Federal Awards.

Failure to rectify findings within the given time frame may result in suspension, termination of grant agreement, and/or disbarment from future grant funding.

City Internal Audit Reviews

The City reserves the right to have its Internal Audit function review any 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. If the City's Internal Audit review of Subrecipient monitoring/account reviews contain findings, then they are sent to Planning and Community Development Director and the Subrecipient for compliance purposes and will reviewed by the Internal Audit Committee.

Financial Reporting

Financial Reporting for Financial Audits

The City must prepare a schedule of expenditures of Federal awards for the period covered by the City's financial statements which must include the total Federal Awards expended as determined in accordance with 2 CFR §200.502.

This schedule must include the name of the pass-through entity and identify number assigned by the pass-through entity for all Federal awards received as a subrecipient. Also, it must include total Federal Awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. If a cluster of programs is applicable, the City should provide the total for the cluster. The City must include the total amount provided to subrecipients from each Federal program, which includes the CDBG program.

The City also must submit required data elements, as described in 2 CFR Appendix X to Part 22, which state whether the audit was completed in accordance with this part and provides information about the City, the Federal programs, and the results of the audit.

The City must also include the information available from the audit required that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs, including the CDBG program. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package.

The City must electronically submit to the FAC the data collection form and the reporting package.


The City must keep one copy of the data collection form and one copy of the reporting package on file for three years from the date of submission to the FAC.

Federal Financial Report for HUD

The City shall establish tracking and data collection systems to support the preparation and submittal of a variety of compliance reports to HUD throughout each program year as required by the CDBG regulations and other federal requirements.

HUD requires the submittal of (4) periodic reports throughout the program year besides the Consolidated Annual Performance and Evaluation Report that is submitted annually within 90 days of the end of the program year. The periodic reports include: Form HUD-50080-SCMF, the Contract-Subcontract Activity Report (Forms 2516 and 2516a), the Semi-Annual Labor Standards Enforcement Report, the Section 3 Summary Report. Each of these reports documents and certifies critical program compliance information that is used in turn by HUD to assess the City's risk as part of HUD's annual risk assessment to determine which of their grantees will receive on-site monitoring visits. For this reason, it is critical that each of these periodic reports is prepared accurately and submitted to HUD timely.

Form HUD-50080-SCMF (LOCCS Payment Voucher/Expense Report)

HUD requires Form HUD-50080-SCMF, which now supersedes the former SF-425 Federal Financial Report and the SF-425 report is no longer required. The Form HUD-50080-SCMF must be submitted Semi-Annually. The first reporting period starts from January 1 through June 30 and the second reporting period starts from July 1 to December 31. These expense reports are due 30 calendar days following the end of each six-month reporting period. Grantee must submit each six-month report in an Excel file. 

Form HUD-50080-SCMF, is used by HUD to protect disbursement data from fraudulent actions, and to safeguard the Line of Credit Control System (LOCCS) from unauthorized access. This report tracks expenses and drawdown of funds for eligible activities at intervals within the grant term.

Procedure

Prepare and submit the Form HUD-50080-SCMF

- **Timeframe:** Due to HUD Semi-Annually July 30th and January 30th
- **Preparer:** CDBG Administrator
- **Approval:** Director of Planning and Community Development
- **Document:** [Form HUD-50080-SCMF \(Excel\)](#)
- **Retention:** CDBG File Folder; Drawdown/Reporting Files

Contract-Subcontract Activity Report

The Contract-Subcontract Activity Report is used by HUD to monitor and evaluate MBE activities against the total program activity and the designated minority business enterprise (MBE) and

Women business enterprise (WBE) goals. HUD requires the information to provide guidance, oversight and for the development of MBE and WBE goals. The report must be submitted to the Field Office's Fair Housing and Equal Opportunity (FHEO) representative within 30 days of the end of the Federal Fiscal year.



Prepare and Submit the Contract-Subcontract Activity Report

- Timeframe:*** Due within 30 days of the end of the Federal Fiscal Year
- Preparer:*** CDBG Administrator
- Approval:*** Director of Planning and Community Development
- Document:*** Links to [Form 2516 and 2516A](#)
- Retention:*** CDBG File Folder

Section 3 Summary Report

The HUD 60002 Section 3 Summary Report provides details on the City's accomplishment of the Section 3 goals prescribed at 24 CFR Part 135. The City's Section 3 Plan delineates the City's approach to compliance with Section 3. The Section 3 Report must be submitted to HUD.



Prepare and Submit the Section 3 Summary Report

- Timeframe:*** Due within 90 days of the close of the program year
- Preparer:*** CDBG Administrator
- Approval:*** Director of Planning and Community Development
- Document:*** Online Submittal
- Retention:*** CDBG File Folder (screenshot of online submission)

Also see for other requirements: <https://files.hudexchange.info/resources/documents/Building-HOME-Appendix-XVIII-MWBE-and-Section-3.pdf>

Semi-Annual Labor Standards Enforcement Report

The HUD-4710 Semi-Annual Labor Standards Enforcement Report, covering the periods of October 1-March 31 and April 1-September 30 is a report to the Field Office Labor Relations representative within 7 calendar days subsequent to the end of the period covered, or upon request.

The Semi-Annual Labor Standards Enforcement Report provides information on contracts awarded that must comply with the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act. Specifically, the report lists each project/contract awarded during the reporting period for which DBRA or CWHSSA is applicable.

The report also includes information on enforcement activities undertaken by the City during the reporting period. The information reported on contracts (Part I) and the information reported on enforcement activity (Part II) is separate and should only be reported to HUD on the HUD-4710 form once. For example, a contract should only be reported on the report corresponding to the period when the contract was awarded. Similarly, enforcement activity is aggregated and reported on the form covering the period when the enforcement activity took place. Therefore, enforcement activity may be reported for projects/contracts that appeared on any prior report as a contract awarded under Part I.

Procedure

Prepare and submit the Semi-Annual Labor Standards Env. Report

- Timeframe: Due April 5th and October 5th
- Preparer: CDBG Administrator
- Approval: Director of Planning and Community Development
- Document: [Semi-Annual Labor Standards Enforcement Report](#)
- Retention: CDBG File Folder

Procedure

Please Note: The City of Dayton will revisit and update the financial section at least once annually, due to ongoing changes in financial reporting requirements for HUD.

Record Keeping and Record Retention

Overview

The record-keeping and retention requirements set by the Department of Housing and Urban Development (HUD) vary for each Entitlement Grant that the City of Dayton receives. The standards set by HUD and documented below are a minimum, and should be followed accordingly. All standards established by HUD must be followed by the City of Dayton and its subrecipients for all records, activities, and documentation as contemplated in the fiscal and programmatic policies and procedures as well as this section.

City of Dayton Record Keeping

Per 24 CFR 570.506, the following records are required, at a minimum by all grantees:

- Program Records
- Program Administration Records
-
- “Records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C *[Eligible Activities]* under which it is eligible.
- Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. *[Compliance with the requirement that all activities meet a national objective – See Section II – National Objectives]*.
- Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f) *[Interim Assistance activities]*, 570.201(i)(2) *[Relocation activities determined to be appropriate under the provisions of 24 CFR 570.606(d)]*, 570.201(p) *[Technical Assistance]*, 570.201(q) *[Assistance to Institutions of Higher Education]*, 570.202(b)(3) *[Loans for refinancing debt on a property being rehabilitated with CDBG funds]*, 570.206(f) *[Submission of Applications for Federal Programs]*, 570.209 *[Guidelines for Evaluating and Selecting Economic Development Projects]*, 570.210 *[Prohibition on Use of Assistance for Employment Relocation Activities]*, and 570.309.

- g. Records which demonstrate compliance with § 570.503(b)(7) [*Agreements with subrecipients – reversion of assets*] or § 570.505 [*Use of real property*] regarding any change of use of real property acquired or improved with CDBG assistance.
- h. Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients.
- i. Records which demonstrate compliance with the requirements in § 570.606 regarding acquisition, displacement, relocation, and replacement housing.
- j. Fair housing and equal opportunity records containing:
 1. Documentation related to the recipient's AFH, as described in 24 CFR part 5, subpart A (§ 5.168).
 2. Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG funds. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.
 3. Data on employment in each of the recipient's operating units funded in whole or in part with CDBG funds, with such data maintained in the categories prescribed on the Equal Employment Opportunity Commission's EEO-4 form; and documentation of any actions undertaken to assure equal employment opportunities to all persons regardless of race, color, national origin, sex or handicap in operating units funded in whole or in part under this part.
 4. Data indicating the race and ethnicity of households (and gender of single heads of households) displaced as a result of CDBG funded activities, together with the address and census tract of the housing units to which each displaced household relocated. Such information shall be used only as a basis for further investigation as to compliance with nondiscrimination requirements. No recipient is required to attain or maintain any particular statistical measure by race, ethnicity, or gender in covered programs.
 5. Documentation of actions undertaken to meet the requirements of § 570.607(b) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of low and moderate income persons and the use of local businesses.
 6. Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with CDBG funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of recipient's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities.

Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.

7. Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color, national origin or sex in administering a program or activity funded in whole or in part with CDBG funds.
- k. Financial records, in accordance with the applicable requirements listed in § 570.502, including source documentation for entities not subject to 2 CFR part 200 [*Uniform administrative requirements*]. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity. Grantee records pertaining to obligations, expenditures, and drawdowns must be able to relate financial transactions to either a specific origin year grant or to program income received during a specific program year.
- l. Agreements and other records related to lump sum disbursements to private financial institutions for financing rehabilitation as prescribed in § 570.513 [*Lump sum drawdowns for financing of property rehabilitation activities*]; and
- m. Records required to be maintained in accordance with other applicable laws and regulations set forth in subpart K [*Other Program Requirements*] of this part.”

Procedure

To ensure record-keeping requirements are met, the City of Dayton implements checklists and contractual stipulations so that all necessary documentation is available after activities are complete. As of 2019, the City formalized its record-keeping procedures by implementing a CDBG File Folder Checklist to monitor the inclusion of required documentation in the project/activity folder. Each item on the checklist must be initialed by the project manager and any variation or missing documentation must be noted. Additionally, the City added language to its agreement that requires subrecipients to submit a full copy of all project files (financial and programmatic) to the City of Dayton at the time of contract expiration and/r project completion. Non-compliance with this stipulation may result in future funding delays, monitoring findings and/or repayment from a subrecipient.

For each activity, the following types of documentation must be kept for a period not less than four 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 loan payments for the last time (when the loan is fully paid off).

Below are types of records that must be maintained for these policies:

Program Records:



- Efforts to maximize participation by the private sector;
- Forms of assistance used;
- Compliance with matching requirements; and
- Compliance with set-aside and funding commitment requirements.

Program Administration Records:

These program administration records must be maintained:

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

Project Records:

- Description of each project:
 - Location (with a map);
 - Form of assistance
- 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

Financial Records:

These financial records must be maintained:

- Source and application of funds;
- Source and application of program income, repayments and recaptured funds; and
- Budget control measures, including periodic account reconciliations.

Compliance with Federal Requirements Records:

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; and
- Debarment and suspension.

Grantee Activity Records:

Individual case files must contain AT A MINIMUM:

- Eligibility of the activity;
- Evidence meeting national objective;
- Subrecipient agreement, if applicable;
- Bids or contracts;
- Characteristics and location of the beneficiaries;
- Compliance with special program requirements;
- Environmental review records;
- Budget and expenditure information (including draw requests); and
- Status of the project/activity.



National Objective Records:

- LMI Area Benefit records:
 - Boundaries of the service area (including a map);
 - Income characteristics of families and unrelated individuals in service area;
 - Data of area qualifies under exception rule, if percentage of LMI persons in service/area is below 51%.
- LMI Limited Clientele records: See LMC Under National Objectives section of Manual
- LMI Housing records: See LMH under National Objectives section of Manual
- LMI Job Creation/Retention records¹: Records to be maintained for job creation activities are differentiated by whether the grantee will document whether the jobs will be available to LMI persons or whether LMI persons will hold the jobs.



¹ When grantee chooses to document that at least 51 percent of the jobs will be available to LMI persons, documentation for each assisted business shall include a copy of a written agreement, containing:

- A commitment by the business that it will make at least 51 percent of the full-time equivalent (FTE) jobs available to LMI persons and will provide training for any of those jobs requiring special skills or education;
- A listing by job title of the permanent jobs to be created, indicating which jobs will be available to LMI persons, which jobs require special skills or education, and which jobs are part-time;
- A description of the actions to be taken by the grantee and business to ensure that LMI persons receive first consideration for these jobs; and

- National Objective - Slum/Blight Area/Spot Basis records: See SBA/SBS under National Objectives section of Manual
- National Objective - Slum/Blight Urban Renewal records: See Urban Renewal under National Objectives section of Manual
- National Objective - Urgent Need records: See Urgent Need Under National Objectives section of Manual

Income Documentation Records:

- Annual income is the gross amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination.
- Grantees must determine annual income for a person, family or a household only for direct benefit activities only.
 - Direct benefit activities include activities such as homeownership assistance or receipt of public services.
 - Family: grantees need documentation for all national objectives except for LMI housing.
 - Household: grantees need documentation necessary for LMI housing.
- Grantees do not need to determine income eligibility for the following national objectives: area benefit, presumed limited clientele, slum/blight, or urgent need.

-
- A listing by job title of the permanent jobs filled, which jobs were available to LMI persons, as well as a description of how first consideration was given to such persons for these jobs. The description should include what type of hiring process was used; names of LMI persons interviewed for a particular job; and which LMI interviewees were hired.

Where the grantee chooses to document that at least 51 percent of the jobs will be held by LMI persons, documentation for each assisted business should include a copy of a written agreement, containing:

- A commitment by the business that at least 51 percent of the permanent jobs on a full-time equivalent (FTE) basis will be held by LMI persons;
- A listing by job title of the permanent jobs to be created (identifying which are part-time, if any);
- A listing by job title of the permanent jobs filled and which jobs were initially held by LMI persons; and
- For each LMI person hired, information on the size and annual income of the person's family prior to the time the person was hired for the job, or evidence the person qualifies as presumed to be LMI based upon location of the business or the person's residence.
- For benefit based on job retention records:
 - a. Evidence that, in the absence of CDBG assistance, the jobs would be lost;
 - b. For each business assisted, a listing by job title of permanent jobs retained, indicating which of those jobs are part time and (where it is known) which are held by LMI persons at the time the assistance is provided;
 - c. Where applicable, identification of any of the retained jobs (other than those known to be held by LMI persons) which are projected to become available to LMI persons through job turnover within two years of the time CDBG assistance is provided, and information on how the turnover projections were calculated;
 - d. For each retained job claimed to be held by a LMI person, information on the size and annual income of the person's family or evidence that the person may be presumed to be LMI based on the location of the business or the person's residence; and
 - e. For jobs claimed to be available to LMI persons based on job turnover: a description covering the items required for "available to" jobs identified above; a listing of each job that has turned over to date, indicating which of those jobs were either taken by, or made available to LMI persons; and a description of how "first consideration" was given to LMI persons for those jobs.

- Grantees must ensure that applicants to their programs and activities are treated equitably. For this reason, the same income definition must be used within a particular program or activity.

Please Note: Income documentation should be collected for these activities, but it is not a requirement that third party verification (e.g., verification of employment) be obtained; however, this method may be a best practice. Income verification forms may be used to document income.

Section 504 Records:

Must be maintained in separate 504 file:

- A copy of the self-evaluation
- A copy of the transition plan;
- A list of interested persons who were consulted;
- A description of areas and buildings examined and any problems identified;
- A description of modifications made and remedial steps taken to comply with the Regulations; and
- Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

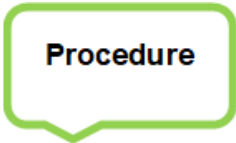
Record Retention

The CBDG record retention period is five years 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.

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

CDBG Loans: If CDBG is provided as a loan, Subrecipient must maintain documentation for a period of five years after the CAPER that reports on the loan payments for the last time (when the loan is fully paid off).

Please Note: The City of Dayton, will update this at least once annually, due to ongoing changes in reporting requirements for HUD. Any of these documents can also be automated at the discretion of the Planning and Economic Development Department.



To ensure record-keeping requirements are met, the City of Dayton implements checklists and contractual stipulations so that all necessary documentation is available after activities are complete. As of 2019, the City formalized its record-keeping procedures by implementing a CDBG File Folder Checklist to monitor the inclusion of required documentation in the project/activity folder. Each item on the checklist must be initialed by the project manager and any variation or missing documentation must be noted. Additionally, the City added language to its agreement that requires subrecipients to submit a full copy of all project files (financial and programmatic) to the City of Dayton at the time of contract expiration and/or project completion. Non-compliance with this stipulation may result in future funding delays, monitoring findings, and/or repayment from a subrecipient.

City of Dayton Record Keeping

Consolidated Planning Process Documents

Financial Record Requirements – Chart of Accounts

Case files by activity type, national objective

Income documentation

Section 504 records

Employment and Contracting

Real Property

Subrecipients & Internal Department Record Keeping

Subrecipients and Internal Departments files must be accurate, complete, orderly, and easily accessible for CDBG funds and reporting purposes to HUD. Records should describe the activity in detail, including the activity’s location, documentation of funding allocated and proof of disbursement, proof of the methodology used to determine eligibility (income verification, geographic location, LMC status, etc.), documentation of compliance with all CDBG regulations pertaining to the activity, all policies and procedures required through the CDBG program, and all additional requirements set forth through 24 CFR 570 Subpart K.

For subrecipients, there are three main categories of records that must be maintained:

- Administrative Records – Administrative records including document the overall administration of the CDBG program, records of administrative systems and detail of their organization
- Financial Records – Financial records document the financial transactions of the subrecipient, both generally and related to CDBG expenditures, and indicate the financial wellbeing and activities of the subrecipient.
- Project Files – Project files provide information about specific beneficiaries and activities undertaken with the CDBG funding.

For additional monitoring requirements for subrecipients for HUD the City follows, see: <https://www.hudexchange.info/sites/onecpd/assets/File/Managing-CDBG-Subrecipient-Oversight-Chapter-5.pdf>

For Internal Departments, there are three main categories of records that must be maintained:

- Administrative Records – Administrative records including document the overall administration of the CDBG program.
- Financial Records – Financial records document the financial transactions of the subrecipient, both generally and related to CDBG expenditures, and indicate the financial wellbeing and activities of the subrecipient.
- Project Files – Project files provide information about specific beneficiaries and activities undertaken with the CDBG funding.

Procedure

To ensure subrecipient record-keeping requirements are met, a Subrecipient File Checklist was created, the City of Dayton completes annual desk or on-site monitoring of all subrecipients. A portion of each monitoring includes file review and record-keeping verification that is adjusted to meet the requirements and beneficiary data of each individual activity. The City of Dayton implemented updates to its record-keeping and retention requirements for subrecipient agreements in 2019. This updated language ensures subrecipients agree to the necessary record-keeping and retention requirements via agreement signature, and explains the types of records that are required to be kept. Additionally, the City added language to its agreements that requires subrecipients to submit a full copy of all project files (financial and programmatic) to the City of Dayton at the time of contract expiration and/or project completion. Non-compliance with this stipulation may result in future funding delays, monitoring findings, and/or repayment from a subrecipient.

Verify Programmatic Records

- **Task:** Verify that all required activity records are included in the file
- **Completed by:** CDBG Administrator
- **Documentation:** Subrecipient File Checklist

Verify Financial Records and Supporting Documentation

- **Task:** Prepare activity records for future audit by third parties
- **Completed by:** CDBG Administrator
- **Documentation:** Subrecipient File Checklist; Final Reimbursement Request
- **Process to:** Finance for Final Reimbursement

Record Retention

Protection of Personal Identifiable Information

Adequate Source Documentation

Requests to Transfer Records

Methods for Collection, Transmission, and Storage of Information

Access to Records

Restrictions on public access to records

Records to identify source and application of funds

Records to show effective control over, and accountability for, all funds, property, and other assets

IDIS Activity Set Up

Each activity in IDIS is set up under one of the projects in an Action Plan. It is at the activity level that grantees supply HUD with details about the work they will carry out to meet project goals. Information entered at setup includes the activity name, location, proposed accomplishments, and program-specific data.

An activity must be funded before draws can be made for the activity. CDBG funds can be committed to an activity only if all required CDBG setup information has been entered.

A single activity may be funded by multiple CPD programs, provided the setup information required by each of the funding programs has been entered.

IDIS Drawdowns

Drawdowns may be made for an activity after it has been funded and, except for PI (Program Income), may only be made from the funding sources (or grant years) from which the activity was funded. The total amount drawn down cannot exceed the funded amount.

When working with drawdowns, keep in mind that program funds deposited in your local account (PI (program income) RL(revolving loan funds, LA (local accounts))) are to be spent before CDBG grant funds are drawn down from the Treasury.

Grant Closeout

The closeout of a grant is a process in which HUD determines that all applicable administrative and program requirements of the applicable Grant Agreement between HUD and the grantee have been completed. P&CD staff shall implement grant closeout procedures to verify all City CDBG policies have been followed in the implementation of each activity. Grant Closeout is an integral internal management process by which programmatic, financial and management staff verify that appropriate records demonstrating compliance with all applicable HUD regulations is on file, ready for audit.

Once HUD determines that all of the funds were expended and the activities were completed, or if the grantee requests initiation of the closeout process, the assigned HUD office should proceed with grant closeout. In general, a grant is ready for closeout when the following conditions are met:

1. All activities are eligible, were completed and met a national objective.
2. All grant funds were expended in full or all remaining funds are to be returned to HUD.
3. All reporting requirements were completed and submitted (except for the final report that is submitted during the closeout process, if applicable).
4. Any special conditions were met.
5. All audit and monitoring issues affecting the grant were resolved.

By signing the Grant Agreement, the grantee agreed to the general and special conditions of the contract and to cooperate with any reviews, including making available records requested by HUD or any other duly authorized representatives (e.g., the Government Accountability Office (GAO) and the Office of the Inspector General (OIG)).

The reporting submission requirement may vary by program to determine readiness for closeout. It should be noted that indicating that a grant is complete in the Integrated Disbursement and Information System (IDIS) and Disaster Recovery Grant Reporting system (DRGR) does not mean that the grant is closed. (Note: The January 17, 2014 enactment of the Omnibus Spending bill, ended the reporting requirements in FederalReporting.gov.) To close out the grant, NSP1, NSP2, NSP3, State/Entitlement CDBG, CDBG-R and CDBG Disaster Recovery grantees must send the completed and signed copy of the certification and closeout agreement and other required documentation requested by HUD to its local field office. **Please Note: This Notice also contains an updated version of the HUD form 7082 (dated 04/1993) (<http://portal.hud.gov/hudportal/documents/huddoc?id=7082.pdf>); as modified, the form includes the submission of the grantee's DUNS Number.**

This notice includes instructions that outline and explain the general criteria for the closeout process. Additional information regarding the compliance requirements for each specific program is provided in separate sections of this Notice. For every grant, *grantees and the appropriate CPD staff must review the applicable Federal Register Notices and any other waivers to determine the procedures and requirements (i.e. administrative, planning, public services, affordable rental housing or other limitation or set-asides) which apply to the specific grant.* Rather than repeat the basic program rules of the CDBG program such as activity eligibility, national objective and audit requirements for each of the specific programs contained in this Notice, they are provided in this section:

Activity Eligibility and National Objective Requirement for State/Entitlement CDBG and CDBG-R Programs All activities undertaken must be eligible and meet one of the CDBG program national objectives, i.e. benefit low and moderate-income (LMI) persons, prevent or eliminate slums or blight, or meet community development needs having a particular urgency (Section 105(a) of the Housing and Community Development Act (HCDA)); 24 CFR 570.482(a) and 570.483 - State, 24 CFR 570.201 -570.208 - Entitlement). The HCDA requires State and entitlement CDBG grantees to certify that over a one- two- or three-year certification period, not less than 70 percent of CDBG funds will be spent on activities that benefit low- and moderate-income persons [see 24 CFR 570.200(a)(3) for non-entitlement CDBG grantees in Hawaii and insular area grantees]. The eligible activities, overall benefit requirement and national objectives have been modified for CDBG-R and CDBG Disaster grants by waivers and alternative requirements. **Although the Neighborhood Stabilization Program (NSP) is considered a component of the CDBG program, it has different national objective requirements. Please refer to the eligibility and national objective standards for NSP in this Notice.**

A. Audits and Monitoring

States, local government and nonprofit organizations are required to comply with OMB Circular A-133 "Audits of States, Local Governments and Non-profit Organizations". CDBG grantees and that

expend \$500,000 or more in a year in Federal awards must have an audit conducted in accordance with OMB Circular A-133. If a grantee or subrecipient expends less than \$500,000 a year in federal awards, it is exempt from the A-133 audit requirements for that year; however, it is recommended the grantee or subrecipient extensively review its own files. Grantee and subrecipient records must be available for review or audit by officials of the federal agency, the grantee and the GAO.

Please note the following:

1. A grant that has open monitoring or audit findings affecting the grant cannot be closed out until all monitoring or audit findings have been resolved; and
2. Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the grantee's next single audit performed in accordance with OMB Circular A-133. The grantee may be required to repay HUD any disallowed costs based on a) the results of the audit, and/or b) additional HUD monitoring reviews conducted per the closeout agreement.

Grantees may contact the appropriate HUD office for further advice and guidance in closing out grants. Field Offices may contact the appropriate Division (Entitlement Communities, State and Small Cities, Disaster Recovery and Special Issues, and Neighborhood Stabilization Program) in the Office of Block Grant Assistance to discuss closeouts. The grant closeout is the process by which the Office of Community Renewal (OCR) determines that all applicable administrative actions and all work required by the Recipient and all requirements of the grant agreement between the Housing Trust Fund Corporation (HTFC) and the Recipient have been completed in accordance with the terms and conditions of the grant agreement.

Recipients are responsible for the orderly and timely closeout of any subcontracts they may have in connection with the grant, and the financial settlement of subcontractor claims. Subcontractor(s) should be advised to prepare their claims or invoices and submit them directly to the Recipient within 30 days of the completion of the project. Charges should be itemized in the same detail and manner as required of the Recipient by OCR since these subcontract costs will be included in the Recipient's final financial reports submitted to OCR. It is suggested that Recipients require that all subcontractors submit closeout data, final reports and final claims in time for the Recipient to prepare for the closeout process.

B. GRANT CLOSEOUT PROCESS

As is the case with all documentation required for implementing the NYS CDBG program, the grant closeout documents are very important and accuracy must be ensured in the completion of documents.

The Grant Closeout Transmittal Form will be issued by the Office of Community Renewal when all of the following have occurred:

- The project has been monitored and any outstanding monitoring findings or concerns have been resolved;
- A FINAL Request for Funds has been submitted;
- A FINAL Annual Performance Report has been submitted and approved and all accomplishments have been reported; and
- Any outstanding single audit findings or concerns have been resolved.

Recipients who must comply with A-200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal awards (Refer to Chapter 3 – Financial Management), must

submit the audit to its Community/Economic Developer. If the audit contains findings the Recipient must submit a written response to the findings and a corrective plan of action.

VII. Program Policies and Procedures

Overview

The program policies and procedures requirements set by the Department of Housing and Urban Development (HUD) and documented below are a minimum, and should be followed accordingly. Programs requiring technical/procedural specifications related to housing construction/remediation, road engineering, and human resources shall adhere to the City of Dayton’s guidance documents relative to the appropriate subject.



Due to the diverse variety of project submissions through the Annual Competitive Process and the wide array of programs eligible under CDBG regulations, a one-size-fits-all approach to program policies and procedures is not prudent.

The project manager and PCD Grants Administrator for CDBG will work together to develop a subrecipient agreement that addresses each specific component of a subrecipient’s application and program.

Housing Activities

Homeowner Rehab

CDBG provides grantees the discretion to structure their homeowner rehabilitation programs to meet the needs of residents and ensure housing conforms to local codes and standards. Programs shall address repair, rehabilitation, or reconstruction of owner-occupied units. Specialist programs allowed through this funding include:

- Energy efficiency,
- Handicapped accessibility,
- Emergency repairs (but not whole-house rehabilitation),
- Weatherization,
- Live-Work units – improvements to the residential portion only.
- Homeownership Counseling for LMI households prior to participation in a homeowner rehabilitation program may be funded through CDBG.

Rehab Administration

Grantee may drawdown funds through escrow accounts, lump sum and revolving loans. Escrow Accounts are subject to the limitations listed in Chapter 4, Section 4.8. Interest earned on escrow accounts must be remitted to HUD at least quarterly. Lump sum drawdowns and revolving loans must follow rules stated in Chapter 11: Financial Management:

Public Services

Job Training

Job training programs that meet one of the CDBG program's national objectives as defined by CFR Part 570.208 which include: to benefit low/moderate income persons; to aid in the prevention of elimination of slum and blight; and to meet community development needs having a particular urgency.

Identify if a service is new or a quantifiable increase in the level of an existing service (see qualifying language in Chapter 7, Section 7.1.1). Funds cannot be a replacement of local or state monies already allocated to this service.

Funds may be used to pay for:

- Labor,
- Supplies and material for operating/maintaining the portion of the facility where the service is located,
- Leasing, equipment, and other property needs.

Homeless Outreach

Homeless Outreach programs that meet one of the CDBG program's national objectives as defined by CFR Part 570.208 which include: to benefit low/moderate income persons; to aid in the prevention of elimination of slum and blight; and to meet community development needs having a particular urgency.

Identify if a service is new or a quantifiable increase in the level of an existing service (see qualifying language in Chapter 7, Section 7.1.1). Funds cannot be a replacement of local or state monies already allocated to this service.

Funds may be used to pay for:

- Labor,
- Supplies and material for operating/maintaining the portion of the facility where the service is located,
- Leasing, equipment, and other property needs.

Public Facilities and Improvements

Asphalt Resurfacing

Asphalt resurfacing is a regular component of Dayton's Annual Action Plans. This program provides funding for the resurfacing of eligible roadways within the City of Dayton under the area benefit criteria. The project is executed by City of Dayton, Department of Public Works, Division of Civil Engineering, and requires adherence to the following guidance documents:

- Construction & Material Specifications
- Construction Standards
- Street Cut Rules & Regulations

Procedure

Engineering coordinates with Planning and Community Development on budget available for resurfacing activities

Engineering selects streets and alleys based on pavement distresses, completed utility projects, and location within CDBG Eligible area.

Engineering submits proposed list to Planning and Community Development for eligibility and environmental review.

Engineering requests PEP Goal from the Human Relation Council on the proposed project based on work to be performed and budget for the project

Engineering and Business Office prepare bidding paperwork and publish bid in newspaper (2 weeks) and on City's webpage

Bids reviewed to ensure CDBG Requirements are met (HRC, Law, Engineering)

Budget set up, contracts created, submitted for Commission Approval (Finance, Engineering, Law, City Manager, Contractor)

Engineering holds pre-construction meeting with Contractor to discuss requirements on the project and answer any questions the Contractor might have.

Engineering sends notice to proceed to Contractor to begin work

Engineering inspects work being performed and tracks quantities for future payment

Business Office conducts site interviews with workers

The Human Relation Council visits sites and is made aware when DBE Contractors are on site

Contractor submits payment requests which Engineering reviews and sends copy to Planning and Community Development when approved

Business Office requests and reviews payrolls for time period of requested payment, once approved check is requested from Finance and payment is made to Contractor

Contractor receives final check when work is satisfactorily completed and necessary paperwork is submitted and approved.

Engineering files contract paperwork away and retains for 5years +

Alley Resurfacing

Alley resurfacing is a regular component of Dayton's Annual Action Plans. This program provides funding for the resurfacing of eligible roadways within the City of Dayton under the area benefit criteria. The activity may be performed by external vendors determined through a bid process, or by the Street Maintenance Division of Public Works.

The project is executed by City of Dayton, Department of Public Works, Division of Civil Engineering, and requires adherence to the following guidance documents:

- Construction & Material Specifications
- Construction Standards
- Street Cut Rules & Regulations

When external vendors perform the alley resurfacing work, the process for Residential Asphalt Resurfacing is followed.

RYS Capital Improvements

Acquisition, Construction, Reconstruction, Rehabilitation or Installation of public facilities and improvements are eligible. Activities can be executed by grantee, sub-recipient, or other nonprofit. Maintenance and repair are ineligible. Must follow guidelines in Chapter 6, Section 6.1.2

Area Benefit Criteria - must benefit all residents of an area where at least 51% of residents are LMI. Following records must be retained: service area boundaries, documentation area is primarily residential (zoning map), income characteristics of households in service area (Census/ACS).

Slum & Blight

Nuisance Abatement Program

The Nuisance Abatement Program addresses issues ranging from residential asbestos surveys and abatement to residential unit demolition.

Procedure

- Housing, Planning and PMB establish demolition budget for fiscal year
 - Nuisance supervisor provides specifications for contract, which may identify specific addresses
 - Business manager prepares bid documents(memo to Civil Engineering, formal specification packet)
 - Business manager requests PEP goal from HRC based on specifications
 - Bid documents sent to Civil Engineering
 - Civil Engineering directs bidding process
 - Approved contract is returned to Housing Inspection
 - Pre-demolition meeting is held in Civil Engineering; Nuisance supervisor is present to answer any contractor questions
 - Contractors receive Notice(s) of Possession to begin work
 - Nuisance Abatement Specialists conduct site checks and tracks work for payment
 - HRC visits sites to track compliance with goals
 - Contractors submit invoices as NOPs are completed
 - Invoices are processed by Business Manager and her staff*
 - Contractor receives final payment once contract is complete
 - Contracts are maintained indefinitely
- *retainer held per contract requirements

Administration

City of Dayton may utilize up to 20% of it allocation for the following administrative functions:

- Grant administration
- Planning services
- Indirect cost allocation

Indirect Cost Allocation

- City of Dayton executes public services through an approved cost allocation plan commissioned annually through the Department of Finance.

Internal Programs

MOUs

MOUs with all City Department/Divisions that use CDBG funding must include:

- specified program/project/activity description;
- policies/procedures for specified program;
- staff responsibilities;
- terms and uses of funding;
- monitoring;
- records to be maintained.

Documents to be transmitted to Community Development Division; reversion of assets; applicability of federal regulatory and statutory requirements

Planning Services

CDBG funds two full-time positions within the Planning Division of the Planning & Community Development Department. Currently, the roles of Chief Planner and a Planner I position receive these funds. These positions staff the Plan Board and Landmarks Commission, providing case review, and recording secretary functions for each.

VIII. Cross-Cutting Requirements

Relocation & Acquisition

Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (URA)

Projects utilizing any federal funds in the acquisition, rehabilitation or demolition of real property must meet the requirements for real property acquisition and/or displacements. The requirements are listed below:

- **For Real Property Acquisition** (Involuntary Acquisition – under threat or use of eminent domain)
 - Appraise property before negotiations;
 - Invite the property owner to accompany the appraiser during the property inspection;
 - Provide the owner with a written offer of just compensation and a summary of what is being acquired;
 - Pay for property before possession; and
 - Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.
 - Voluntary acquisitions differ. All additional requirements being will be met as stated in 49 CFR 24.101(b) and HUD Handbook 1378 chapter 5.
- **For Residential Displacements**
 - Provide relocation advisory services to displaced tenants and owner occupants;
 - Provide a minimum 90 days written notice to vacate prior to requiring possession;
 - Reimburse for moving expenses; and

- Provide payments for the added cost of renting or purchasing comparable replacement housing.
- **For Nonresidential Displacements (Business, Farms, and Nonprofit Organizations)**
 - Provide relocation advisory services.
 - Provide a minimum 90 days written notice to vacate prior to requiring possession.
 - Reimburse for moving and reestablishment expenses.

CDBG assisted projects may also be subject to Barney Frank Amendment Section 104(d) requirements as described in 24 CFR Part 42. The Section 104(d) requirements may be triggered when displacement occurs as a result of demolition or conversion for a CDBG project. The primary requirements that may be triggered under Section 104(d) are:

- Replacement housing payments of up to 60 months for displaced tenants whose incomes are equal to or below Section 8; and
- Replacement of rental housing that is demolished or converted to a use other than housing renting at or below the local fair market rents on a one-for-one basis.

Under this Amendment, the intent of the law is fulfilled only if the City follows its residential antidisplacement and relocation assistance plan. The City's Residential Anti-displacement and Relocation Assistance plan is included in the Consolidated Plan.

Procedure

All CDBG projects involving real property acquisition and/or residential or nonresidential displacement will include a checklist for the program manager to complete to ensure all policy requirements are met. Any CDBG project involving displacement must obtain additional approval from the department director during the eligibility determination phase.

Fair Housing, Accessibility, and Equal Employment Opportunity

Consolidated Plan Requirements

In accordance with the Fair Housing Act, the Secretary requires that CDBG grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. As part of the certification to affirmatively further fair housing that grantees are required to submit with their consolidated plan, the City of Dayton is required to complete an analysis of impediments to fair housing choice within one year of the effective date of the Consolidated Plan Rule (February 6, 1995). Therefore, the City of Dayton will complete an analysis of impediments to fair housing choice and to take actions to overcome the effects of any impediments identified through that analysis. The City of Dayton assumes responsibility of the Fair Housing Plan. Furthermore, the City of Dayton will provide annual updates and take the appropriate action and document such action to overcome the identified impediments to fair housing choice.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, age, familial status, or national origin.

Procedure

The City of Dayton will review its plan annually and take the necessary steps to overcome identified impediments to fair housing choice. Every five years, in conjunction with the development of the Consolidated Plan, the City of Dayton will prepare and submit to HUD the Analysis of Impediments (AI) and Fair Housing Actions Plan (FHAP). Every year, as part of the CAPER, the Human Relations Council (HRC) will report its accomplishments towards goals of the FHAP.

Fair Housing

The City of Dayton prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. Whenever federal funds are utilized for housing and urban development, the City of Dayton will further fair housing through various meaningful actions such as:

- Developing affordable housing;
- Removing barriers to development of affordable housing in areas of high opportunity;
- Strategically enhancing access to opportunity through:
 - Targeted investment in neighborhood revitalization/stabilization;
 - Preservation or rehabilitation of existing affordable housing;
 - Promoting greater housing choice within or outside of areas of concentrated poverty and greater access to areas of high opportunity; and
 - Improving community assets such as quality schools, employment, and transportation

Procedure

During the eligibility determination phase, staff will ensure that the project aligns with the most recent Analysis of Impediments (AI) and Fair Housing Action Plan.

Prohibited Discrimination

Fair Housing Activities

The HRC is certified as a substantially equivalent agency with the United States Department of Housing and Urban Development (HUD). This means that HUD has determined that the City of Dayton enforces a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act.

The Human Relations Council is responsible for the civil rights enforcement of anti-discrimination ordinances outlined in the City of Dayton’s Revised Code of General Ordinances (R.C.G.O) 32.02-32.21 and 32.99. These ordinances protect our residents and visitors from discrimination in the areas of employment, housing, public accommodations, and credit transactions on the basis of an individual’s race, color, religion, sex, ancestry, national origin, place of birth, age, marital status, familial status, sexual orientation, gender identity, or disability.

Procedure

The Human Relations Council (HRC) will ensure all compliance with the recordkeeping policies. HRC will make records available for review at the request of the Community Development Division.

Affirmative Marketing

All HUD funded and City supported rental and homebuyer housing projects with five or more units are required to submit an Affirmative Fair Housing Marketing Plan (AFHM) for approval by HUD. The AFHM Plan details the marketing strategy designed to provide information and to attract eligible persons or families in the housing market area to the available units without regard to race, color, national origin, sex, gender identity, religion, marital status, familial status, disability, sexual orientation, ancestry, or any other basis prohibited by law.

The City of Dayton performs marketing campaigns for housing units of five (5) or more. The City of Dayton utilizes the Fair Housing logo and equal opportunity language where applicable. Additionally, City of Dayton websites, signage, radio advertisements, and social media are utilized to inform the public, owners, and potential tenants about policies and Fair Housing laws. The City of Dayton provides certain information in Spanish and has partnerships with groups that can provide oral and written translation services

Believing it important to ensure Fair Housing for all community members, the City of Dayton will maintain records for a reasonable period of time to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness. Efforts will be assessed routinely, and corrective actions will be implemented where appropriate.



To ensure affirmative marketing requirements are met, the Human Resource Council (HRC) utilizes marketing campaigns consistent with the Affirmative Fair Housing Marketing Plan. The HRC uses websites, signage, radio advertisements, and social media to attract eligible persons and families to available housing units without regard to race, color, national origin, sex, gender identity, religion, marital status, familial status, disability, sexual orientation, ancestry, or any other basis prohibited by law. HRC personnel will annually assess efforts and implement changes when appropriate.

Program Accessibility

The City of Dayton will be receptive to the needs and requests of disabled person(s) within the community when it is determined auxiliary aides are necessary. For section 504 compliance, the target population will include: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care. The City of Dayton will provide auxiliary aides and services, as necessary, such as:

- For persons with hearing impairments:
- Qualified sign language interpreters;
- Note takers;
- Telecommunication devices for deaf persons (TDD);
- Telephone handset amplifier;
- Assertive listening devices (devices that increase the sound in large group settings);
- Flashing lights (where aural communication is used, such as warning bells);
- Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
- Transcription services; and
- Closed and open captioning.

For persons with vision impairments:

- Qualified readers;
- Written materials translated into alternative formats (e.g., Braille, audio tape, large print);

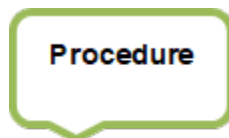
- Aural communication (e.g., Bells or other sounds used where visual cues are necessary); and
- Audio description services (i.e., through a headset, a narrator describes what the visually impaired person cannot see).

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given. Title II of ADA prohibits discrimination based on disability by State and local governments.



- Facilities
 - Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. Facilities constructed or altered in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained in Section 4.1.3(5) and Section 4.1.6(1)(j) of ADAAG shall not apply.
- Roads and Pedestrian Walkways
 - Title II specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.



Recognizing the importance of interpersonal communication, the City of Dayton remains receptive to requests for accommodations. The City of Dayton furnishes auxiliary aids and services, as necessary for persons with hearing and/or vision impairments. Additionally, the City remains committed to ensuring people with impairments are made aware of these accommodations and will work with organizations to ensure those affected receive the services they need. Where City of Dayton employees communicate with applicants and beneficiaries by phone, a TDD or equivalent system is available so long as it does not cause a financial or administrative burden.

Equal Employment Opportunity

The City of Dayton is an equal opportunity employer as stated in **HR Policy 1.01 EQUAL OPPORTUNITY EMPLOYER.**

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

The City of Dayton Civil Service Office creates and enforces the primary goals and objectives set forth in the City of Dayton Charter and Civil Service Board, as well as applicable elements of collective bargaining agreements, State of Ohio statutes, and the United States Code. To that end, the Civil Service Office ensures that the City of Dayton complies with all applicable Equal Opportunity and ADA requirements.

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

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

Steps that can be taken to prevent discrimination in employment include the following:

- Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review;
- Advertise employment opportunities and/or to recruit employees for project-related positions;
- Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin; and
- An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the grantee.

Specifically, Section 504 has a number of general prohibitions against employment discrimination. Grantees must ensure that the following items are adhered to:

- No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives Federal assistance.
- Any grantee cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.

In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the grantee. HUD regulations specify that an employer is prohibited from discrimination in the following instances:

- Recruiting, advertising, and processing of applications;
- Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring;
- Rates of pay and any other forms of compensation;
- Job assignments, classifications and descriptions, organizational structures, lines, progression, and seniority lists;
- Leaves of absence, sick leave, or any other leave;
- Fringe benefits available by virtue of employment;

- Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
- Employer sponsored activities (including social or recreation programs); and
- Any other term, condition, or privilege of employment.

Grantees may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.

Reasonable accommodation, under Section 504, in employment is determined on a case-by- case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

Procedure

The City of Dayton will follow all policies found in HR Policy 1.01 Equal Opportunity Employer. The City of Dayton, through the Department of Human Resources and Civil Service Board, will follow all federal regulations for equal opportunity employment.

Access for Disabled (Section 504)

Section 504 Target Population

Section 504 – Housing

Projects utilizing federal funding for new construction and substantial rehabilitation of multi-family rental housing must meet the requirements outlined in Section 504. The City of Dayton will ensure that program and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities.

A rehabilitation project is considered substantial when the rehab costs will be 75% or more of the replacement cost of the complete facility. All federally assisted newly constructed (developed for first occupancy on or after March 13, 1991) containing five or more units and substantial rehabilitation of multi-family rental housing with fifteen (15) or more units must meet the following requirements.

- A minimum of five percent of total dwelling units (but not less than one unit) accessible for individuals with mobility impairments;
- An additional 2% of dwelling units (but not less than one) accessible for persons with hearing or vision impairments; and
- All units made adaptable that are on the ground level or can be reached by an elevator.

Procedure

All housing and community development projects utilizing federal funds will include a checklist the program manager will complete to ensure all policy requirements are met.

Section 504 – Facilities

Accessibility Requirements for Pubic Facilities and Infrastructure Construction and renovation of buildings and facilities assisted with CDBG funds are subject to the some or all (and potentially

other) federal and state accessibility requirements. Although not discussed here, some accessibility requirements also apply to the activities and program operations assisted with CDBG funds.

Procedure

Because a Section 504 plan is both required of the federal CDBG Program, and because it is a valuable part of the planning process, the grantee shall undertake the following steps:

1) Published advertisements for the above program shall include:

- **No persons with disabilities will be denied participation in public hearings;**
- **Persons with specific needs can call ahead to obtain certain accommodations for their participation;**
- **Disabled person will not be denied program services or opportunities to participate;**
- **Disabled persons will not be denied employment opportunities;**
- **Date, location, and time of a public hearing to invite project discussion and proposals;**
- **Offer of assistance to disabled persons**

2) Section 504 Master File will contain:

- **A copy of the self-evaluation;**
- **A copy of the transition plan, if needed;**
- **A list of interested persons who were consulted;**
- **A description of areas and building examined and any problems identified;**
- **A description of modifications made and remedial steps taken to comply with the regulations as needed;**
- **Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards where applicable.**

Special Requirements (Grantees with 15 or more Employees)

There are two additional requirements for Section 504 compliance for grantees (called “recipients” under 504 to include public agencies, instrumentalities, and public and private entities including nonprofits) with fifteen (15) or more full or part-time employees:

- Designation of responsible employee and adoption of grievance procedures:
- At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
- A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.



- Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age disability, religion and familial status may file a complaint. The complaint may be filed with the grantee or HUD.
- Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. In summary, the grantee must provide notice regarding the following:
 - Grantees must publish in a newspaper of general circulation the notice “Policy of Non- Discrimination on the Basis of Disability Status.”
 - Grantees must include the same language found in their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
 - Grantees must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered.
 - Methods for ensuring participation may include qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

Environmental Review

Overview

All activities funded with CDBG funding are subject to the federal National Environmental Policy Act (NEPA). NEPA (40 CFR 1500-1508) requires that information regarding the environmental impact of an activity is available before work begins and/or funds are expended.

- Subrecipients may not spend public or private funds (CDBG, other Federal or non- Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until they have received notice of environmental clearance.
- Grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).
- Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant’s own funds, prior to obtaining environmental clearance.

During the environmental review process, the term “commitment of funds” may include:

- Executing a legally binding agreement;
- Expending CDBG funds;
- Utilizing non-CDBG funding for actions that may have an adverse impact (demolition, site filling, site excavation, etc.); and
- Utilizing non-CDBG funding for actions that may be “choice limiting” (real property acquisition, property leasing, construction, demolition, or rehabilitation of structures or buildings, building or structure relocation, site conversion of land or buildings/structures.

It is acceptable for grantees to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review process is satisfactorily completed.



All Environmental Review activities must be complete before an activity or project begins and/or the City of Dayton enters into an agreement with a subrecipient. The CDBG project manager must coordinate with the PCD Grant Administrator for CDBG and the PCD Grants Administrator for Cross Cutting Requirements to ensure all components are complete. An Environmental Review is not considered complete until the ER Grant Administrator provides documentation that all components are satisfied.

Exemptions

Certain activities which by their nature are unlikely to have any direct impact on the environment may be exempt from the procedural requirements of environmental review. If a project is determined to be exempt, the subrecipients/entities is required to document the conditions for exemption in writing.

Listed below are examples of activities which may be exempt from environmental review:

- Public service activities that will not have a physical impact or result in any physical changes;
- Information and financial services;
- Engineering and design costs;
- Environmental and other studies;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;

Responsibility Entity & Official Designations

In order to fulfill its obligations under 24 CFR Part 58, the City of Dayton, as Responsible Entity (RE) should designate two responsible parties:

- **Certifying Officer:** The responsible entity must designate a Certifying Officer -- the "responsible Federal official" -- to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.
- **Environmental Officer:** The funding recipient should also designate an Environmental Officer. The Environmental Officer is responsible for conducting the environmental review including such tasks as: writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings.

Procedure

The Certifying Officer is the Director of the Department of Planning and Community Development.

The Environmental Officer is the Planning and Community Development Grant Administrator for Cross-Cutting Requirements.

Environmental Review Record

Each responsible entity must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review upon request.

The ERR shall contain all the environmental review documents, public notices (and proof of their publication), and written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, decision making and actions pertaining to a particular project. The document shall:

- Describe the project and each of the activities comprising the project, regardless of individual activity funding source; and
- Evaluate the effects of the project or the activities on the human environment;
- Document compliance with applicable statutes and authorities; and
- Record the written determinations and other review findings required by 24 CFR Part 58.
- The ERR will vary in length and content depending upon the level of review required for the categories of activities.

Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

Environmental Clearance

Classifications

Uniform Relocation Act and 104(d)

Lead-Based Paint

Overview

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. Most private housing, public housing, Federally owned housing, and housing receiving Federal assistance are affected by this rule.

Before ratification of a contract for housing sale or lease, sellers and landlords must:

- Give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards ("Protect Your Family From Lead In Your Home" pamphlet, currently available in English, Spanish, Vietnamese, Russian, Arabic, Somali).

- Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).
- Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.
- Sellers must provide homebuyers a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

Sellers and lessors must retain a copy of the disclosures for no less than three years from the date of sale or the date the leasing period begins.



Pursuant to federal law, the City of Dayton requires lead-based paint disclosures to be issued on properties built before 1978. These disclosures apply to any house, public housing, federally-owned housing, or housing receiving federal assistance that is affected by Act and Title X. The City of Dayton strives to protect families from exposure to lead from paint, dust, and soil, and thus will monitor transactions to ensure sellers and landlords comply with all applicable rules and regulations under Title X.

Types of Requirements

The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing. The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. For CDBG projects, the lead based paint requirements falls into three major categories: notification, Lead Hazard Assessment/Evaluation, and Lead Hazard Reduction.

Notification

- Lead Hazard Information Pamphlet - Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent. Pamphlets should be provided to all households at time of application.
 - It is recommended that grantees develop an acknowledgement form and have all households sign to document they received and understood the pamphlet.
 - A copy of this acknowledgment form should then be placed in the file.

- Disclosure - Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
 - A disclosure notice must be provided to purchasers before closing so that they are aware that there may be lead in the home they are purchasing. A copy of the disclosure notice must be placed in the file. Disclosure notice provided to tenants before moving into a unit should be kept by landlord in tenants file
 - Tenants must receive a disclosure notice before moving into the unit. Ideally, they should receive a disclosure notice at time of application so they can make an informed decision when choosing housing for their household. A copy of the disclosure notice should be kept by the landlord in the tenant's file.
- Notice of Lead Hazard Evaluation or Presumption - Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.
 - A copy of this notice must be provided to owners and tenants within 15 days of the evaluation.
 - A copy of this notice should be kept in the project file.
- Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
 - A copy of this notice must be provided to owners and tenants within 15 days of the project achieving clearance.
 - A copy of this notice should be kept in the project file.

Lead Hazard Assessment/Evaluation:

- Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

Lead Hazard Reduction:

- Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

Exemptions

The City of Dayton will document all exemptions in the project file. Special attention to the exemption “The rehabilitation will not disturb any painted surfaces” should be made. Many emergency repair programs replace only water heaters or roofs where no painted surfaces are disturbed and thus may be exempt from the Rule. Some projects are exempt if they meet the criteria listed below:

- Housing units constructed after 1978.
- Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural

damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.

- The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.
- Housing “exclusively” for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit.
- An inspection performed according to HUD standards found the property contained no lead-based paint.
- According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.
- The rehabilitation will not disturb any painted surface.
- The property has no bedrooms.
- The property is currently vacant and will remain vacant until demolition.



Rehabilitation Project Requirements

CDBG funds may be used rehabilitation of existing units. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies.

Calculating the Level of Assistance. The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

- Per unit rehabilitation hard costs (regardless of source of funds); or
- Per unit Federal assistance (regardless of the use of the funds).

To make this determination, it helps to understand several terms:

- **Rehabilitation Hard Costs.** The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.
- **Lead Hazard Evaluation and Reduction Costs.** Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
- **Federal Assistance.** Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

Requirements for Projects Receiving Rehabilitation Assistance Up to and Including \$5,000 per Unit

Projects where the level of rehabilitation assistance is less than or equal to \$5,000 per unit must meet the following requirements:

- The goal is to “do no harm.” Therefore all work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices (see the attached exhibits).

- Lead Hazard Evaluation. Paint testing must be conducted to identify lead-based paint on painted surfaces that will be disturbed or replaced. Alternatively, grantees may presume that these surfaces contain lead-based paint.
- Lead Hazard Reduction. Grantees must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint. – If lead-based paint is detected or presumed, safe work practices must be used during rehabilitation. – Clearance is required by a certified clearance examiner.
- Notices must be provided to owners and tenants: – The Lead Hazard Information pamphlet; – The Notice of Evaluation (if paint testing is performed) or Notice of Presumption (if paint testing is not performed); and – The Notice of Lead Hazard Reduction.
- In short, for rehabilitation projects where the level of assistance is less than or equal to \$5,000 per unit, workers must be trained in safe work practices, notices must be provided to owners and tenants, and clearance must be achieved.

Requirements for Projects Receiving Rehabilitation Assistance Between \$5,000-\$25,000 per Unit

Projects where the level of rehabilitation assistance is between \$5,000 and \$25,000 per unit must meet the following requirements:

- The goal is to “identify and address lead hazards.” A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls.
- Lead Hazard Evaluation. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.
- Lead Hazard Reduction. If the risk assessment identifies lead-based paint hazards interim controls must be implemented to address lead-based paint hazards. – Interim controls must be performed by qualified professionals using safe work practices. – Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.
- Options. There are two options, as follows:
 - The grantee is permitted to presume that lead-based paint is present and that lead-based paint hazards exist. In such cases, evaluation is not required. The grantee must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.
 - The grantee is also permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the grantee/subrecipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.)
- Notices must be provided to owners and tenants: – The Lead Hazard Information pamphlet; – The Notice of Evaluation (if a risk assessment is performed) or Notice of Presumption (if a risk assessment is not performed); and – The Notice of Lead Hazard Reduction.
- In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting and budget.

Procedure

When federal funds are used on rehabilitation projects for units built prior to 1978, the City of Dayton will apply the Lead Safe Housing Rule. The City of Dayton will calculate the level of assistance follow all applicable policies to ensure compliance under this section. The City of Dayton strives to adhere to the “do no harm” safety point, and all workers will be trained to comply with this standard.

Acquisition, Leasing, Supportive Services Project Requirements

Projects utilizing any federal funds in the acquisition, leasing, and supporting services of housing units must meet the requirements listed below:

- **Lead Hazard Assessment.** A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
- **Lead Hazard Reduction.** Deteriorated paint must be corrected using paint stabilization methods. Paint stabilization must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
 - **Safe Work Practices.** Safe work practices are required so workers must be appropriately trained or supervised.
 - **Clearance.** Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.
- **Notification**
 - **Lead Hazard Information Pamphlet.** The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. Grantees do not have to provide the pamphlet if they can document that it has already been received.
 - **Notice of Lead Hazard Reduction Activity.** The notice must be provided within 15 calendar days of the date when the paint stabilization is completed.

Procedure

All federally funded projects involving real property acquisition will include a checklist for the program manager to complete to ensure all policy requirements are met.

Lead Compliance

Renovation, Repair, and Painting Rule

Contractors who perform performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. A EPA-certified renovator is required to conduct renovation, repair, and painting projects that disturbs lead-based paint in pre-1978 homes, child care facilities and schools. All contractors must follow the safe-work practices listed below:

- Contain the work area;
- Minimize dust; and
- Clean up thoroughly

Contractors performing renovation, repair and painting projects that disturb lead-based paint must provide owners and occupants of child care facilities and to parents and guardians of children

under age six that attend child care facilities built prior to 1978 the lead hazard information pamphlet “Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools”. All housing receiving federal assistance must still comply with the above policy.

NOTE: The rule does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior. Window replacement is not minor maintenance or repair.

Procedure

The grant administrator will keep all required documentation to support the policy requirements. Such documents should include: proof that the contractor is EPA certified for all repair, renovation, and painting products that disturb lead-based paint and proof that owners and occupants were given the lead hazard information pamphlet. An inspection shall be conducted by the grant administrator to ensure all safe-work practices listed in the policy are followed.

Labor Laws & Requirements

Projects utilizing federal funds will comply with the following labor laws:

Davis Bacon and Labor Standards

Triggered when construction work over \$2,000 is financed in whole or in part with CDBG funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account Labor Standards labor (construction carried out by employees of the grantee).

Procedure

The City of Dayton maintains records to ensure compliance with the Davis-Bacon Act and Related Acts. Documentation generally consists of the cost of the project, the size of the project, and what type of project. The City of Dayton tracks whether the project is for the construction, alteration, or repair of public buildings or public works. Additionally, the City of Dayton routinely conducts reviews to ensure all standards are met. These reviews will assess whether the City of Dayton is compliant with all rules and regulations and add recommendations where appropriate.

Copeland Anti-Kickback Act

Requires that workers be paid weekly, that deductions from workers’ pay be permissible, and that contractors maintain and submit weekly payrolls.

Procedure

The City of Dayton maintains records to ensure compliance with the Anti-Kickback Act. Documentation consists of weekly payroll to ensure compliance with the requirements. Additionally, the City of Dayton routinely conducts reviews to ensure all standards are met. These reviews will assess whether the City of Dayton is compliant with all rules and regulations and add recommendations where appropriate.

Contract Work Hours and Safety Standards Act

Applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week.

Section 3, Jobs and Contracts

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of training, employment and other economic opportunities that arise through HUD-financed housing and community development assistance to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with federal, state, and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

Section 3 applies when a housing construction, housing rehabilitation or other public construction project or activity exceeds certain thresholds. Contractors and subcontractors providing services on projects for which the total amount of the housing and community development assistance exceeds \$200,000 and the amount of the contract or subcontract exceeds \$100,000 are required to comply with Section 3. If a grantee receives housing or community development assistance for a covered project that is funded in part with CDBG funds, Section 3 requirements apply to the entire project or activity.

It is important to document efforts made to comply with Section 3 through recordkeeping. Files should contain memoranda, correspondence, advertisements, etc., illustrating contractor and subcontractor attempts to hire low income residents and business concerns.



The HRC administers Section 3 for the City of Dayton. The HRC, and its Business and Technical Assistance staff, routinely establishes inclusion goals for Section 3 contractors and workers. The HRC publishes Section 3 information on its website at: <http://daytonhrc.org/business-technical-assistance/certification/hud-section-3/>. The information provided on the website will consist of eligibility and reference materials. The HRC will routinely monitor this information and update when appropriate.

Note –

- If Federal and State laws differ, grantees must comply with the more stringent of the two.
- Demolition, by itself, is not considered to be construction, alteration or repair and therefore Davis-Bacon wage requirements are not typically triggered by demolition work, alone. If however, demolition work is part of a larger, planned construction project, then the demolition work is considered to be part of the overall project and is subject to Davis-Bacon wage requirements.

Equal employment certification and incentives for contractors

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

The HRC administers the Section 3 program for the City of Dayton and establishes inclusion goals for Section 3 contractors and workers. Dayton embraces the spirit and intent of its obligations under Section 3, and has set forth policies which are applicable to contractors, subcontractors, developers, and/or sub-recipients and others engaged in projects funded through the City of Dayton, Ohio with funds (meeting the respective established thresholds of \$200,000 and \$100,000) sourced from the U.S. Department of Housing and Urban Development.

Bidding and Contracting Requirements

Wage Rate Decisions

- A wage determination is a listing of wage rates and fringe benefit rates for each labor category of workers which the U.S. Department of Labor has determined to be prevailing in a given area.
- Wage determinations fall under two categories: Davis-Bacon Act (DBA) WDs and Service Contract Act (SCA) WDs.
 - The DBA applies to contracts involving the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works. These contracts must specify the minimum wages and fringe benefits to be paid to laborers and mechanics employed under the contract.
 - The Service Contract Act (SCA) applies to federal and District of Columbia contracts that provide services. It establishes standards for wage rates and safety and health protections for employees performing work on covered contracts.
- You can find the applicable DBA and SCA wage determinations required for each contract action in SAM. Search by wage determination (WD) number, or use the filters to narrow down your results by geographic location.
- Each wage determination reflects the current data provided by the Department of Labor. In the future, you will be able to sign up to follow wage determinations as they are updated.

Procedure

The Human Relations Council (HRC) and Public Works Business Office are responsible for the City of Dayton's compliance and record keeping for Wage Rate Decisions. The project manager will work with both entities to ensure that proper compliance documentation is available to the Division of Community Development for all CDBG projects.

Labor Clauses and Wage Decisions in Bid and Contract Documents

The labor clauses, which are contained in HUD-4010, and the applicable wage rate decision (and any additional classifications) must be a physical part of the bid package. The labor clauses obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and provide remedies and sanctions should violations occur.

- Ten days prior to bid opening, the grantee must check to see if the wage decision has been modified. If so, grantees should notify all potential bidders appropriately in conformance with local procurement procedures.

- If a contract has been awarded but construction has not yet begun within 90 days of the award, the grantee must also determine if any modifications have been issued to the wage decision. If so, the contractor must adhere to the modified wage decision.



The Human Relations Council (HRC) and Public Works Business Office are responsible for the City of Dayton’s compliance and record keeping for Wage Determination documentation. The project manager will work with both entities to ensure that proper compliance documentation is available to the Division of Community Development for all CDBG projects. The project manager shall review HUD form 4010 to ensure all relevant labor laws and clauses are being complied with.

Enforcement during Construction

The following good construction management techniques will be employed:

Pre-construction Conference (not required but highly recommended)

- The City can use this opportunity to clearly present the Federal statutory compliance requirements as well as performance expectations. Items that should be covered at the preconstruction conference include, but are not limited to:
 - Provide and review with the contractor with a copy of the “Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.”
 - Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.
 - Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HUD immediately.
 - Explain that employee interviews will be conducted periodically during the project.
 - Emphasize that a copy of the wage rate decision must be posted at the job site.
 - Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the State certification of his/her program.
 - If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
 - Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions unless the contractor has obtained written permission of the employee. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.

- Provide contractor with posters for the job site, such as the “Notice to All Employees Working on Federal or Federally Financed Construction Projects.”
- The grantee should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor.
- Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

Notice to Proceed

- Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date, and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

Payroll Review

- Once construction is underway, the prime/general contractor should complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.
- Certified payroll reports should be submitted by the prime/general contractor to the grantee within a reasonable timeframe so as to ensure compliance, typically no more than 10 working days following the end of the payroll period.
- The HUD payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).
- The payrolls should be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.
- Grantees should review every payroll to ensure that workers are being paid no less than the prevailing Davis-Bacon wages and that there are no other falsifications.
- In addition to the falsification indicators described in the HUD guidance, items to be spot checked should include:
 - The correct classification of workers;

- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
 - A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
 - Review of deductions for any non-permissible deductions; and
 - The Statement of Compliance has been signed by the owner or an officer of the firm.
- Any discrepancies and/or falsification indicators must be reported to HUD, along with the steps being taken by the grantee to resolve the discrepancies. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees should contact HUD for assistance if a violation occurs.

On-Site Interviews

- The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.
- Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.
- Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).
 - The interview should take place on the job site and conducted privately (this is a one-on-one process).
 - The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.
 - To initiate the interview, the authorized person shall:
 - ✓ Properly identify himself/herself;
 - ✓ Clearly state the purpose of interview; and
 - ✓ Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
 - When conducting employee interviews, the interviewer should pay particular attention to:
 - ✓ The employee's full name;
 - ✓ The employee's permanent mailing address;

- ✓ The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
 - ✓ The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
 - a. The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
 - b. If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - 1. Ask for any records.
 - 2. Arrange to re-interview the employee.
 - ✓ Enter the worker's statement of his/her classification.
 - ✓ Observe duties and tools used:
 - a. If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
 - b. If there are discrepancies, detailed statements are necessary.
 - ✓ Enter any comments necessary.
 - ✓ Enter date interview took place.
- The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information.
 - If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person.
 - If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.
 - If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved. Contact HUD if necessary.

Progress Payments

- Upon receipt of requests for payment during construction, the grantee should check that labor standards compliance is being met.
 - All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and
 - Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

- Although retainage is not a requirement, many grantees have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems.

Final Payment

- When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, the grantee must ensure that:
 - All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;
 - All discrepancies identified through job site interviews have been resolved; and
 - All files are complete.

Procedure

All CDBG projects involving construction will include a checklist for the program manager to complete to ensure all policy requirements are met.

Drug-Free Workplace

The City of Dayton is committed to being a drug-free workplace as evidenced by City of Dayton Human Resources Policy 2.13 **Fitness for Duty for City Employees** and will adhere to all requirements as stated in HUD form 50070.

Procedure

The Human Resources Department will ensure the City of Dayton is a drug free workplace via supporting existing policies that forbid the use of drugs on the job as well as conducting drug screens to all perspective new employees. Should an employee be found to utilizing illegal drugs, the city will take disciplinary action. Any perspective employee found to have illegal drugs detected in their drug screen may have their offer of employment revoked.

Drug-free workplace 2 CFR Part 182

- Make a good faith effort, on a continuing basis, to maintain a drug-free workplace.
- Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 182.205 through 182.220); and
- Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 182.225).
- Identify all known workplaces under your Federal awards (see § 182.230).

Violations of Drug-free workplace

- If a recipient is determined to have violated this part, as described in § 182.500 or § 182.505, the agency may take one or more of the following actions –
 - Suspension of payments under the award;
 - Suspension or termination of the award; and

- Suspension or debarment of the recipient under the agency's regulation implementing the OMB guidance on non-procurement debarment and suspension (2 CFR part 180), for a period not to exceed five years.

Monitoring – Fair Housing, Accessibility, and Equal Employment Opportunity Monitoring

Recordkeeping and Monitoring - Employment and Contracting

Data on employment of the local government that is carrying out an activity funded in whole or in part with CDBG funds. The data to be maintained in the files includes:

- A description of the local government work force in percentage by race, gender, job title, salary, and hire date;
- The percentage of minorities in the jurisdiction of the unit of general local government that is receiving CDBG funds and the percentage of minorities working for that unit of general local government;
- The number of project area residents employed with CDBG funds;
 - Data should show the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using CDBG funds to employ staff.
 - For example, if CDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department.
- Government hiring practices and policies;
- Affirmative Action Plan (if applicable);
 - Documentation of the affirmative actions the grantee has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the grantee has previously discriminated against persons on the grounds of race, color, national origin, or sex in administering a program or activity funded in whole or in part with CDBG funds.
- Procurement procedures and implementation plan;
- Minority and Women Business Enterprise (MBE/WBE) outreach and networking;
- MBE and WBE reporting;
- Section 3 Plan;
- Section 3 Summary Report (CAPER); and
- Section 3 reporting by contractors.
 - A check of the availability and adequacy of employment records;
 - Identification of programs and activities assisted through CDBG funding and assessment of program impact on protected groups;
 - An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
 - A review of voluntary efforts to promote fair housing; and

- An examination of the extent to which various protected groups have been impacted by relocation activities.

Procedure

The Human Relations Council (HRC) will ensure all compliance with the recordkeeping policies. HRC will make records available for review at the request of the Community Development Division.

The City of Dayton will review compliance requirements on an annual basis. All records and files will be kept in an easily accessible location and condition at all times. Some of the areas HUD staff will review to determine if grantees meet compliance with all fair housing and equal opportunity requirements and laws are listed below:

- A check of the availability and adequacy of employment records;
- Identification of programs and activities assisted through CDBG funding and assessment of program impact on protected groups;
- An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
- A review of voluntary efforts to promote fair housing; and
- An examination of the extent to which various protected groups have been impacted by relocation activities.

Direct Benefit Records

It is important that grantees maintain statistical information on the persons benefiting from the project be maintained and updated throughout the implementation of the project. Even if the project activities meet the “presumptive benefit” test for proving LMI benefits and surveys have not been conducted or statistical data on beneficiaries has not been collected, benefit data for fair housing and equal opportunity purposes must be maintained.

Grantees should note that those benefiting from the project must be determined. A Project Benefit Profile must be maintained for each activity except administration, planning, and contingency.

For direct benefit activities, provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with CDBG funds. Records must be kept by race, ethnicity, and gender of heads of households.

Section 504 Records

The following records must be maintained by the grantee in a separate 504 file:

- A copy of the self-evaluation;
- A copy of the transition plan;
- A list of interested persons who were consulted;
- A description of areas and buildings examined and any problems identified;
- A description of modifications made and remedial steps taken to comply with the regulations; and
- Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

Procedure

The program manager will utilize a checklist to ensure all Section 504 Record policy requirements are complied with. The records will be maintained in the Central File Room of the Community Development Department and on the “P” drive located on the cities network.

HUD FHEO Compliance and Monitoring

HUD’s Office of Fair Housing and Equal Opportunity (FHEO) is responsible for seeking cooperation from and providing assistance to grantees regarding compliance. FHEO may perform periodic reviews of grantees or require reports or other information to measure compliance including records of program participation by individuals with handicaps.

It is important for grantees to keep organized records and document their Section 504 activities.

A complaint can be made by any individual or authorized representative of that individual who believes they have been denied opportunities or treated differently, due to their race, ethnicity, gender, disability, or age.

This complaint would be filed with FHEO under the Housing Discrimination Form 903.1. The complainant’s identity will be held in confidence unless written authorization is given. The time period for filing complaints is within one hundred eighty (180) days of the alleged act. Grantees should have copies of this form available to the public.

Person who believes his/her rights have been violated may file in Federal court. The remedy through court action may include the award of damages, back pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD’s policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance may result ultimately in the termination of or refusal to grant Federal assistance.

IX. Appendices

Appendix A

National Objectives and Eligible Activities

Matrix Code Key		National Objective Codes (N = Not Allowed)														
Code	Eligible Activity	LMA	LMAFI	LMASA	LMC	LMCMC	LMCSV	LMH	LMHSP	LMJ	LMJFI	LMJP	SBA	SBS	SBR	URG
01	Acquisition of Property - 570.201(a)					N	N				N					
02	Disposition - 570.201(b)					N	N				N					
03A	Senior Centers	N				N	N	N	N						N	
03B	Facility for Persons with Disabilities	N				N	N	N	N							
03C	Homeless Facilities (not operating costs)	N				N	N	N	N							
03D	Youth Centers	N				N	N	N	N							
03E	Neighborhood Facilities					N	N	N	N							
03F	Parks, Recreational Facilities		N	N		N	N	N	N	N		N				
03G	Parking Facilities					N	N	N	N							
03H	Solid Waste Disposal Improvements					N	N									
03I	Flood Drainage Improvements					N	N									
03J	Water/Sewer Improvements					N	N									
03K	Street Improvements					N	N									
03L	Sidewalks					N	N									
03M	Child Care Centers	N				N	N	N	N							
03N	Tree Planting					N	N		N							
03O	Fire Station/Equipment		N	N	N	N	N	N	N	N		N				
03P	Health Facilities					N	N	N	N							
03Q	Abused and Neglected Children Facilities	N				N	N	N	N							
03R	Asbestos Removal					N	N	N	N							
03S	Facilities for AIDS Patients (no op'ing costs)	N				N	N	N	N							
03T	Operating Costs Homeless/AIDS Patients	N	N	N		N	N	N	N	N	N	N		N	N	
03Z	Other Public Improvements Not Listed in 03A-03S					N	N									
04	Clearance and Demolition					N	N				N					
04A	Cleanup of Contaminated Sites					N	N				N					
05A	Senior Services	N	N	N		N		N	N	N	N	N		N	N	
05B	Services for Persons with Disabilities	N	N	N		N		N	N	N	N	N		N	N	
05C	Legal Services		N	N		N		N	N	N	N	N		N	N	
05D	Youth Services	N	N	N		N		N	N	N	N	N		N	N	
05E	Transportation Services		N	N		N		N	N	N	N	N		N	N	
05F	Substance Abuse Services		N	N		N		N	N	N	N	N		N	N	
05G	Services for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking	N	N	N		N		N	N	N	N	N		N	N	
05H	Employment Training		N	N		N		N	N	N	N	N		N	N	
05I	Crime Awareness		N	N		N		N	N	N	N	N		N	N	
05J	Fair Housing Activities-Subj. to Pub.Serv.Cap		N	N		N		N	N	N	N	N		N	N	
05K	Tenant/Landlord Counseling	N	N	N		N		N	N	N	N	N		N	N	
05L	Child Care Services	N	N	N		N		N	N	N	N	N		N	N	
05M	Health Services		N	N		N		N	N	N	N	N		N	N	
05N	Abused and Neglected Children	N	N	N		N		N	N	N	N	N		N	N	
05O	Mental Health Services		N	N		N		N	N	N	N	N		N	N	
05P	Screening for Lead Based Paint/Lead Hazards	N	N	N		N		N	N	N	N	N		N	N	
05Q	Subsistence Payments	N	N	N		N		N	N	N	N	N		N	N	
05R	Homebuyer Downpayment Assistance - Excluding Housing Counseling, under 24 CFR 5.100	N	N	N	N	N	N			N	N	N		N	N	
05S	Rental Housing Subsidies	N	N	N	N	N				N	N	N		N	N	
05T	Security Deposits	N	N	N	N	N				N	N	N		N	N	
05U	Housing Counseling Only, under 24 CFR 5.100	N	N	N	N	N	N			N	N	N	N	N	N	N
05V	Neighborhood Cleanups		N	N	N	N		N	N	N	N	N		N	N	
05W	Food Banks		N	N		N		N	N	N	N	N		N	N	
05X	Housing information and referral services	N	N	N		N	N			N	N	N	N	N	N	N
05Y	Housing Counseling under 24 CFR 5.100 supporting homebuyer downpayment assistance (05R)	N	N	N	N	N	N			N	N	N		N	N	
05Z	Other Public Services Not Listed in 03T and 05A-05Y		N	N		N		N	N	N	N	N		N	N	
06	Interim Assistance		N	N	N	N	N	N	N	N	N	N		N	N	
07	Urban Renewal Completion					N	N				N		N	N		N
08	Relocation					N	N				N					
09	Rental Income Loss					N	N				N					
11	Privately Owned Utilities					N	N				N					
12	Construction of Housing	N	N	N	N	N	N			N	N	N		N		
13A	Housing Counseling, under 24 CFR 5.100, for Homeownership Assistance 13B	N	N	N	N	N	N			N	N	N	N	N	N	N
13B	Homeownership Assistance - excluding Housing Counseling under 24 CFR 5.100	N	N	N	N	N	N			N	N	N	N	N	N	N

Matrix Code Key		National Objective Codes (N = Not Allowed)														
Code	Eligible Activity	LMA	LMAFI	LMASA	LMC	LMCMC	LMCSV	LMH	LMHSP	LMJ	LMJFI	LMJP	SBA	SBS	SBR	URG
14A	Rehab; Single-Unit Residential	N	N	N	N	N	N			N	N	N				
14B	Rehab; Multi-Unit Residential	N	N	N	N	N	N			N	N	N				
14C	Public Housing Modernization	N	N	N	N	N	N			N	N	N				
14D	Rehab; Other than Public-Owned Residential Buildings	N	N	N	N	N	N			N	N	N				
14E	Rehab. Pub./Pvt.-Comm/Indust'					N	N	N	N		N					
14F	Energy Efficiency Improvements	N	N	N	N	N	N			N	N	N				
14G	Acquisition for Rehabilitation	N	N	N	N	N	N			N	N	N				
14H	Rehabilitation Administration					N	N				N					
14I	Lead-Based Paint Abatement	N	N	N	N	N	N			N	N	N				
14J	Housing Services, excluding Housing Counseling under 24 CFR 5.100	N	N	N	N	N	N			N	N	N	N	N	N	N
14K	Housing Counseling, under 24 CFR 5.100, Supporting HOME Program Assistance Housing Activities	N	N	N	N	N	N			N	N	N	N	N	N	N
14L	Housing Counseling, under 24 CFR 5.100, in Conjunction with CDBG Assisted Housing Rehab	N	N	N	N	N	N			N	N	N				
15	Code Enforcement		N	N	N	N	N	N	N	N	N	N		N		
16A	Residential Historic Preservation	N	N	N	N	N	N			N	N	N				N
16B	Non-Residential Historic Preservation					N	N	N	N		N					N
17A	ED Acquisition by Recipient					N	N	N	N							
17B	CI Infrastructure Development					N	N	N	N					N		
17C	CI Building Acq., Construction, Rehabilitation					N	N	N	N		N					
17D	Other Commercial/Industrial Improvements					N	N	N	N		N					
18A	ED Assistance to For-Profits				N	N	N	N	N		N			N		
18B	Economic Development: Technical Assistance				N	N		N	N		N			N		
18C	Micro-Enterprise Assist.					N	N	N	N		N			N		
19C	Nonprofit Capacity Building															
19E	Operation and Repair of Foreclosed Property		N	N	N	N	N			N	N	N	N	N	N	N
19F	Planned Repayments of Sec.108 Loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
19G	Unplanned Repayments of Sec.108 Loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
19H	State CDBG Technical Assistance to Grantees	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20	Planning	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
20A	State Planning-only 570.483(b)(5) and (c)(3)															N
21A	General Program Admin. - 570.206	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21B	Indirect Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21C	Public Information	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21D	Fair Housing Activity (subject to Admin. cap)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21E	Submissions or Applications for Federal Programs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21H	CDBG Funding of HOME Admin.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21I	CDBG Funding of HOME CHDO Operating Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
21J	State Administration Costs	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
23	Tornado Shelters - Private Mobile Home Parks		N	N	N	N	N	N	N	N	N	N	N	N	N	N
24A	Payment of Interest on Section 108 Loans	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
24b	Payment of Costs of Section 108 Financing															
24C	Debt Service Reserve	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
National Objective Key										Entitlements			States			
LMA	Low- and moderate-income (Low/Mod) Area Benefit									570.208(a)(1)			570.483(b)(1)			
LMAFI	Low/Mod Area Benefit CDFI									570.208(d)(6)(i)			570.483(e)(4)			
LMASA	Low/Mod Area Benefit NRSA									570.208(d)(5)(i)			570.483(e)(5)			
LMC	Low/Mod Limited Clientele									570.208(a)(2)			570.483(b)(2)			
LMCMC	Low/Mod Limited Clientele Microenterprise Development									570.208(a)(2)(iii)			570.483(b)(2)(iv)			
LMCSV	Low/Mod Limited Clientele, Job Service Benefit									570.208(a)(2)(iv)			570.483(b)(2)(v)			
LMH	Low/Mod Housing									570.208(a)(3)			570.483(b)(3)			
LMHSP	Low/Mod Housing, CDFI or NRSA									570.208(d)(5)(ii) & (d)(6)(ii)			570.483(e)(5)			
LMJ	Low/Mod Job Creation or Retention									570.208(a)(4)			570.483(b)(4)			
LMJFI	Low/Mod Job Creation/Retention, Public Facility/Improvement									570.208(a)(4)(vi)(F)			570.483(b)(4)(vi)(F)			
LMJP	Low/Mod Job Creation or Retention, Location Based									570.208(a)(4)(iv)(B)			570.483(b)(4)(iv)(B)			
SBA	Slum and Blight Area									570.208(b)(1)			570.483(c)(1)			
SBS	Slum and Blight Spot									570.208(b)(2)			570.483(c)(2)			
SBR	Slum and Blight Urban Renewal/Planning Activities (States)									570.208(b)(3)			570.483(c)(3)			
URG	Urgent Needs									570.208(c)						

IDIS – National Objective Codes for CDBG			
N.O. Code	National Objective Description	Regulatory Citations	
		Entitlement Communities	States
LMA	Low/Mod Area Benefit	570.208(a)(1)	570.483(b)(1)
LMAFI	Community Development Financial Institution (CDFI)	570.208(d)(6)(i)	570.483(e)(4)
LMASA	Neighborhood Revitalization Strategy Area	570.208(d)(5)(i)	570.483(e)(5)
LMC	Low/Mod Limited Clientele Benefit	570.208(a)(2)	570.483(b)(2)
LMCMC	Microenterprise	570.208(a)(2)(iii)	570.483(b)(2)(iv)
LMCSV	Job service benefit	570.208(a)(2)(iv)	570.483(b)(2)(v)
LMH	Low/Mod Housing Benefit	570.208(a)(3)	570.483(b)(3)
LMHSP	CDFI or Neighborhood Revitalization Strategy Area	570.208(d)(5)(ii) & (d)(6)(ii)	570.483(e)(4) & (e)(5)
LMJ	Low/Mod Job creation/retention	570.208(a)(4)	570.483(b)(4)
LMJFI	Public Facility/ Improvement benefit	570.208(a)(4)(vi)(F)	570.483(b)(4)(vi)(F)
LMJP	Location based	570.208(a)(4)(iv)	570.483(b)(4)(iv)
SBA	Slum/Blight <u>Area Benefit</u>	570.208(b)(1)	570.483(c)(1)
SBS	Slum/Blight <u>spot basis</u>	570.208(b)(2)	570.483(c)(2)
SBR	Slum/Blight in an <u>urban renewal</u> area	570.208(b)(3)	
URG	Urgent Need	570.208(c)	570.483(d)
LMAFI	Community Development Financial Institution (CDFI)	570.208(d)(6)(i)	570.483(e)(4)
LMASA	Neighborhood Revitalization Strategy Area	570.208(d)(5)(i)	570.483(e)(5)
LMCMC	Microenterprise	570.208(a)(2)(iii)	570.483(b)(2)(iv)
LMCSV	Job service benefit	570.208(a)(2)(iv)	570.483(b)(2)(v)
LMHSP	CDFI or Neighborhood Revitalization Strategy Area	570.208(d)(5)(ii) & (d)(6)(ii)	570.483(e)(4) & (e)(5)
LMJFI	Public Facility/ Improvement benefit	570.208(a)(4)(vi)(F)	570.483(b)(4)(vi)(F)
LMJP	Location based	570.208(a)(4)(iv)	570.483(b)(4)(iv)

Employee:														
Division:	Community Development													
Title:	CD Grant Administrator													
		Date:												
			M	T	W	T	F	M	T	W	T	F	TOTAL	
Project	Charge To:	Grant	-	-	-	-	-	-	-	-	-	-	-	
County Corp	PD - Housing	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Rebuilding Toget	PD - Housing	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Nuisance Abatem	PD - Housing	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Housing Inspectio	PD - Housing	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Grant Compliance	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
General Administ	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
HOME Admin Wo	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
CNDAB Meetings	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
HUD Training/Tra	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Holiday Pay	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Vacation Leave	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Sick Leave	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Personal/Family	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
DOC Clinic Leave	Admin	CDBG	-	-	-	-	-	-	-	-	-	-	-	
Daily Total			-	-	-	-	-	-	-	-	-	-	-	
I certify and attest that the allocation of time reported on this personnel activity report is an accurate and truthful disclosure of the work performed for the sources of														
Employee Signature		Date							Supervisor Signature		Date			

Activity Reports and Time Certification Sheets
 Required for staff working on multiple activities, grants, and/or other CDBG eligible activities.

CDBG Staff Time Certification

Required for staff working on a sole grant-based funding source or activity that is eligible to be supported administratively through the CDBG program.



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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MAYOR
 Nan Whaley

CITY COMMISSIONERS
 Matt Joseph
 Jeffrey J. Mims, Jr.
 Chris Shaw
 Darryl Fairchild

CITY MANAGER
 Shelley Dickstein

**PLANNING AND COMMUNITY
 DEVELOPMENT DIRECTOR**
 Todd M. Kinskey

Monthly Time & Effort Certification

Instructions:

2 CFR 225, APPENDIX B §8(h)(4-5) states that employees paid by Federal and non-Federal sources needs to complete time and effort certifications at least monthly, which reflect the individual's total work time and identify the portion of time spent on federal projects. The certification must be signed by the employee. When multiple funding sources contribute to an employee's salary, the certification must be supported with documentation of actual effort (i.e. timesheets). Kronos is the official timekeeping record for the City of Dayton and serves as documentation of actual effort for single grant-funded employees.

Name: Position/Title:
 Federal Program: Fiscal Year:
 Certification Period: through:

Program/OCA/Coast Objective	Distribution of Time	Hours of Time
	%	
Total:	%	

I hereby certify this report is an after-the-fact determination of the total activity and actual effort expended for the period indicated, and I have full knowledge of 100% of these activities.

Employee Signature: _____ Date: _____

Director Signature: _____ Date: _____

CDBG Subrecipient Timesheet and Activity Log

For personnel charging a percentage of their time LESS THAN 100% to toward this agreement, please use this timesheet and activity log. The activity log MUST provide adequate information detailing activities, events, processes, etc. billed toward the agreement so that the Project Manager can determine cost allocability and cost allowability per 2CFR 200 requirements.

Subrecipient Name

MONTHLY TIMESHEET

Name John Smith

Date

FY 2020

Code	Project	Date:	1-Sep	2-Sep	3-Sep	4-Sep	5-Sep
		Sun	Mon	Tue	Wed	Thu	
1	Market cashier			4.00	3.00	3.00	
2	Training Program			3.00	4.00	4.00	
Total Hours Worked				7.00	7.00	7.00	

Subrecipient Name – Program/Project Name

MONTHLY ACTIVITY LOG

Subrecipient Name – Program/Project Name

Employee Name

Month & Year

Activity Log – June 2020

June 1, 2020

8:00 AM/PM – 5:00 AM/PM

- Mobile Market – cashier – checking out customers, organizing stock, providing accounting of drawer
- Training Program – seminar on workforce etiquette, training on using raised garden beds

June 2, 2020

7:30 AM/PM – 4:30 AM/PM

- Training Program – Carpentry – making raised garden beds;
- Training Program – Proper techniques for harvesting peppers;
- Training Program – Operation of Gettysburg hoop house

June 3, 2020

8:00 AM/PM – 5:00 AM/PM

- Mobile Market – Setup at 2nd Street Market; Stocking and replenishment for market stand; transportation of signage and produce from XYZ Garden to 2nd Street Market
- XYZ Garden – volunteer training;
- XYZ Garden – harvesting tomatoes and preparing fertilizer

CDBG Subrecipient Timesheet Certification

For Personnel Funded 100% through this agreement, please use this certification:

Certification & Support for Personnel Invoicing

2 CFR 225, APPENDIX B §8(h)(4-5) states that employees paid by Federal and non-Federal sources need to complete time and effort certifications at least monthly, which reflect the individual's total work time and identify the portion of time spent on federal projects. The certification must be signed by the employee and their supervisor. When multiple funding sources contribute to an employee's salary, the certification must be supported with documentation of actual effort (i.e. timesheets). is the official timekeeping record for Homefull and serves as documentation of actual effort for grant-funded employees.

Pay Dates Included in this Certification:

<u>Name</u>	<u>Total Hours Worked</u>	<u>Pay Rate</u>	<u>Total Wages</u>	<u>Fringe Benefits Percentage (If Applicable)</u>	<u>Total Amount Billed for Personnel</u>

Summary of Work Performed:

The above wages and benefits are for.....insert a paragraph explaining the work accomplished during this period by the personnel identified above.

I, _____ (print name) certify that 100% of my time reported during this reporting period was spent performing the activities described above. I hereby this report is an after-the-fact determination of the total activity and actual effort expended for the period indicated, and I have full knowledge of 100% of these activities.

Employee Signature

Date

Supervisor Signature

Date

Sample Interdepartmental Memorandum of Understanding

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM
INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING (MOU)
{PROGRAM NAME}
CFDA 14.218**

THIS CDBG INTERDEPARTMENTAL MOU (hereinafter the "Agreement"), entered into this _____ day of _____, 2020, is between the **CITY OF DAYTON DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT, COMMUNITY DEVELOPMENT DIVISION ("PCD")**, and the **CITY OF DAYTON DEPARTMENT OF {DEPARTMENT NAME}, {DIVISION NAME} ("Implementing Agency")**, both with a principal address of 101 West Third Street, Dayton, Ohio 45402.

WITNESSETH, THAT:

WHEREAS, the City is a grantee of funds from the United States Department of Housing and Urban Development, hereinafter referred to as "**HUD**," under Title I of the Housing and Community Development Act of 1974, as amended, Public Law 93-383, responsible for the development, implementation, administration, and evaluation of HUD's Community Development Block Grant, hereinafter referred to as "**CDBG**," Program in Dayton; and,

WHEREAS, the Program set forth herein will meet one of the CDBG program's national objectives, as defined in 24 Code of Federal Regulations ("CFR"), Part 570.208, which include: to benefit low/moderate income persons; to aid in the prevention or elimination of slum and blight; and to meet community development needs having a particular urgency; and,

WHEREAS, Implementing Agency submitted a proposal to utilize **{Amount}** in Program Year {Year} CDBG funds towards the {Program Name} program ("Program"), {brief project description and location} and more specifically described in Exhibit A; and

WHEREAS, although PCD will continue to oversee the project, Implementing Agency, as an internal organization within the City of Dayton, will primarily manage the Program, and the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the CDBG regulations.

NOW, THEREFORE, for the consideration of the mutual promises hereinafter set forth, PCD and Implementing Agency agree as follows:

ARTICLE 1. DEFINITIONS

- A. "Program Funds" shall mean any funds authorized by PCD from the CDBG Program under this Agreement for use by Implementing Agency for Program.
- B. "Program Income" is income directly generated from the use of CDBG funds.
- C. "CDBG Program Funds" shall mean funding received by the City from HUD under the City of Dayton's CDBG Program.
- D. "Contract Period" shall mean the effective date of this agreement and time given for performance.
- E. "Project Activity" shall mean the activity therein described in Exhibit A of this Agreement.
- F. "Moderate, Low, and Very Low Income" shall mean 80% or less, 50% or less, and 30% or less – respectively – of the area median income as defined by HUD for the current Agreement period.

ARTICLE 2. PURPOSE

The purpose of this Agreement is to provide funding for project activities approved by PCD under the CDBG Program for Program Year(s) {Program Year(s)} as described in Exhibit A – Scope of Services. Project accomplishments will be reported in the {Program Year(s)} Consolidated Annual Performance Evaluation Report(s) (CAPER). Project activities, tasks, and budget are included in Exhibits B – Program Budget, C – CDBG Program Monitoring Schedule, D – Monthly and Cumulative Reports, and E – CDBG Sample Timesheet and Activity Log.

All activities authorized by this Agreement will be performed in accordance with the goals and objectives set forth in Exhibit A – Scope of Services, the budget set forth in Exhibit B – Program Budget, the monitoring scheduling set forth in Exhibit C – CDBG Program Monitoring Schedule, and the conditions, assurances, and requirements set forth in the HUD CDBG Program regulations as detailed in Exhibit A. Implementing Agency further agrees that it will notify PCD prior to undertaking any activity or authorizing any expenditure that is not clearly consistent with the terms of this Agreement and its appendices and/or with the conditions, assurances, and requirements of the HUD CDBG Program and that no such activity or expenditure of a questionable nature shall be authorized without prior approval of the City.

ARTICLE 3. SCOPE OF SERVICES

Implementing Agency shall provide the work and services, in a manner satisfactory to PCD consistent with any standards required as a condition of providing these funds. Implementing Agency hereby agrees to use CDBG funds made available to the Program for the purpose fully described in Exhibit A - Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence on {Start Date}, and shall be undertaken and completed in such sequence as to assure its expeditious completion of light of the purposes of this Agreement; but in any event, all of the work and services required herein shall be completed and this Agreement shall terminate on {Expiration Date}.

ARTICLE 5. GRANT OF FUNDS AND PAYMENT

PCD shall make available to Implementing Agency funds in the amount of **{AMOUNT (AMOUNT IN NUMBERS)}** for the work and services to be provided by Implementing Agency for the Program, pursuant to this Agreement. Eligible expenses are listed on the line item budget specified in Exhibit B – Program Budget, which is attached hereto and incorporated herein, and in accordance with performance. Any amendments to the budget must be approved in writing by both PCD and Implementing Agency.

Expenditures between {Start Date} and {Expiration Date}, are eligible for reimbursement.

Any and all cost overruns or expenditures that are outside the established budget are the responsibility of the Implementing Agency. Any such overrun or ineligible expense charged to the CDBG fund must be corrected in Banner or paid via interdepartmental invoice within 30 days of the original charge.

ARTICLE 6. GENERAL CONDITIONS

A. Compliance

1. Implementing Agency agrees that the HUD regulations set forth in 24 CFR Part 570 and 2 CFR Part 200 are applicable to the grant funds it receives pursuant to this Agreement.
2. Implementing Agency agrees that the work and services authorized by this Agreement shall be performed in accordance with any and all applicable local, state, and federal regulations, directives, or guidelines.
3. Implementing Agency agrees to prohibit the use of federal funds for lobbying in compliance with the following:
 - (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Implementing Agency, 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 loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
 - (b) If any funds other than federal appropriated funds have been paid or will be paid 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 this federal agreement, grant, loan or cooperative agreement, Implementing Agency shall notify the City, and complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
4. Implementing Agency shall include the requirements of this Subsection A in award documents for all sub-awards at all times (including sub-contracts, subgrants, and Agreements) and require that all sub-award recipients disclose the same accordingly.

B. Grantor Recognition

Implementing Agency shall ensure recognition of the grantor agency (HUD and CDBG) in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Implementing Agency will include a reference to the support provided in all publications made possible with funds made available under this Agreement.

C. Amendments

PCD or Implementing Agency may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative for each party.

PCD may, at its discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both PCD and Implementing Agency.

D. Suspension or Termination

In accordance with 2 CFR 200.338-200.342, PCD may suspend or terminate this Agreement if Implementing Agency materially fails to comply with any terms of this Agreement, which include (but are not limited to,) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of Implementing Agency to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement;
4. Submission by Implementing Agency to PCD reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either PCD or Implementing Agency, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, PCD determines that the remaining portion of the award will not accomplish the purpose for which the award was made, PCD may terminate the award in its entirety.

ARTICLE 7. CONTACTS

All communications or notices required or permitted under this Agreement shall be sufficient if sent to PCD or Implementing Agency via interdepartmental mail or email and addressed to the following parties:

To PCD: {Project Manager Name}, {Title}
Community Development Division
Department of Planning and Community Development
{Internal Telephone Number}
{Internal Email}

To Implementing Agency: {Project Manager Name}, {Title}
{Division}
{Department}

{Internal Telephone Number}
{Internal Email}

Nothing contained in this subsection shall be construed to restrict the transmission of routine communications between representatives of PCD and Implementing Agency.

ARTICLE 8. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

Implementing Agency agrees to comply with 2 CFR Part 200 Subparts, D and E, as applicable, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

Implementing Agency shall administer its program in conformance with 2 CFR Part 200 Subparts, D and E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

3. Financial Records

- a. PCD may require quarterly reports of all cash receipts, including Program Income, from all sources and disposition thereof, and such other financial statements, as the City deems appropriate. Quarterly reports and financial statements may continue to be required after termination of this Agreement until the collected Program Income has been expended.
- b. All costs and expenditures shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City.

B. Documentation and Record Keeping

1. Records to be Maintained

Implementing Agency shall maintain all records required by the federal regulations specified in 2 CFR Part 200 and 24 CFR 570.506, which are pertinent to the services and activities to be funded under this Agreement. Such records shall include, but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records providing a full description and reporting of all accomplishments by {Department Name} {Division Name} between execution of this agreement and {Expiration Date}, regardless of program.

- c. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- d. Records required to determine the eligibility of activities;
- e. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- f. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- g. Financial records are required by 24 CFR 570.502, and 2 CFR Part 200; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Client Data

Implementing Agency shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, race and ethnicity, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. Retention of Records and Documentation

Implementing Agency shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the City's Annual Performance and Evaluation Report to HUD in which the activities assisted under the Agreement are reported on for the final time.

Within thirty (30) days of the expiration or conclusion of the Agreement, the Implementing Agency shall provide PCD with full and complete copies of all project files and records associated with the Agreement.

Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Disclosure

Implementing Agency understands that applicant information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of PCD's or Implementing Agency's responsibilities with respect to work or services to be provided under this Agreement, is prohibited by federal law, unless written consent is obtained from

such person receiving service, and in the case of a minor, that of a responsible parent/guardian or otherwise required by law or court order.

5. Close-Outs

Implementing Agency's obligation to PCD shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, Program Income balances, and accounts receivable to PCD), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Implementing Agency has control over CDBG funds, including Program Income.

6. Audits, Monitoring, and Evaluation

All Implementing Agency records with respect to any matters covered by this Agreement shall be made available to PCD or the Federal Government, or their designees or agents, at any time during normal business hours, as often as PCD or Federal Government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data and records. Any deficiencies noted in audit reports must be fully cleared by Implementing Agency within thirty (30) days after notice thereof. Failure of Implementing Agency to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

Implementing Agency shall allow PCD to conduct on-site monitoring, tests, and inspections at such time as proposed in a written notification requesting a monitoring visit. Implementing Agency shall provide to PCD such statements, records, reports, and other information as PCD may request at the time of scheduled monitoring visits and in such format and detail, as PCD shall specify.

7. Property Records

Implementing Agency shall maintain, as may be applicable, real property inventory records, which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR 560.503 (b) (8) and 2 CFR Part 200, as applicable.

C. Reporting Procedures

1. Program Income

Implementing Agency shall report no less than quarterly all "Program Income," as defined at 24 CFR Part 570.500(a), generated by activities carried out with CDBG funds made available under this Agreement. The use of Program Income by Implementing Agency shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, Implementing Agency may use such Program Income during the Agreement term for activities permitted under this Agreement, and shall reduce requests for additional funds by the amount of any

such Program Income balance on-hand. All unused Program Income shall be returned to PCD at the end of the term of this Agreement. Any interest earned on cash advances or from funds maintained in revolving loan accounts are not Program Income and shall be remitted promptly to PCD.

2. Payment Procedures

Implementing Agency will ensure that all expenditures made under Program and charged to the CDBG fund are fully compliant with all provisions of this Agreement and eligible under CDBG regulations. By the fifth business day of each month, Implementing Agency will submit to PCD the monthly report for the previous month, including supporting documentation to validate each expenditure, relevant time sheets and activity logs, and accomplishment data. PCD will review the reports for accuracy and compliance. PCD will draw approved expenditures from the IDIS system. PCD will notify Implementing Agency of ineligible expenses and Implementing Agency must correct the expenditures in Banner within 30 days.

PCD reserves the right to liquidate funds available under this contract for costs incurred by PCD or other City departments on behalf of Implementing Agency.

3. Progress Reports

Implementing Agency shall submit regular Progress Reports to City in the form, content, and frequency, as required by City and specified in Exhibit A – Scope of Services.

D. Procurement

1. Compliance

Implementing Agency shall comply with current City policies concerning the purchase of equipment, goods, services, and shall maintain inventory records of all non-expendable personal property, as defined by such City policies as may be procured with the CDBG funds provided herein. All program assets (unexpended Program Income, property, equipment, etc.) shall revert to City upon termination or expiration of this Agreement.

Implementing Agency shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200, Subpart D, Procurement, and shall subsequently follow Property Management Standards as modified by 2 CFR 200, Subpart D, covering utilization and disposal of property.

2. OMB Standards

Unless specified otherwise within this agreement, Implementing Agency shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-200.326.

3. Travel

Implementing Agency shall obtain written approval from PCD for any travel outside

the metropolitan area with funds provided under this Agreement.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. Implementing Agency shall transfer to PCD any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under Implementing Agency's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet one of the CDBG National Objectives pursuant to 2 CFR 200.310-200.316 until five (5) years after expiration of this Agreement. If Implementing Agency fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, Implementing Agency shall pay PCD an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute Program Income. Implementing Agency may retain real property acquired or improved under this Agreement after the expiration of the five (5) year period.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be Program Income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by Implementing Agency for activities under this Agreement shall be (a) transferred to PCD for the CDBG program or (b) retained after compensating PCD an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

ARTICLE 9. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

Implementing Agency agrees to comply with all local and state civil rights statutes, rules, regulations and ordinances, and with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12107, and 12086.

2. Nondiscrimination

Implementing Agency agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 270.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

Implementing Agency shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton, Ohio, constitutes a material condition of this Agreement as fully as if specifically rewritten herein and that failure of Implementing Agency to comply therewith shall constitute a breach of this Agreement entitling City, at its option, to terminate this Agreement.

3. Land Covenants

This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, Implementing Agency shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Implementing Agency, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

Implementing Agency shall comply with any federal regulations or orders issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the disabled in any federally assisted program. The City shall provide Implementing Agency with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

Implementing Agency agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program keeping with the principles provided in the President's Executive Order 11246 of September 24, 1966. The City shall provide Affirmative Action guidelines to Implementing Agency to assist in the formulation of such program. Implementing Agency shall

submit a plan for an Affirmative Action Program for approval prior to the award of funds. Implementing Agency must also submit the proper letter of certification from the Dayton Human Relations Council, which will serve as documentation for their Affirmative Action Plan.

2. Women and Minority-Owned Businesses

Implementing Agency will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Implementing Agency may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

Implementing Agency shall furnish and cause each of its own contractors or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

Implementing Agency will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Implementing Agency's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

Implementing Agency will, in all solicitations or advertisements for employees placed by or on behalf of Implementing Agency, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

Implementing Agency will include the provisions of this Paragraph's Section A, Civil Rights, and Section B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subcontractors.

C. Employment Restrictions

1. Prohibited Activity

Implementing Agency is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or inherently religious activities, lobbying, political patronage, or nepotism activities.

2. Labor Standards

Implementing Agency agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Implementing Agency agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Implementing Agency shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

3. “Section 3” Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the federal financial assistance provided under this contract and binding upon the City, Implementing Agency and any of Implementing Agency’s Implementing Agencies and subcontractors. Failure to fulfill these requirements shall subject the City, Implementing Agency and any of Implementing Agency’s Implementing Agencies and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which federal assistance is provided. Implementing Agency certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

Implementing Agency agrees to comply with the “Section 3” requirements set forth above, and shall include the following language in all subcontracts executed for the program:

“The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.”

The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

b. HUD Section 3 Participation Goals

Developer agrees that the aspiration sub-contracting goals for certified HUD Section 3 certified business sub-contracting and hiring goals will be:

Employment: Thirty percent (30%) of the aggregate number of new hires during a one year period of the project. (Example: A construction contractor hires 10 new workers. Three of the new workers should be Section 3 eligible persons.)

Contracting: (a) At least 10 percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, construction, and other public construction with federal funds; and (b) At least three percent (3%) of the total dollar amount of all other, including professional services, covered Section 3 contracts to eligible Section 3 business concerns. HUD Section 3 companies can be found at <http://daytonhrc.org/business-technical-assistance/certification/>

c. Notifications

Implementing Agency agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. Subcontracts

Implementing Agency will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by PCD. Implementing Agency will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

Implementing Agency shall not assign or transfer any interest in this Agreement without the prior written consent of PCD thereto. Notice of any such assignment or transfer shall be furnished promptly to PCD.

2. Subcontracts

a. Approvals

Implementing Agency shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of PCD prior to the execution of such agreement.

b. Monitoring

Implementing Agency will monitor all subcontracted services on a regular basis to assure contract compliance. Evidence of noncompliance shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

Implementing Agency shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

Implementing Agency shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to PCD along with documentation concerning the selection process.

3. Hatch Act

Implementing Agency agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

Implementing Agency agrees to abide by the provisions of 24 CFR 84.42, 24 CFR 85.36, and 570.611, which include (but are not limited to) the following:

- a. Implementing Agency shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
- b. No employee, officer, or agent of Implementing Agency shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or

agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, Implementing Agency, or any designated public agency.

5. Lobbying

Implementing Agency hereby certifies that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of it, 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;
- b. If any funds other than federal appropriated funds have been paid or will be paid 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 this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of Paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly.
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S.C. and 2 CFR 200.450. As stated in Section 1352, Title 31, U.S.C. and 2 CFR 200.450, this certification must be filed by the Implementing Agency during the submission of its annual indirect cost rate proposal. Any person who fails to file the required certification shall be subject to a civil penalty of not less than **TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00)** and not more than **ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$100,000.00)** for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

Implementing Agency agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

ARTICLE 10. ENVIRONMENTAL CONDITIONS

A. Air and Water

Implementing Agency shall comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act 42 U.S.C., 7401, et seq.
2. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR, Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), Implementing Agency shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the national flood insurance program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

Implementing Agency agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR, Part 570.608 and 24 CFR, Part 35. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

ARTICLE 11. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

ARTICLE 12. SECTION HEADINGS AND SUBHEADINGS

The section heading and subheading contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

ARTICLE 13. WAIVER

PCD's failure to act with respect to a breach by Implementing Agency does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver or such right or provision.

ARTICLE 14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between PCD and Implementing Agency for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and Implementing Agency with respect to this Agreement.

ARTICLE 15. REFERENCES TO LAW

All references to federal, state or local laws, regulations, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement.

IN WITNESS WHEREOF, City and Implementing Agency, each by a duly authorized representative, have executed this Agreement as of the date first set forth above.

Planning and Community Development

Implementing Agency

Director

Director

Date

Date

**EXHIBIT A
SCOPE OF SERVICES
{IMPLEMENTING AGENCY}
{PROGRAM NAME}**

1. PROGRAM DESCRIPTION

EXAMPLE:

Implementing Agency will use all funds granted hereunder to operate the “West Dayton Food and Jobs Program,” through December 31, 2021. The program will provide for the West Dayton Food and Jobs (WDFJ), an urban farm worker training program, and will result in job training programming for 20 LMI participants at or below 80% AMI and the creation or retention of jobs for approximately 7-10 individuals in the City of Dayton.

Through WDFJ, Homefull is establishing meaningful and sustainable urban agriculture employment via “Green Collar Jobs” that support the creation and maintenance of vibrant, strong communities. Urban agriculture promotes the local economy as the growing demand for safe, locally sourced food leads to increased economic transactions within a community through the local food start-ups and businesses that support urban agricultural sources. Increased demand fuels job creation and a need for further job training and development. The practice of farming promotes the development of marketable trades and crafts, and often requires skills in carpentry, irrigation, electric work, construction, plumbing, canning, pickling, and cooking. These skills are useful and profitable in other spheres of local community economics.

The West Dayton Food and Jobs Program will expand the creation and operation of community and school-based urban gardens throughout West Dayton. As gardens expand their competency and capacity through the training efforts of WDFJ, Homefull will purchase produce directly from the gardens and distribute the produce at Farm Stands that include The Market at Wright Stop Plaza, 2nd Street Market, Shiloh Farmer’s Market, and pop-up Markets in West Dayton. Job training initiatives will continue through Homefull’s Mobile Grocery, where the farm-to-market model can employ job training participants in low-skill, high-demand job opportunities that range from farm/garden planting, harvesting, food prep, distribution, and stocking, to Market sales, customer service, reconciliation, and reporting.

Homefull supports the residents of West Dayton by providing job training opportunities and direct access to local, nutritious, affordable food as well as food-related education. By creating workforce training opportunities for green collar jobs, Homefull encourages the improvement of the health of program participants as well as their families and wider community.

The Implementing Agency shall provide staff supportive services to the West Dayton Food and Jobs Program as well as operating expenses to continue the expansion of WDFJ. This activity is an eligible public service that provides workforce training and development, and is eligible for Community Development Block Grant (CDBG) program funding under the national objective benefiting low/moderate income persons. Under the Limited Clientele presumed benefit designation, this activity is considered to benefit LMI individuals since 100% of the beneficiaries are at or below 80% of the Area Median Income (AMI).

2. COMMUNITY DEVELOPMENT OBJECTIVES

EXAMPLE:

Implementing Agency certifies that the activities carried out under this Agreement are allowable expenses under HCDA Section 105 (a) (8) and 24 CFR 570.201, CDBG Matrix Code 05H (Employment Training), benefitting low- and moderate income (LMI) persons under the National Objective of Low/Mod Clientele (LMC) Benefit. The program will provide staff supportive services and operating expenses to Homefull in order to provide workforce training and development to individuals participating in the West Dayton Food and Jobs Program. The provision of employment training as a public service is considered to address the LMC National Objective per 24 CFR 570.201 (e).

3. PROGRAM GUIDELINES

EXAMPLE:

The Sub-recipient shall use City of Dayton CDBG funds for provision of West Dayton Food and Jobs Program, not to exceed **ONE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (\$110,000.00)**. The period will be from execution of this Agreement through December 31, 2021, as contemplated in this agreement.

A. Implementation of Workforce Training and Development through the West Dayton Food and Jobs Program

1. The program provides the funding, labor, and materials necessary to implement a workforce training and development program at urban agriculture sites in West Dayton.
2. Eligible beneficiaries of this program are City of Dayton residents at or below 80% of the Area Median Income (AMI).

(As of 06.28.2019)	FY 2019 Dayton, OH MSA Income Limits
Household Size	Moderate (80%) Income Limits
1	\$39,550
2	\$45,200
3	\$50,850
4	\$56,500
5	\$61,050
6	\$65,550
7	\$70,100
8	\$74,600

3. Eligible program participants will be determined by evaluating the family size and income of a participant. Required documentation includes a certification of family size and income qualification through the provision of pay stubs, bank statements, income tax returns, SSI statements, or a notarized self-certification.
4. The creation and retention of jobs will be tracked on a full-time equivalent (FTE) basis. Job creation and retention data will be reported on a monthly and annual basis through the required Monthly and Annual reports.

4. OUTCOME MEASUREMENTS: PERFORMANCE AND OUTCOME MEASURES

In accordance with U.S. Department of Housing and Urban Development (HUD) requirements, the City has implemented a performance measurement system that is based on an outcomes-based approach to funding projects. PCD requires recipients of federal funds to assess the productivity and impact of their programs. This Performance and Outcome Measurement System will help to quantify the effectiveness of programs and establish clearly defined outcomes.

PCD shall report outcomes-based accomplishments to HUD. PCD therefore requires Implementing Agency to submit timely and consistent performance measurement reports that focus on establishing clearly articulated objectives, performance measures, outputs, and program outcomes (desired end results). PCD shall review the reports to track progress, provide feedback, and when necessary, provide technical assistance. Program performance is also considered in the decision-making process for fund allocation. The Implementing Agency agrees to submit the reports detailed in Section 10, Reporting Procedures.

5. IMPLEMENTING AGENCY RESPONSIBILITIES

EXAMPLE

The Implementing Agency will be responsible for the implementation and execution of workforce training and development services, data tracking and management regarding the number of full-time equivalent (FTE) positions created or retained through the workforce training and development programming, documentation of family size and income of all beneficiaries, compliance with all CDBG regulations, provision of employment services and job training for program participants, and preparation of reports to the City as detailed in Section 10, Reporting Procedures and as display in Exhibit D – Monthly and Cumulative Reports.

6. BUDGET

The program budget is attached to this document as Exhibit B – Program Budget.

7. STAFFING

EXAMPLE:

Implementing Agency shall assign the following staff as Key Personnel to the West Dayton Food and Jobs Program:

Staff Member/ Title	General Program Duties	Time Allocation
Farm and Community Liaison	<p><i>The Farm & Horticulture Project Manager is part of the Homefull Food Access line is responsible for implementing strategic plans for the Microfarm and for overseeing day to day operations of the farm and other community urban farms. The FHP Manager also assists with the horticultural aspects of special projects related to Homefull's food access initiatives. She/He will attend team meetings/trainings and be responsible for reporting responsibilities for their program.</i></p> <p><i>The Farm and Community Liaison is responsible for:</i></p>	40 hours/week

	<ul style="list-style-type: none"> • <i>Overseeing the planting, maintenance, and harvesting plans for the Microfarm along with other community farms and coordinating daily tasks;</i> • <i>Managing individual volunteers, volunteer groups, training program workers, and Homefull Stipend employees assigned to Farm projects;</i> • <i>Providing on-the-job training for the Farm Coordinator and advising her/him of ongoing farm plans for implementation including directing day to day activities;</i> • <i>Monitoring work hours for staff assigned to the farm;</i> • <i>Manage HR for their program(s) including counseling staff on performance issues, developing corrective action plan as needed, identifying and highlighting high performers, providing regular supervision support, reviewing and approving timecards if needed;</i> • <i>Ensuring a high quality level of client care is provided in their program(s);</i> • <i>Manage the partner relationship in assigned program(s);</i> • <i>Monitor program budget and control for spending as much as possible;</i> • <i>Being fiscally responsible and modelling this standard for other staff;</i> • <i>Attending trainings as scheduled;</i> • <i>Attending team meetings;</i> • <i>Complete all reports as requested;</i> • <i>Support farm-related Homefull projects as part of the social enterprise efforts;</i> • <i>Providing horticultural oversight as needed for the West Dayton Food Access grant including advising the targeted community gardens and providing guidance for them to manage the development of their food growing;</i> • <i>Seeking opportunities for leadership via committee work, facilitating trainings, and/or showing creative initiative;</i> • <i>Completing other duties as assigned.</i> 	
<p><i>Clerks, Mobile Grocery Clerk</i></p>	<p><i>The primary role of the Market Worker is to ensure the daily assigned tasks at Homefull Markets are completed. There are full-time and part-time, hourly paid position opportunities. Currently, Homefull operates Markets at Wright Stop Plaza, 2nd Street Market, Dayton Children’s Hospital, Mobile Grocery and pop-up locations across the community.</i></p> <p><i>The Grocery Clerk will be responsible for:</i></p> <ul style="list-style-type: none"> • <i>Completing daily assigned market tasks, including but not limited to opening, closing, stocking, transporting, weighing/bagging produce, cleaning, cashier & reporting through Point of Sale System, and customer service duties.</i> • <i>Assisting with other Urban Agriculture projects as needed and participating as part of a Team.</i> • <i>Responding to customer needs and providing a high level of customer service.</i> 	<p><i>1.1 FTE – 40 hours/week</i></p>

	<ul style="list-style-type: none"> • <i>Managing cash, credit, and SNAP-EBT transactions with accuracy, efficiency, and confidentiality.</i> • <i>Answering questions about produce.</i> • <i>Representing Homefull and Market partners with professionalism.</i> • <i>Reporting on needs and progress to supervisor.</i> • <i>Attending trainings & meetings as requested.</i> • <i>Other duties as assigned and related to the specific program assignment.</i> 	
<p><i>Stipend Workers, Mobile Grocery Stipend Workers</i></p>	<p><i>The primary role of the Market Stipend Worker is to learn through on the job experience the skills needed to assist in the overall daily operations of the Homefull Markets. These positions are opportunities for low income consumers to be trained and reimbursed by stipends to gain meaningful on the job skills in Homefull's Food Programs. Currently, Homefull operates Markets at Wright Stop Plaza, 2nd Street Market, Dayton Children's Hospital, Mobile Grocery and pop-up locations across the community.</i></p> <p><i>The Stipend Worker will be trained and assist in:</i></p> <ul style="list-style-type: none"> • <i>Completing daily assigned market tasks, including but not limited to, stocking, weighing/bagging produce, cleaning, cashier duties & operating a Point of Sale System, and other customer service duties.</i> • <i>Assisting with other Urban Agriculture projects as needed and participating as part of a Team.</i> • <i>Responding to customer needs and providing a high level of customer service.</i> • <i>Managing cash, credit, and SNAP-EBT transactions with accuracy, efficiency, and confidentiality.</i> • <i>Answering questions about produce.</i> • <i>Representing Homefull and Market partners with professionalism.</i> • <i>Reporting on needs and progress to supervisor.</i> • <i>Attending trainings & meetings as requested.</i> • <i>Other duties as assigned and related to the specific program assignment.</i> 	<p><i>\$10,000 (\$500 per stipend)</i></p>

Any changes in the Key Personnel assigned or their general responsibilities under this project are subject to the prior approval of PCD.

8. PAYMENT PROCEDURES

Implementing Agency is authorized to incur expenses for the Project and in accordance with the line-item budget set forth in Exhibit B – Program Budget. Implementing Agency shall submit all invoices and supporting documentation to PCD by the fifth business day of each month. Implementing Agency shall comply with the following requirements for the submission of requests for reimbursement:

A. Monthly Expense Summary Information

Implementing Agency's monthly expense summary shall contain the following:

1. Period Covered
2. Work Done/Accomplishments Summary, etc.
3. Written documentation verifying that weekly payroll reports were reviewed and comply with approved wage determination.
4. Total Amount Expended
5. List of Enclosed Documents
6. Agreement Funding Balance
7. Other information Implementing Agency desires to communicate to PCD
10. Signature of Implementing Agency's Director

B. Supporting Documentation

Implementing Agency shall collect, maintain, and submit the following documentation and information with monthly expense summaries. For personnel expenses, the Implementing Agency will include the number of hours worked on the program/project funded, and a detailed summary of work performed by the employee during the time for which payment was made. The detailed summary should include a description of each activity/action performed by the personnel as well as a total of the amount of invoiced time spent working on that activity/action. At a minimum, documentation for personnel charges must include the level of detail and information provided in Exhibit E – CDBG Sample Timesheet and Activity Log. For supplies and materials, the documentation and information shall include an invoice from the vendor or company detailing the item(s)/services purchased and a copy of the Implementing Agency's processed invoice. Monthly documentation should include a copy of the required Monthly Report as enumerated in Exhibit D.

9. DOCUMENTATION AND RECORD KEEPING

In order to ensure that program participants and activities meet the program eligibility criteria, Implementing Agency must record the name, race and ethnicity, income, job descriptions, duties performed by program participants, and proof of payment to contractor(s).

The following financial records related to the payment of salaries and fringes for operational staff should be included in the project file if applicable:

- A. Accounting journals and ledgers
- B. Source documentation that costs were eligible and paid (invoices, purchase orders, cancelled checks, etc.)

- C. Bank account records
- D. Time sheets and activity logs for personnel
- E. Income verification or self-certification documents verifying the income level of program participants
- F. Payroll records and reports
- G. Documentation of other administrative costs charged
- H. Financial reports
- I. Audit files
- J. Financial correspondence

Implementing Agency will maintain case files, including the above information for a period of not less than four years after completion of the program and all affordability requirements. Implementing Agency will maintain these and other documents and financial records in accordance with the requirements for record retention specified in Article 8 of the Agreement.

10. REPORTING PROCEDURES

PCD will require timely and consistent reports to ensure that the program is proceeding according to the work program and in accordance with federal regulations. Implementing Agency agrees to submit the following reports.

A. Monthly Progress Reports

Implementing Agency agrees to submit on the fifth business day of each month a written progress report covering the agreed upon objectives, activities, and expenditures of the previous month. The Monthly Progress Report must detail, at a minimum, the following information per reporting period:

1. The total number of persons assisted during the reporting period;
2. The race/ethnicity for each individual assisted;
3. The income level for each individual assisted;
4. The income verification or certification for each individual assisted;
5. The total number of persons with new or continuing access to a service or benefit;
6. The total number of persons who receive a service or benefit that is no longer substandard;
7. The total number of part-time and full-time jobs created or retained.

A copy of the Monthly Report is included in Exhibit D – Monthly and Cumulative Reports.

B. Cumulative Reports

The Implementing Agency shall submit an annual Cumulative Report detailing the activities of the Implementing Agency to the City no later than December 30 of each year. A copy of the report is included in Exhibit D – Monthly and Cumulative Reports.

Within 60 days after expiration or termination of this Agreement or within 60 days of submitting the final monthly expense summary, whichever comes first, Implementing Agency shall submit an additional cumulative report to PCD. This report shall be in a format approved by PCD, and it shall detail all sources and uses of funds and describe Implementing Agency's activities and outcomes of the services provided throughout the course of the Agreement. This exhibit shall survive termination or expiration of this Agreement.

B. Meetings and Evaluation

Implementing Agency shall meet with PCD and/or its designees at such times designated by the City to review and discuss the Implementing Agency's performance of this Agreement. The Implementing Agency shall allow PCD to conduct on-site inspections, tests and monitoring of its financial, personnel and employment activities pursuant to this Agreement, and will cooperate with the PCD in all respects concerning the review and monitoring of the Implementing Agency's performance.

11. COMMUNICATIONS

All reports, notices, and/or correspondence regarding this Agreement and the Project shall be submitted to the parties as specified in Article 7 of the Agreement.

**EXHIBIT B
PROGRAM BUDGET**

EXAMPLE

	City CDBG	Private	Federal	Local	County	In-Kind	Project Total
Personnel Costs	\$100,360	-	-	\$37,000	\$40,000	\$18,391	\$181,751
<i>Farm and Community Liaison</i>	\$46,000	-	-	-	-	-	
<i>Mobile Grocery Stipend Workers</i>	\$10,000	-	-	-	-	-	
<i>Mobile Grocery Clerks</i>	\$25,000	-	-	-	-	-	
<i>Chief Strategic Officer</i>	\$19,360	-	-	-	-	-	
Utilities	-	-	-	\$8,000	-	-	\$8,000
Supplies/Materials	\$2,500	-	-	-	-	\$10,000	\$12,500
Communications	\$2,500	-	-	\$5,000	-	-	\$7,500
Legal/Auditing Services	\$540	-	-	-	-	-	\$540
Equipment	-	-	-	\$4,000	-	\$3,000	\$7,000
Occupancy	\$4,100	-	-	-	-	-	\$4,100
In-Kind Support	-	-	-	-	-	\$20,000	\$20,000
<i>Labor (volunteers)</i>	-	-	-	-	-	\$15,000	
<i>Materials</i>	-	-	-	-	-	\$5,000	
Total	\$110,000	\$-	\$-	\$54,000	\$40,000	\$51,391	\$255,391

**EXHIBIT C
CDBG MONITORING SCHEDULE**

Grantee: City of Dayton Department of Planning and Community Development

Implementing Agency:

Project/Program:

Monitoring Subject Area	Date of Review	City Representative
<i>Section I. Required Monitoring for ALL CDBG Implementing Agency Agreements</i>		
Financial and Program Eligibility	Upon submission of invoice(s)	Sarah Geist or designated staff
Program Performance and Records Management	Ongoing on a monthly basis until termination of Agreement	Sarah Geist or designated staff
Environmental Review	At the start of agreement	Pete Thornburgh or designated staff
Historic Properties Protection Review	Not Applicable	
On-Site Monitoring Visit	TBD in accordance with CDBG risk assessment policy	Sarah Geist or designated staff

<i>Section II. Specific Monitoring Areas based on Project Type</i>		
Construction Activities (Prevailing Wage Compliance and Record Keeping, Bidding and Procurement Process)	Not Applicable	
Acquisition and Relocation Compliance	Not Applicable	
Housing Rehabilitation Guidelines	Not Applicable	
Economic Development Guidelines	Not Applicable	

**EXHIBIT D
MONTHLY AND CUMULATIVE REPORTS**

Monthly and Cumulative Report

Project Name:

Implementing Agency:

Action Plan Year: 2020

Period Covered by Report:

1. Provide a description of all activities and accomplishments occurring during this reporting period. Quantify all accomplishments and identify the location of physical improvements with an address

2. Total number of persons assisted: _____

3. Race/Ethnicity

Total must match #2

Race	Total	Hispanic/Latino
White		
Black/African-American		
Asian		
American Indian/Alaskan Native		
Native Hawaiian/Other Pacific Islander		
Black/African-American & White		
Asian & White		
American Indian/Alaskan Native & White		
Native Hawaiian/Other Pacific Islander & White		
American Indian/Alaskan Native & Black/African-American		
Other multi-racial		
TOTALS		

4. Income Levels

Total must match #2

Income Level	Number Households
Extremely Low - 0-30%	
Low - 30-50%	
Moderate - 50-80%	
Non-Low/Moderate	
TOTALS	
Percent Low/Mod	%

NOTE: Please provide a copy of all income documentation or self-certifications.

5. Job Creation/Retention

Total must match #2

	Part-Time	Part-Time Low/Mod	Part-Time Weekly Hours	Full-Time	Full-Time Low/Mod	Full-Time Weekly Hours	Percent Low/Mod
Jobs Created							%
Jobs Retained							%

6. FTE jobs created/retained: _____

7. Job Categories – FTE

Total must match #6

Job Category	Jobs Created (FTE)	Jobs Retained (FTE)
Officials and Managers		
Professional		
Technicians		
Sales		
Office and Clerical		
Craft Workers (Skilled)		
Operatives (Semi-Skilled)		
Laborers (Unskilled)		
Service Workers		

8. Total Number of Persons Assisted:

Total must match #2

With new or continuing access to a service or benefit:	
With improved access to a service or benefit:	
That receive a service or benefit that is no longer substandard:	

9. Total Number of Persons Assisted:

Total must match #2

Homeless Persons Given Overnight Shelter:	
Beds Created in Overnight Shelter or Other Emergency Housing:	

EXHIBIT E

CDBG SAMPLE TIMESHEET AND ACTIVITY LOG

For Personnel Funded 100% through this agreement, please use this certification:

Certification & Support for Personnel Invoicing

2 CFR 225, APPENDIX B §8(h)(4-5) states that employees paid by Federal and non-Federal sources need to complete time and effort certifications at least monthly, which reflect the individual's total work time and identify the portion of time spent on federal projects. The certification must be signed by the employee and their supervisor. When multiple funding sources contribute to an employee's salary, the certification must be supported with documentation of actual effort (i.e. timesheets). Banner is the official timekeeping record for {Department Name} {Division Name} and serves as documentation of actual effort for grant-funded employees.

Pay Dates Included in this Certification:

<u>Name</u>	<u>Total Hours Worked</u>	<u>Pay Rate</u>	<u>Total Wages</u>	<u>Fringe Benefits Percentage (If Applicable)</u>	<u>Total Amount Billed for Personnel</u>

Summary of Work Performed:

The above wages and benefits are for.....insert a paragraph explaining the work accomplished during this period by the personnel identified above.

I, _____ (print name) certify that 100% of my time reported during this reporting period was spent performing the activities described above. I hereby this report is an after-the-fact determination of the total activity and actual effort expended for the period indicated, and I have full knowledge of 100% of these activities.

Employee Signature

Date

Supervisor Signature

Date

For personnel charging a percentage of their time LESS THAN 100% to toward this agreement, please use this timesheet and activity log. The activity log MUST provide adequate information detailing activities, events, processes, etc. billed toward the agreement so that the Project Manager can determine cost allocability and cost allowability per 2CFR 200 requirements.

{Department Name} {Division Name}

MONTHLY TIMESHEET

Name **John Smith**

Date September 1-30, 2019

FY 2020

Code	Project	Date:				
		1-Sep Sun	2-Sep Mon	3-Sep Tue	4-Sep Wed	5-Sep Thu
1	Market cashier			4.00	3.00	3.00
2	Training Program			3.00	4.00	4.00
Total Hours Worked				7.00	7.00	7.00

{Department Name} {Division Name} – {Program Name}

MONTHLY ACTIVITY LOG

{Department Name} {Division Name} – {Program Name}

Employee Name

Month & Year

Activity Log – June 2020

June 1, 2020

8:00 **AM/PM** – 5:00 **AM/PM**

- Mobile Market – cashier – checking out customers, organizing stock, providing accounting of drawer
- Training Program – seminar on workforce etiquette, training on using raised garden beds

June 2, 2020

7:30 **AM/PM** – 4:30 **AM/PM**

- Training Program – Carpentry – making raised garden beds;
- Training Program – Proper techniques for harvesting peppers;
- Training Program – Operation of Gettysburg hoop house

June 3, 2020

8:00 **AM/PM** – 5:00 **AM/PM**

- Mobile Market – Setup at 2nd Street Market; Stocking and replenishment for market stand; transportation of signage and produce from XYZ Garden to 2nd Street Market
- XYZ Garden – volunteer training;
- XYZ Garden – harvesting tomatoes and preparing fertilizer

Appendix B: Procurement Policies and Procedures

I. Procurement Program Policies and Procedures

The federal government has set standards and procedures for procurement that are intended to ensure that supplies, equipment, construction and other services acquired in whole or part with federal funds are:

1. Obtained as efficiently and economically as possible, and;
2. Procured in a manner that provides, to the maximum extent practical, open and free competition.

All solicitations must clearly explain all the requirements that the bidder must fulfill in order for your agency to evaluate the bid. A description of the material, product or service must be clear and accurate. Furthermore, the solicitation must not contain features which unduly restrict competition.

Examples of restricting competition include but are not limited to:

- Placing unreasonable qualifying requirements on firms.
- Requiring unnecessary experience and excessive bonding.
- Specifying only "brand name" products instead of allowing "an equal" product.
- Noncompetitive pricing practices between firms and affiliated companies.
- Noncompetitive awards to consultants on retainer contracts.

All awards must be made to the bidder whose bid is responsive to the solicitation and most advantageous to the subrecipient. Any and all bids may be rejected when it is in the interest of the agency to do so. The agency must ensure that the award is only made to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement.

All procurement done shall be in accordance with the HUD procurement procedures found at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/pihh/74608, in addition to the local requirements herein; whichever is most restrictive.

HUD – Methods Of Procurement					
<i>Comparison Chart</i>					
	Small Purchases		Sealed Bids	Competitive Proposals	Non-Competitive
	Micro Purchases Up to \$2,000.00	\$2,000 to \$100,000	\$100,000 and higher	\$100,000 and higher	
Obtain Bids	Solicit ONE quote In Writing Or Verbally	Solicit REASONABLE number of quotes In Writing Or Verbally	<ul style="list-style-type: none"> • Specification • IFB • Advertise • Open Publicly 	<ul style="list-style-type: none"> • Scope of Work • RFP <i>Factors Relative Importance Evaluate</i> • Advertise 	ONLY ONE BIDDER
Award Contract	Single Quote No Competition	<ul style="list-style-type: none"> • Requires Competition (recommend a minimum of three) • Awarded to "Best Value" 	<ul style="list-style-type: none"> • Requires Competition • Always an Apparent Low Bidder • Awarded to Lowest Cost • Fixed Firm Price Contract. 	<ul style="list-style-type: none"> • Requires Competition • Awarded to Most Advantageous (Best Overall Value) 	<ul style="list-style-type: none"> • Available only from a single source. • Public extgency or emergency exits. • HUD Approves. • Lack of competition
Prove Cost Reasonableness	Signature signifies that the cost is reasonable.	Apparently obvious or price analysis	Price Analysis	<ol style="list-style-type: none"> 1. Price Analysis (Qualifications & Cost) 2. Cost Analysis (Qualifications ONLY) 	Cost Analysis
Independent Cost Analysis	Not Required	Required	Required	Required	Required
Bonding Requirements	Not Required	Not Required	Required for construction Contracts.	Not Required	Required for construction contracts.
Wage Rates	Not Required	Required for construction & maintenance contracts.	Required for construction & maintenance contracts	Not Required	Required for construction contracts over \$2,000.
Required HUD Forms	Not Required	General - Table 5.1 Construction HUD 5370-EZ or HUD 5370 Maintenance – Table 5.1 Sect. II-HUD 5370-C	Non-Construction HUD-5369-B HUD-5369-C HUD-5370-C Construction HUD-5369 HUD-5369-A HUD-5370	Non-Construction HUD-5369-B HUD-5369-C A/E Contract HUD-51915	See small purchases, sealed bids and competitive proposals.
Check List of Parties Excluded from Federal Procurement	Required	Required	Required	Required	Required
Check List of Denial of Participation	Required	Required	Required	Required	Required
Documenting Rationale for Award	Historical Data	Historical Data or written summary (Finding of Fact)	Historical Data or written summary (Finding of Fact)	Written Summary (Finding of Fact)	Written Summary (Finding of Fact)

From <https://www.hud.gov/sites/documents/PROCUREMENT-CHART.PDF>

Debarred Contractors

HUD maintains a list on their web site of contractors who have been barred from competing for HUD contracts. Before awarding a bid, the agency must check the federal System for Award Management (SAM) web site (<http://www.sam.gov/>) to verify that a contractor is not on the debarred list.

Sub recipients seeking to procure goods and services, including professional services, in an amount of \$3,000 or greater must check SAM prior to awarding a contract to expend federal dollars.

For any contractor on the excluded parties list, the use of CDBG and HOME funds is prohibited. Print the SAM web page that states that no record was found regarding your contractor and place it in your files.

General Purchasing

Purchases may be made with the use of CDBG and HOME funds. The purchase must be (1) required for the success of the program which you have been funded and (2) an allowable cost as determined within the contractual agreement between the City of Dayton and your agency. All purchases must be accompanied by proper source documentation; (1) an invoice, and/or sales receipt and (2) copies of checks or charge slips to verify that your agency paid for the items at hand.

The City Charter and City Policies establish specific dollar thresholds (frequently referred to as City Commission Approval Limit). Contracts (PO's) that total less than this amount may be approved by the City Procurement Agent based upon authority delegated by the City Commission to the City Manager and further delegated by the Manager to the Procurement Agent. Contractual obligations that exceed this limit require approval by the City Manager and City Commission. The City Commission shall approve all purchase orders/contracts that exceed \$10,000.00.

It is imperative that agencies keep a log of purchases charged to the grant. Below are specific purchase cost requirements.

1. Procurement transactions less than \$500 are expected to be handled via p-Card (City of Dayton p-Card Policy) or Petty Cash (City of Dayton Petty Cash Policy).
2. Purchase requisitions submitted for purchases totaling less than \$500.00 should include an explanation why p-card or petty cash are not viable means to accomplish transaction.
3. In no event shall individual transactions be 'split' into multiple transactions to avoid the competitive procurement process administered by the Division of Procurement; doing so may be deemed a direct policy violation and may result in disciplinary action.

Purchases less than \$2,500:

- It is encouraged that several quotes are obtained to ensure the best price for any item.
- Only one quote is required. The sales slip from the store where you bought the item is sufficient.

Purchases between \$2,500 - \$10,000:

- Three written quotes must be obtained for the item. These quotes should be placed in the project file.
- If the subrecipient is unable to obtain three quotes, a list of the vendors/contractors contacted should be placed in the file, noting those vendors who did submit quotes.
- If there is only one vendor who makes the item to be purchased, this should be noted

in the file with an explanation of how such determination was made.

- A printout of the SAM web page that states "no record was found" regarding the chosen contractor/vendor and should be placed in the project file.

Purchases between \$10,000 - \$50,000:

- Informal bids should be done in accordance with Section 8.02 of the City's Procurement Policies and Procedures Guide.
- The Division of Procurement should work to obtain at least three responses via a written posted documents on the City's website on behalf of the Department.
- If the subrecipient is unable to obtain three response, a list of the vendors/contractors contacted should be placed in the file, noting those vendors who did reply.
 - It is further recommended that "delivery" and "read" receipts be put on the complimentary email notification to vendors.
- If there is only one vendor who makes the item to be purchased, this should be noted in the file with an explanation of how such determination was made.
- A printout of the SAM web page that states "no record was found" regarding the chosen contractor/vendor and should be placed in the project file.

Purchases more than \$50,000:

- The Procurement Division must be contacted for assistance prior to starting the bid process. Sealed formal bids are required in accordance to Section 8.03 of the City's Procurement Policies and Procedures Guide.
- A formal bid can be either an Initiation to Bid or a Request for Proposals.
- A printout of the SAM web page that states "no record was found" regarding the chosen contractor/vendor and should be placed in the project file.

Advertisement

The bid is advertised in a newspaper of general circulation per the City Charter. We are required to advertise once, wait at least one week, advertise a second time, and then wait at least eight calendar days prior to opening of the bids. The Bid is also posted to the City's Website under the Division of Procurement at www.daytonohio.gov.

Bids are received to bids@daytonohio.gov in the provided PDF format or as outlined in that solicitation. Bid openings are being held via Zoom conferences with information that is provided in the bid. Any bids that are received by the office of the Division of Procurement late, in the incorrect email, or in any other way not in compliance with the instructions set forth by the bid documents will be rejected, and cannot be considered for possible purchase. This allows for fair competition and protects the City against unethical practices.

Awarding of Bids

The award of purchase orders resulting from bids (whether formal or informal) are made predominantly on the following criteria:

- Compliance of products or services bid with specifications.
- Cost of products or services.
- Payment terms.
- Freight (or shipping) terms.
- Delivery date quoted.

If a more complex criteria is required for evaluation purpose, the City may elect to use a Request for Proposal (RFP), in which specific Evaluation Criteria will be stated in the RFP document.

Recommendation to Purchase

The award of purchase order/contract resulting from the bid process is carried out by the Division of Procurement for Purchase Orders and the Requesting Department if a contract process.

Recommendations for other than low bid must be justified above and signed by the Director of the requisitioning department if using either a purchase order or a contract. This justification must specifically state how the low bid(s) failed to meet bid specifications. The party responsible for evaluating bids needs to review those bids with the following information in mind:

The primary objective of Competitive Bidding and Centralized Procurement is to achieve the best value for the City; this generally will result in a recommendation being made for the "low bid meeting specifications" or "lowest and best bid". Goods and services acquired through competitive bid process administered by the Division of Procurement shall be awarded on the basis of "Lowest and Best Bid;" the lowest responsive and responsible bid.

- DEFINITION: Responsive Bid; a bid that meets all of the terms, conditions and specifications of the bid solicitation.
- DEFINITION: Responsible Bid; a bid submitted by an entity that has the overall capacity to satisfactorily perform the contractual obligations.

The following approach to the review of bid documents is strongly suggested for time effectiveness and to accomplish that which is in the best interest of the City:

- Begin with the least costly bid received, and determine if it meets the minimum specifications set forth. If so, stop here and make the recommendation to award to that (lowest) bid.
- If the lowest bid is determined to not meet specifications, it must be clearly documented and defined to the Procurement Agent how the bid does not comply with the terms, conditions and/or specifications of the bid solicitation, and the next lowest bid shall then be reviewed to determine compliance with specifications. This review process shall continue until such time as an award recommendation is successfully achieved for the lowest responsive bid. Letters documenting non-compliance with specifications must be signed by a Department Director.
- If one of the bids received meet the specifications, you may recommend the lowest bid that most closely meets specifications or recommend that all bids be rejected.
- The Procurement Agent will carry out purchases under \$10,000.00 when s/he is in agreement with the recommendations submitted.
- Purchases in excess of \$10,000.00 (or as determined by the City Charter and per Section. 35.21) will be submitted to Commission for approval, along with the recommendation by the Procurement Agent when s/he is in agreement with the recommendation submitted.
- Award recommendations are made as a series of recommendations and approvals until such time as contract (PO) is authorized. The Dayton City Commission is the contracting authority for the City of Dayton. For practical purposes, the City Commission legally delegates authority to the City Manager and the City Manager delegates' authority to the Procurement Agent. These delegations of authority provide operational efficiencies in supply provisioning to facilitate municipal service delivery. The chain of recommendations/approvals is from the Using Agency (Department Director or designee) to the Procurement Agent, Director of Central Services, City Manager and then City

Commission. At each step of this approval process award recommendations are subject to review and approval/authorization. Incumbents at each step of this approval process is responsible to ensure the accuracy and validity of the recommendation before proceeding to authorize the City's entry into a contractual obligation and may, therefore, require additional information, or reject recommendation until satisfactory contract award is achieved.

Legal Ads

On May 9, 2012, the City Commission approved Ordinance 31168-12 amending Sections 35.01 through 35.03 of the Revised Code of General Ordinances in Order to Permit Public Advertising and Publication Electronically.

The City of Dayton Charter requires all public advertising or publication by the City to be published in a daily newspaper of general circulation within the City or in a journal published by the City. The City has elected to create and use an electronic journal for public advertising in order to increase the efficiency of the City operations and reduce operating expenditures. As of June 11, 2012, all public advertising through the Division of Procurement will be posted electronically on a centralized Internet website designated for this purpose.

PROCEDURES – The Division of Procurement will be responsible for the posting of legal ads to the City's website for IFB/RFP solicited by the Division of Procurement.

The Emergency Purchase Order

Section 86 of the Dayton City Charter authorizes Department Directors and the City Procurement Agent to immediately order goods and services required to correct an emergency condition. An emergency condition is defined as:

- An event that cannot be reasonably foreseen
- Immediate action is necessary to mitigate or correct risk of jeopardy to:
 - Public Safety
 - Public Health
 - Public Welfare

The competitive procurement process may be waived or modified, but is recommended if practicable.

To acquire goods and services in an emergency:

1. A City Department Director declares the emergency condition in writing to the City Procurement Agent (copy City Manager). The emergency declaration:
 - a) Defines the risk to public safety, health and/or welfare.
 - b) Specifies the goods/services required to correct the condition.
 - c) Includes available information related to the need to acquire goods/services (e.g., how the condition came to exist, how the acquisition of goods/services will remedy the condition, sources contacted, prices quoted/estimated, supply availability).
2. A Purchase Requisition is prepared and accompanies the emergency declaration to the City Procurement Agent
3. Department Directors and the City Procurement Agent are authorized by the Dayton City Charter to immediately acquire goods/services needed to rectify the emergency condition.
 - a) If a Department Director authorizes purchase, that Director shall notify the Procurement Agent by written emergency declaration and purchase requisition

within a reasonable time-frame (generally within one business day) to avoid a payment of voucher.

- b) If a Department Director declares the emergency for action by Procurement Agent (recommended when practicable), the Procurement Agent shall act within a reasonable timeframe (generally within one business day) to remedy the emergency condition, use whatever means are available and appropriate to expedite delivery of needed goods/services
- c) Procurement Agent shall ensure appropriate approvals are obtained (e.g., City Manager Report for City Commission action) as soon as practicable (generally within 30 days)

Land and Building Purchases

If your grant is to purchase land or an existing building, there are certain notifications which must be made prior to making an offer. When property is purchased using federal funds, certain actions are required by Federal law to ensure that the seller is treated fairly. Proof that these actions were taken will be required before the City of Dayton can fund the activity.

Vacant Property or Building:

An agency may purchase property if, before the seller enters into the contract of sale, the agency informs the seller in writing of the following:

1. That the agency does not have the power of eminent domain and therefore will not acquire the property if negotiations fail to result in an amicable agreement; and
2. Of the agency's estimate of the fair market value of the property. An appraisal is not required; however, agency files must include an explanation, with reasonable written evidence, of the basis for the estimate. Whenever feasible, this information shall be provided before making the purchase offer. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

Additionally, receipt of the letter must be documented. A return receipt from the post office will suffice. An example "Notice to Real Property Owner" can be provided by City staff

Non-Vacant Property or Buildings:

If the land or building is not vacant, or owner occupied, there are additional requirements which must be met at the time the owner is first approached about selling the property. **You must contact the Community Services Division as early as possible to avoid time delays, additional expenses, and the possible loss of federal funds for your project.**

Relocation is not an allowable activity with the use of City of Dayton CDBG and/or HOME funds. Projects requiring relocation of individuals may not be undertaken.

Contracting

Federal regulations make it very clear that a subrecipient should make every effort to use local business firms and contract with small, minority-owned, and/or women-owned businesses in the procurement process.

A subrecipient must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus firms. Steps should include:

- Work with the Human Relations Council to determine appropriate goals and encourage DBE outreach.
- Incorporating such businesses in solicitation lists whenever they are potential sources.
- Ensuring that such businesses are solicited when identified as potential sources.
- Dividing procurement requirements, when economically feasible, to permit maximum participation of such businesses.
- Requiring prime contractors, when subcontracts are let, to take affirmative steps to select such businesses.
- To find a list of local historically underutilized businesses (HUB) visit the State of Ohio website at:

Section 3 of the Housing and Urban Development Act of 1968:

In conformance with Section 3 of the Housing and Community Development Act of 1968, to the greatest extent feasible, subrecipients must award contracts for work to be performed to eligible business owners located in or owned by residents of the target area. This helps ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very low-income persons. Subrecipients should note, however, that the desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive bid process. **Subrecipients who are awarded \$200,000 or more in CDBG and/or HOME funds must comply with requirements at 24 CFR Part 135, including requirements related to preferences for contracting opportunities for section 3 business concerns and training and employment opportunities for section 3 residents. The Section 3 Clause at 24 CFR**

135.38 Must be included in all section 3 covered contracts. Subrecipients must keep records demonstrating compliance with Part 135.

Insurance and Indemnification

Each agency must procure and maintain insurance for the duration of the contractual agreement between the City of the Dayton and the agency. Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed by subrecipient, its agents, representatives, employees, volunteers, officers, director, or subcontractors. Each agency must provide adequate proof of insurance prior to signature of the contract for funding.

All insurance requirements are stated in detail as an attachment to the agency contract.

Property Management

When CDBG or HOME funds are used to acquire real property (e.g., land, buildings) or personal property (e.g., equipment, supplies, intangible property), federal regulations make the subrecipient responsible for ensuring that (1) the property continues to be used for its intended (and approved)

purpose, (2) that the subrecipient keeps track of and takes care of the property, and (3) that if the subrecipient sells the property, the subrecipient reimburses the City of Dayton for the share of the property's value according to the contractual obligation.

Requirement

For all equipment (e.g., computers, furniture, hardware):

1. Property records must be maintained that include a description of the equipment, a serial number or other identification number, the source of the equipment, who holds title, the acquisition date, the cost, the percentage of federal participation in the cost of the equipment, the date of disposal, and the sale price when the agency disposes of it.
2. A physical inventory of the equipment must be taken and the results reconciled with the property records at least every two years.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft shall be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.
5. If the property is sold, proper sales procedures must be established to ensure the highest possible return. Items with a current per-unit fair market value of less than \$5,000 may be retained, sold, or disposed of with no further obligation to the City of Dayton. Items with a current fair market value exceeding \$5,000 may be retained or sold, and the City of Dayton shall have a right to receive a pro-rata share of the proceeds based on the share of the purchase price which was paid from grant funds.

Real property sales require reimbursement to the City if the affordability and/or national objective compliance period is not met. Each CDBG construction and HOME contract provides more specific details regarding repayment of obligations.

BID Protest

1. Section 10.01- In the event that an Offeror(s) (entity that extends a bid or proposal to the City of Dayton in response to a competitive solicitation administered by the City's Procurement Division) is the apparent low bidder/proposer to the City and does not concur with a contract award recommendation, it shall first bring its concerns to the attention of the competitive solicitation administrator (assigned Buyer/Senior Buyer). The assigned administrator, or designee, shall explain the basis and merits of the award recommendation within ten business days. If this explanation does not satisfy the Offeror, it may initiate a formal protest by producing the following documentation of its concerns to the competitive solicitation administrator:
 - a. Written statement of issues(s)/concern(s) specifically related to how the City's award recommendation does not comply with applicable laws, Ordinances, policies and/or terms and conditions of the City's competitive bid/proposal solicitation
 - i. Statement shall be on official letterhead of the Offeror's entity*
 - ii. Statement shall be executed by an agent of the Offeror that is duly authorized to legally bind that entity*
2. The competitive solicitation administrator shall reply in writing to formal protests within ten business days. In the event that the Offeror still is not satisfied that the award recommendation is consistent with applicable rules as outlined above, it may appeal the



decision in the following order/steps of succession:

- a. Purchasing Agent/Director of PMB
 - b. City Manager
 - c. City Commission
3. In each of these levels of successive appeal, protesting entity shall expressly state the violation of applicable rules as outlined above and detail why the previous response from the City is not consistent with those applicable rules. Each level of appeal shall reply, in writing, within ten business days of receipt of the protest, provided it was received in the proper order of appeal; City may otherwise remand the protest to the appropriate level of hearing and response.
 4. While under formal bid protest, City is not prevented from moving forward with recommendation or actual contract award. In the event that the City shall proceed with award and subsequently determine a formal bid protest is valid and with merit, the City shall take the appropriate steps to revise its contract award consistent with the terms and conditions of the solicitation that resulted in the award, contract, applicable Laws, Ordinances, Rules, Codes, Policies, procedures and judgment of the proper City officials as to the City's best interests
 5. Bid solicitation documents, including the general terms and conditions of the solicitation as well as specifications, scopes of work and any & all other relative documentation shall, collectively, work in conjunction to prescribe to potential Offeror how bids/proposals shall be evaluated for possible award. In many instances, this is simply the "Lowest and Best Bid" award criteria outlined herein. In more complex procurements, however, the solicitation documents may prescribe more precise formula, weighting factors and/or other means and techniques of evaluating offers to ensure the City's best interests are procured. Solicitation documents may also incorporate other relative documents including Laws, Ordinances, Rules and Policies by reference alone as if they were fully re-written within the solicitation.

DISPOSITION OF SURPLUS MATERIAL AND PROPERTY

GENERAL

1. Lead Hazard Reduction: Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

AUTHORITY

1. The City Charter grants authority to the Procurement Agent to conduct and monitor the City's surplus property program. The Procurement Agent is responsible for the disposal of all surplus materials (i.e.: real estate, motor vehicles, capital equipment, scrap, etc.) Responsibilities delegated include the following:
2. The Procurement Agent may require periodic reports of all supplies which are no longer used or while have become obsolete, worn out, or unusable.
3. The Procurement Agent shall have the authority to transfer items to other agencies.
4. The Procurement Agent shall have the authority to sell, exchange, or trade-in all supplies which have become unsuitable for public use.

5. The Procurement Agent shall ensure all sales are made to the highest responsible bidder.

METHODS OF DISPOSAL

1. When items become excess, obsolete, or surplus, the using Department must report them to the Division of Procurement (through the Property Disposition Request Form). In all cases of property disposal, the Department shall notify the Finance Division to update the Department's Fixed Asset Accounts. The authorized methods of surplus disposition follow:

A. TRANSFER

- The transfer to another Department that has a use of the item is the best method of disposition. The Division of Procurement will periodically circulate a list of items available for transfer. A Department wishing to accept an item available for transfer will notify Procurement and receive approval of the transfer.

B. TRADE-IN

- The Purchase Agent may determine that it is advantageous to the City to seek bids on replacement items with bidders allowed to offer prices with trade-in allowances and without trade-in allowances. Award may be made in the manner that is in the best interest of the City.

C. SALE

- There are several methods of selling excess surplus items that are no longer of use to the City.

D. AUCTIONS

- The City contract with an auctioneering service to sell items to the highest bidder at advertised public auctions or through On-line auction (such as Govdeals.com).

E. SEALED BIDS

- The Procurement Agent may determine that items will be sold at a sealed bid sale. Public notice of the sale is made, and solicitations are e-mailed to prospective bidders. The opportunity may also be posted on the City's website at www.daytonohio.gov. This method assures reaching a large number of prospective bidders, and allows potential purchasers from outside to the immediate geographical area to participate in the bidding.

F. NEGOTIATED SALES

- The Procurement Agent is authorized to negotiate the sale of surplus items with other political subdivisions.

G. DONATIONS (Previously per Ordinance 29103-95).

- For Donations less than \$10,000, the Procurement Agent, with written approval of the City Manager, may make donations on behalf of the City to any non-profit organization. The City Commission, by resolution, may make a donation with

an aggregate value of \$10,000 or more, providing the City Manager determines in writing that the donation is in the best interest of and contributes to the general welfare of the citizens of the City.

2. ALLOCATION OF PROCEEDS

A. Unless otherwise directed by the City Commission or required by the terms of a grant, the proceeds from the disposition of surplus or excess property will be deposited into the City's general fund.

3. SALES TO EMPLOYEES

A. The sale of surplus or excess City property to City employees is strictly prohibited unless the purchase is made at a City sponsored public auction, and the employee competes on an equal basis with all other eligible bidders.

4. DISPOSAL OF GRANT-FUNDED MATERIAL

A. When equipment is purchased using funds from State or Federal grant funds, the provisions of the grant must be followed during disposal. It is the disposing Department's responsibility to notify the Division of Procurement as the time the property is declared surplus of any grant provision which must be followed. If required by the grant provisions, proceeds from the disposal may be returned to the grant funding agency, rather than deposited to the City's general fund.

REFERENCE

- All procurement activities performed on behalf of the City of Dayton are expected to be fully compliant with applicable Ordinances, rules, codes, policies and procedures in effect at the time of the procurement activity. A partial listing of these applicable documents follows for reference and shall be considered incorporated into this document by reference as if fully re-written herein:
- City of Dayton Ordinance No. 30829-09 "Payment of Living Wages"
- City of Dayton Ordinance No. 30698-07 "Prohibit Discriminatory Practices"
- City of Dayton Resolution No. 5670-09 "Utilize Federal Economic Stimulus Grant Funds for Goods and Services Provided Within The United States"
- City of Dayton Ordinance No. 30698-07 "Affirmative Action Assurance" (Section 35.14 and 35.15)
- City of Dayton Ordinance No. 31023-10 "Procurement Enhancement Program" (Sections 35.30 through 35.52)

X. ITEM 103 INSTRUCTION TO BIDDERS

- 103.01 Contract Completion and Critical Path Scheduling**
- 103.02 Delay Claims**
- 103.03 Giving Notice**
- 103.04 Examination of Contract Documents**
- 103.05 Evaluation of Work Season and Project Site**
- 103.06 Subsurface and Concealed Physical Conditions**
- 103.07 Pre-bid Meeting**
- 103.08 Request for Information or Clarification**
- 103.09 Interpretation or Clarification by Addendum**
- 103.10 Standards**
- 103.11 Proposed Equals**
- 103.12 Approval or Disapproval of Proposed Equals**
- 103.13 Substitutions**
- 103.14 Electronic Bid**
- 103.15 Alternates**
- 103.16 Submission of Bid**
- 103.17 Submittals with Bid**
- 103.18 Unit Prices**
- 103.19 Changes to Unit Price Work**
- 103.20 Change in Bid Amount**
- 103.21 Timely Submission of Bids**
- 103.22 Bid Letting**
- 103.23 Bid Deadline Extension**
- 103.24 Bid Evaluation Criteria**
- 103.25 Bid Evaluation Procedures**
- 103.26 Lowest Bidder**
- 103.27 Rejection of Bids**
- 103.28 Best Bidder**
- 103.29 Information**
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103.01 Contract Completion and Critical Path Scheduling.

Unless otherwise provided in the Contract Documents, the time for completion of the Project indicated on the Bid or Electronic Bidding Service shall be the time for Contract Completion applicable to the Bidders. Critical path scheduling methods shall be utilized, unless waived by the Authorized Representative in writing.

103.02 Delay Claims.

The only delays for which the Bidder is entitled to additional compensation are those delays which the Bidder has established were proximately caused by an improper action or failure to act by the Owner.

103.03 Giving Notice.

Whenever any provision of the Contract Documents requires the giving of notice prior to the execution of the Contract Form, such notice shall be deemed to have been validly given if delivered personally to the Person for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such Person known to the giver of the notice. All notices provided to the Bidder by the Engineer shall be copied to the Authorized Representative. All notices provided to the Engineer by the Bidder shall be copied to the Authorized Representative. All notices provided to the Authorized Representative by the Bidder shall be copied to the Engineer.

103.04 Examination of Contract Documents.

Contract Documents are available through the Electronic Bidding Service. The Bidder shall examine all Contract Documents, including without limitation the Drawings and Specifications for all divisions of Work for the Project, noting particularly all requirements which will affect the Bidder's Work in any way prior to submitting the Bidder's Bid. Failure of a Bidder to be acquainted with the amount and nature of Work required to complete any of the Work, in conformity with all requirements of the Project as a whole wherever set forth in the Contract Documents or reasonably inferred therefrom, will not be considered as a basis for additional compensation.

103.05 Evaluation of Work Season and Project Site.

The Bidder shall evaluate when the Work may be performed and examine and evaluate the Project site and related Project conditions where the Work will be performed prior to submitting the Bidder's Bid, including without limitation the following:

- The condition, layout and nature of the Project site and surrounding area, including Borrow Areas and Waste Areas, if any;
- The condition, layout and nature of the Project site and surrounding area, including Borrow Areas and Waste Areas, if any;
- The availability and cost of labor;
- The availability and cost of Materials, supplies and Equipment;
- The cost of temporary utilities required;
- The usual weather conditions;
- The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;
- Conditions bearing upon transportation, disposal, handling, and storage of Materials and waste.

103.06 103.06 Subsurface and Concealed Physical Conditions.

The Contractor may rely upon the general accuracy of the technical data contained in reports and drawings provided to the Contractor by the Owner and, except for such reliance on technical data, the Contractor shall not rely upon or make any claim against the City with respect to:

- The completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or
- Other data, interpretation, opinions, and information contained in such reports or shown or indicated in such drawings; or
- Any Contractor interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information.

For example, all interpolations and extrapolations of data performed by the Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which the Owner does not warrant. Subject to the foregoing, if during the progress of the Work subsurface or concealed physical conditions are encountered at the site differing materially from those indicated in the Contract Documents, or if subsurface or concealed physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, the Contractor shall notify the Engineer of the specific differing conditions before they are disturbed or the affected Work is performed. Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, a Change Order may be issued in accordance with Item 117. The City may decline to issue a Change Order if the notice required by 117.11 is not timely provided by the Contractor. If the Contractor fails to timely provide the notice required by 117.11, the Contractor shall be deemed to have waived any and all claims for additional compensation or time extension for the related subsurface or concealed physical conditions.

103.07 Pre-Bid Meeting.

All Bidders are required to attend the pre-Bid meeting, where the Engineer will answer questions regarding the Contract Documents. If not given in the Legal Notice, notice of the time and place of any pre-Bid meeting to be held will be given by the Engineer to each Person of record holding Contract Documents. A Bidder's failure to attend the pre-Bid meeting will result in his or her bid being rejected as non-responsive.

103.08 Request for Information or Clarification.

If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including without limitation the Drawings and Specifications, or between any Contract Documents and any applicable provision of law, the Bidder shall submit a written request to the Engineer for an interpretation or clarification. Such requests must be submitted to the Engineer at least seven Days before the Bid Deadline.

103.09 Interpretation or Clarification by Addendum.

If the Engineer determines that an interpretation or clarification is warranted, the Engineer

shall issue an Addendum through the Electronic Bidding Service. Any interpretation or clarification of the Contract Documents made by any Person other than the Engineer, or in any manner other than an Addendum issued through the Electronic Bidding Service, shall not be binding and the Bidder shall not rely upon any such interpretation or clarification. The Bidder shall not, at any time before or after the execution of the Contract Form, be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, any discrepancy on or between Contract Documents or incorrectly assumed conditions regarding the nature, extent or character of the Work, if no request for interpretation or clarification regarding such matter was made by the Bidder prior to the Bid Deadline in compliance with 103.08.

103.10 Standards.

The articles, devices, Materials, Equipment, forms of construction, fixtures and other items named in the Specifications to denote kind, quality or performance requirement for each significant portion of the Work shall be known as Standards and all Bids shall be based upon those Standards. Where two or more Standards are named, the Bidder may furnish any one of those Standards. Items which are not Standards may be used only if accepted pursuant to the requirements of 103.11 and 103.12.

103.11 Proposed Equals.

If the Bidder proposes to use an article, device, material, Equipment, form of construction, fixture or item other than those Standards named in the Specifications, the Bidder shall submit such a proposal to the Engineer, not later than ten Days prior to the Bid Deadline, certifying that the item is equal in quality, and in all aspects of performance and appearance, to the Standards specified. In addition, the Bidder shall submit information to the Engineer not later than ten Days prior to the Bid Deadline, which information shall include:

- The name and a complete description of the Proposed Equal, including Drawings, performance and test data, and other information necessary for a complete evaluation of the Proposed Equal;
- A statement setting forth any changes which the Proposed Equal will require in the Contract Documents or the Project.

103.12 Approval or Disapproval of Proposed Equals.

If the Engineer, in the exercise of the Engineer's sole unfettered discretion, approves the Proposed Equal as a Standard, the Engineer shall issue an Addendum to that effect through the Electronic Bidding Service. If the Engineer does not approve the Proposed Equal as a Standard, the Engineer shall inform the Bidder of the disapproval in writing, no later than ninety-six hours prior to the Bid Deadline, excluding Saturdays, Sundays and legal holidays, which decision shall be final. The Engineer shall have the discretion to reject a Proposed Equal for any reason, including, but not limited to, the Bidder's failure to provide sufficient information to enable the Engineer to completely evaluate the Proposed Equal without delaying the scheduled Bid Deadline.

103.13 Substitutions.

If no Addendum is issued approving the Proposed Equal as a Standard, the Bidder may list the item on the Substitution sheet. A Bidder desiring consideration for the use of an article, device, material, Equipment, form of construction, fixture or item other than those Standards named in the Specifications shall submit a Proposal for the Substitution of same for the applicable standard, using the Substitution sheet provided in the Electronic Bidding

Service and listing, for each proposed Substitution: the standard specified, the Substitution, and the change in Bid amount, (or indicate no change, if applicable). The name and a complete description including Drawings, performance and test data, and other information necessary for a complete evaluation of each Substitution shall be furnished to the Engineer by the Bidder promptly upon request. Any Substitution accepted by the City must be incorporated in the Contract in writing. Substitutions shall not be considered in determining of the lowest and best Bid but may be considered in rejecting all Bids.

103.14 Electronic Bid.

Each Bid shall contain the name of every Person interested therein and be submitted through the Electronic Bidding Service. Instructions for using the Electronic Bidding Service are available on the City's website. Failure to properly submit a Bid through the Electronic Bidding Service may cause a Bid to be rejected as nonresponsive. Unless the Bidder withdraws the Bid as provided in 103.31, the Bidder will be required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.

103.15 Alternates.

When an Alternate is listed in the Electronic Bidding Service, the Bidder shall complete the applicable portion, indicating an amount which will increase or decrease the Base Bid. The City reserves the right to accept or reject any or all Bids on Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected in any order.

103.16 Submission of Bid.

If the Bidder is a corporation, limited liability company, partnership or sole proprietorship, an officer, member, partner or principal of the Bidder, as applicable, shall submit and electronically sign the Bid through the Electronic Bidding Service. If the Bidder is a joint venture, an officer, member, partner or principal, as applicable, of each participant of the joint venture shall electronically sign the Bid on behalf of that participant, where applicable. By submitting a Bid, the Bidder warrants that it is not now, and will not become subject to an unresolved finding for recovery under Section 9.24 ORC, prior to the award of any Contract arising out of this Project, without notifying the City of such findings. Section 9.24, ORC prohibits the City from awarding a Contract to any Bidder against whom the Auditor of State has issued findings for recovery if the findings for recovery are unresolved at the time of award. The completed Bid submission of the Bidder with whom the City executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.

103.17 Submittals with Bid.

Where indicated in the Electronic Bidding Service, the Bidder must download all documents that are shown as requiring a download and submit every document that is shown as requiring submission. A Bid shall be rejected if the Bidder fails to submit, or submits not fully complete, any document that is shown as requiring submission.

103.18 Unit Prices.

When Unit Prices are requested in the Electronic Bidding Service, any scheduled quantities listed by the City are not binding upon the City and are to be used only for the comparison of Bids for purposes of determining the lowest and best Bidder and to determine the maximum quantity to be provided without a Change Order. If Unit Prices are stated to be

sought only for informational purposes, they shall not be used for comparison of Bids. Unless otherwise specified in the Contract Documents, the Unit Prices and the totals or extensions thereof set forth shall include all Materials, Equipment, insurance, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of that portion of the Work to which the Unit Prices apply. The Bidder shall submit Unit Prices for all items listed unless other instructions are stated.

103.19 Changes to Unit Price Work.

The Bidder agrees that the City may increase, decrease or delete entirely the scheduled quantities of Work to be done and Materials to be furnished after execution of the Contract Form without invalidating the Contract. Payments, except for lump sum items in Unit Price Contracts, will be made to the Contractor only for the actual quantities of Work performed or Materials furnished in accordance with the Contract Documents, but not in excess of the maximum set by the scheduled quantities. The Contractor must obtain a Change Order prior to performing Work or furnishing Materials in excess of the scheduled quantities in order to be compensated for the excess.

103.20 Change in Bid Amount.

The Bidder may amend or withdraw its Bid through the Electronic Bidding Service at any time prior to the Bid Deadline.

103.21 Timely Submission of Bids.

It is the responsibility of the Bidder to submit its Bid through the Electronic Bidding Service prior to the Bid Deadline. Bids arriving after the Bid Deadline shall not be considered.

103.22 Bid Letting.

Bidders may submit Bids through the Electronic Bidding Service up to the Bid Deadline. At the Bid Deadline, all Bids will be tabulated and the tabulation made public. The public bid tabulation is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted. The electronic Bid submissions shall be a public record and open for inspection, upon request, at any time after the Bid Deadline, except for any information which is not subject to disclosure as provided by applicable law.

103.23 Bid Deadline Extension.

If any Addendum is issued within Seventy-two hours prior to the published Bid Deadline, excluding Saturdays, Sundays and legal holidays, the Bid Deadline shall automatically be extended one week, with no further advertising required. If any Addendum is issued more than seventy-two hours prior to the published Bid Deadline, excluding Saturdays, Sundays, and legal holidays, the Bid Deadline may be revised by the Addendum, at the City's discretion.

103.24 Bid Evaluation Criteria.

The City reserves the right to accept or reject any or all Bids, in whole or in part, and reserves the right to reject any Bid or Bids and to award the Contract to any remaining Bidder the City determines to be the lowest and best Bidder. The City reserves the right to accept or reject any or all Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected in any order. The City may reject the Bid of any Bidder who has engaged in collusive Bidding, been involved in violations of ethics laws or who has an unresolved finding against it by the Auditor of State as provided in Section 9.24, ORC, as not the lowest and best Bid. The City reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a Bid, provided the

irregularity or deficiency does not affect the Bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any requirements of the Contract Documents may cause a Bid to be rejected.

103.25 Bid Evaluation Procedures.

The Contract will be awarded to the lowest and best Bidder as determined in the discretion of the City or all Bids will be rejected in accordance with the procedures set forth in 103.26 through 103.31.

103.26 Lowest Bidder.

In determining which Bidder is the lowest, the City shall consider the Base Bid and any Alternate or Alternates which the City determines to accept. Substitutions shall not be considered. The total of the Bids for the accepted Alternate(s) shall be added to or deducted from the Base Bid, as applicable, for the purpose of determining the lowest Bidder. If the Project involves multiple Contracts, the City may also receive combined Bids for two or more Contracts, if provided in the Electronic Bidding Service, but no Contract for the entire job or for more than one Contract shall be awarded unless the separate Bids do not cover all the Work and Materials required or unless the combined Bid is lower than the applicable separate Bids in the aggregate. The City may also receive Bids for multiple Projects if provided in the Electronic Bidding Service.

103.27 Rejection of Bids.

In addition to any other reason provided for in this Item, a Bid shall be rejected if:

- The Bid fails to respond to the Contract Documents in all material respects;
- The Bid contains irregularities or deviations from the Contract Documents which would affect the amount of the Bid or otherwise give the Bidder a competitive advantage;
- The Bid contains a Bid guaranty executed by a Surety not licensed in Ohio; or
- A Bid guaranty that is otherwise determined to be insufficient by the City.

In addition to any other reason provided for in this Item, a Bid may be rejected if:

- The Bid is Mathematically Unbalanced;
- The Bid does not contain an executed Non-collusion affidavit;
- The Bidder fails to furnish Samples and a complete statement of the origin, composition and manufacture of any or all Materials to be used for the Work, when so requested; or
- The Samples provided by the Bidder fail to demonstrate that Materials are of sufficient quality or fitness for the Work.

103.28 Best Bidder.

In determining whether a Bidder is best, factors to be considered include, without limitation:

- Preferences required by law, where applicable;
- The experience of the Bidder;

- The financial condition of the Bidder;
- Compliance by the Bidder and related Persons with ethics laws and City ordinances and regulations, including without limitation submission of an affirmative action program in accordance with Section 35.16 R.C.G.O.;
- The conduct and performance of the Bidder on previous Bids and Contracts with the City or other owners, which shall include, without limitation, compliance with prevailing wage laws, Workers' compensation, income tax laws and equal opportunity requirements;
- The facilities of the Bidder, including without limitation machinery, plant and Equipment, as applicable;
- The management skills of the Bidder;
- The ability of the Bidder to execute the Contract properly, including whether the Bidder's existing workload may hinder or prevent timely completion of the Work;
- The ability of the Bidder to perform at least fifty-one percent of the Work with its own employees;
- The evaluation of a Bid below the median of other Bids pursuant to 103.37.

A Bidder who submits a Bid for Work for electrical, plumbing, hydronics, refrigeration or heating, ventilating and air conditioning shall provide evidence of a valid Contractor's license from the Ohio Construction Industry Licensing board or successor.

103.29 Information.

A Bidder shall submit to the Engineer, upon request, any information the Authorized Representative deems appropriate to the consideration of factors showing that such Bidder's Bid is best, including without limitation the following:

1. Overall experience of the Bidder, including number of years in business under present and former business names;
2. Names and qualifications of key Bidder personnel;
3. Complete listing of all ongoing and completed public and private construction Contracts of the Bidder in the last three years, including the nature, status and value of each Contract and a name, address, and phone number for a representative of the Owner of each related Project;
4. Complete listing of any EPA, (OSHA) or other regulating entity issues or citations in the last ten years;
5. Complete listing of all outstanding liens against the Bidder;
6. Certified financial statement with trade and bank references;
7. Description of relevant facilities of the Bidder;

8. Description of the management experience of the Bidder's Project manager(s) and Superintendent(s); who will be assigned to the Project;
9. Complete list of all Subcontractors and Material Suppliers;
10. To support a Contract Bond, a current and signed certificate of compliance required under Section 9.311 ORC, issued by the Department of Insurance, showing the Surety is licensed to do business in Ohio;
11. Current Ohio Workers' Compensation Certificate.

If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a certificate of good standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 through 4123.94, inclusive, ORC.

The Engineer may obtain such information from several Bidders simultaneously. Each Bidder shall provide requested information within such time limits as the Engineer shall establish.

103.30 Notice of Intent to Award.

The City shall notify the apparent lowest and best Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified, the Bidder will be awarded the Contract. The City reserves the right to rescind any Notice of Intent to Award at any time prior to the execution of the Contract if the City determines the Notice of Intent to Award was issued in error.

103.31 Withdrawal of Bid.

A Bidder may withdraw its Bid at any time prior to the Bid Deadline through the Electronic Bidding Service. All Bids submitted through the Electronic Bidding Service which were not withdrawn prior to the Bid Deadline shall remain valid and open for acceptance for a period of at least sixty Days after the Bid Deadline; provided, however that during that period a Bidder may withdraw a Bid from consideration if the Bid amount was substantially lower than the amounts of other Bids, providing the Bid was submitted in good faith, and the reason for the Bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor or material made directly in the compilation of the Bid amount.

Notice of such a request to withdraw a Bid must be made in writing filed with the Authorized Representative within two business Days after the Bid Deadline. The City reserves the right to request that the Bidder submit evidence substantiating the Bidder's request to withdraw the Bid. No Bid may be withdrawn after the Bid Deadline when the result would be the awarding of the Contract on another Bid to the same Bidder. If a Bid is withdrawn after the Bid Deadline, the City may award the Contract to another Bidder that the City determines to be the lowest and best Bidder or reject all Bids and advertise for other Bids. If the City advertises for other Bids, the withdrawing Bidder shall pay the costs incurred by the City in connection with the rebidding if the City finds that such costs would not have been incurred but for such withdrawal. A Bidder may withdraw its Bid at any time after the expiration of the described sixty-day period by written notice to the Authorized Representative.

103.32 Refusal to Accept Withdrawal.

If the City intends to contest the right of the Bidder to withdraw a Bid after the Bid Deadline, a hearing shall be held by the Authorized Representative within ten Days after the Bid Deadline and an order shall be issued by the City allowing or denying the claim of such right within five Days after such hearing is concluded. The City shall give the withdrawing Bidder timely notice of the time and place of any such hearing. The City shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing. If the City denies the claim for withdrawal and the Bidder elects to litigate or otherwise refuses to perform the Contract, the City may reject all Bids or award the Contract to the next lowest and best Bidder, as determined by the City, without waiving any claims against the non-performing Bidder.

103.33 Effect of Withdrawal.

No Bidder who is permitted to withdraw a Bid after the Bid Deadline shall for compensation supply any material or labor to, or perform any subcontract or other Work agreement for, the Person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn Bid was submitted, without the written approval of the City. The Person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the City in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval. A Bidder who is permitted to withdraw a Bid after Bid Deadline may be considered not the best for future City Contracts.

103.34 Bid Estimate.

In no instance shall Contracts be let either as a whole, or in aggregate, if Bids for parts of the Work are taken, which exceed one hundred ten percent of the estimate for the improvement contemplated.

103.35 Review of Low Bid.

The City may reject a Bid which is:

- More than twenty percent below the median of all higher Bids received for a Contract where the estimate is one hundred thousand dollars or more; or
- More than twenty-five percent below the median of all higher Bids received for a Contract where the estimate is less than one hundred thousand dollars.

In determining whether to reject such a bid, the City may at its discretion, but is not required to:

- Conducts an interview with the Bidder to determine what, if anything has been overlooked in the Bid, and to analyze the process planned by the Bidder to complete the Work;
- Require the Bidder to submit to the City a certified financial statement and a list of recent public Contracts which the Bidder has performed; and/or

- Notify the Bidder's Surety in writing that the Bidder with whom the City intends to enter a Contract submitted a Bid determined to be substantially lower than the median of all higher Bids.

103.36 Bid Guaranty.

The Bidder must file with the Bid a Bid guaranty, payable to the City of Dayton, in the form of the signed Bid guaranty and Contract Bond contained in the Contract Documents, for the full amount of the Base Bid plus add Alternates. The Bid guaranty shall be submitted through the Electronic Bidding Service. The Bid guaranty shall be in form and substance satisfactory to the City and shall serve as an assurance that the Bidder will, upon acceptance of the Bidder's Bid, comply with all conditions precedent for execution of the Contract Form and execute the Contract Form within the time specified by the City. ANY BID GUARANTY MUST BE PAYABLE TO THE CITY OF DAYTON. A Bid may be rejected if the Bid guaranty is payable to any other Person. IF THE BLANK LINES FOR THE AMOUNT ON THE BID GUARANTY AND CONTRACT BOND ARE NOT FILLED IN, THE PENAL SUM WILL AUTOMATICALLY BE THE FULL AMOUNT OF THE BASE BID PLUS ADD ALTERNATES.

If those blank lines are filled in, the amount must not be less than the full amount of the Base Bid plus add Alternates, stated in dollars and cents. A PERCENTAGE IS NOT ACCEPTABLE. The Bid guaranty and Contract Bond must be signed by an authorized agent with Power of Attorney from a Surety. The Bid guaranty and Contract Bond must be issued by a Surety authorized by the Department of Insurance to transact business in Ohio. The requirements of Section 3905.41, ORC, may be applicable to require the Bid guaranty and Contract Bond be countersigned by an Ohio resident agent. The Bidder must determine whether this requirement is applicable to the Bidder's Surety. Bid guaranties will be returned to all unsuccessful Bidders seventy-five Days after the Bid Deadline or upon execution of the Contract Form by the apparently successful Bidder, whichever is earlier.

103.37 Bid Guaranty Forfeiture.

If for any reason, other than as authorized by 103.31 or 103.38, the Bidder fails to execute the Contract Form, and the City awards the Contract to another Bidder which the City determines is the lowest and best Bidder, the Bidder who failed to execute the Contract Form shall be liable to the City for the difference between such Bidder's Bid and the Bid of the lowest and best Bidder, or for a penal sum not to exceed ten percent of the defaulting Bidder's Bid amount, whichever is less.

If the City then awards a Contract to another Bidder which the City determines is the lowest and best Bidder and such Bidder also fails or refuses to execute the Contract Form, the liability of such lowest and best Bidder shall, except as provided in 103.38, be the amount of the difference between the Bid amounts of such lowest and best Bidder and another Bidder which the City determines is the lowest and best Bidder, but not in excess of the liability specified in 103.31. Liability on account of an award to each succeeding lowest and best Bidder shall be determined in like manner. If the City does not award the Contract to the another Bidder which the City determines is the lowest and best Bidder but resubmits the Project for Bidding, the Bidder failing to execute the Contract Form shall, except as provided in 103.38, be liable to the City for a penal sum not to exceed ten percent of such Bidder's Bid amount or the costs incurred by the City in connection with the rebidding, whichever is less.

103.38 Exception to Bid Guaranty Forfeiture.

A Bidder with the City for a Contract with the City costing less than five hundred thousand

dollars may withdraw a Bid from consideration if the Bidder's Bid for some other Contract with the State or any political subdivision, district, institution or agency thereof, excluding ODOT, costing less than five hundred thousand dollars has already been accepted, if the Bidder certifies in good faith that the total price of all such Bidder's current Contracts is less than five hundred thousand dollars, and if the Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because to perform such Contract would exceed the Bidder's Bonding capacity.

If a Bid is withdrawn pursuant to 103.38, the City may award the Contract to another Bidder which the City determines is the lowest and best Bidder or reject all Bids and resubmit the Project for Bidding, and neither the withdrawing Bidder nor such Bidder's Surety shall be liable for the difference between the Bidder's Bid and that of another Bidder which the City determines is the lowest and best Bidder, for a penal sum, or for the costs incurred by the City in connection with the rebidding.

103.39 Contract Bond.

If the Bidder executes the Contract Form, the Bidder shall, at the time of signing the Contract Form, provide the Contract Bond required by law in form and substance, and from a Surety, satisfactory to the City. The Contract Bond shall be in the full amount of the Contract to indemnify the City against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract Documents and in accordance with the Plans, Specifications, details and bills of material therefore and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or Materials furnished in carrying forward, performing or completing the Contract. A Contract Bond must be signed by an authorized agent with Power of Attorney from the Surety.

103.40 Personal Property Tax Statement.

The successful Bidder shall provide a properly completed and executed affidavit in a form satisfactory to the City in order to fulfill the requirements of Section 5719.042 ORC, which provides as follows:

“After the award by a taxing district of any Contract let by competitive Bid and prior to the time the Contract is entered into, the Person making a Bid shall submit to the district's fiscal officer a statement affirmed under oath that the Person with whom the Contract is to be made was not charged at the time the Bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such Person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty Days of the date it is submitted.”

A copy of the statement shall also be incorporated into the Contract, and no payment shall be made with respect to any Contract to which 103.40 applies unless such statement has been so incorporated as a part thereof.

103.41 Conditions Precedent for Execution of Contract Form by City.

The award of the Contract and the execution of the Contract Form are based upon the expectation that the lowest and best Bidder will execute the Contract Form and comply with

all conditions precedent for execution of the Contract Form within ten Days of the date of the issuance of the Notice of Intent to Award. Failure to execute the Contract Form or noncompliance with the conditions precedent for execution of the Contract Form within ten Days of the date of the issuance of the Notice of Intent to Award shall be cause permitting the City to cancel the Notice of Intent to Award for the Bidder's failure to be best, and to award the Contract to another Bidder which the City determines is the lowest and best Bidder or to resubmit the Contract for Bidding, at the discretion of the City. The City may extend the time for submitting the conditions precedent for execution of the Contract Form for good cause shown. No extension shall operate as a waiver of the conditions precedent for execution of the Contract Form. The conditions precedent for execution of the Contract Form by the City are as follows:

- (a) Contract Form;
- (b) Contract Bond and to support the Contract Bond, a power of attorney for any attorney-in-fact signing the Contract Bond and a certificate of compliance issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio;
- (c) Ohio Workers' Compensation Certificate;
- (d) Certificate of Insurance (ACORD form is acceptable) clearly setting forth all exclusions and deductibles and copy of additional insured or loss payee endorsement. The City reserves the right to request a certified copy of the Contractor's insurance policies, including all endorsements.
- (e) If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of good standing from the Secretary of State showing the right of the Bidder to do business in the State will be required. If the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05 ORC, or under Sections 4123.01 through 4123.94, inclusive, ORC.
- (f) Personal property Tax Statement; and
- (g) Evidence of registration of the Contractor and all of the Contractor's Subcontractors with the Building Department and the City's Department of Finance, Division of Revenue and Taxation.
- (h) Material Declaration of Assistance/Non-Assistance to Terrorist Organization, when required.
- (i) If requested by the City, the Bidder shall immediately submit evidence that the Person signing the Contract is authorized to bind the Bidder.

103.42 Time Limits.

A Contract Form is not executed until it has been signed on behalf of both the Bidder and the City by Persons authorized to bind the Bidder and the City, respectively. The failure to award the Contract and to execute the Contract Form within ninety Days of the Bid Deadline invalidates the entire Bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest and best Bidder and the City concurs with such extension. If the Contract is awarded and the Contract Form is executed within ninety Days of the Bid Deadline, any increases in material, labor and subcontract costs shall be borne by the Bidder without alteration of the amount of the Bid. If the cause of the failure to execute the Contract within ninety Days of the Bid Deadline is due to matters for which the City is solely responsible, the Contractor shall be entitled to a Change Order authorizing

payment of verifiable increased costs in Materials, labor or subcontracts. If the cause of the failure to execute the Contract within ninety Days of the Bid Deadline is due to matters for which the Contractor is responsible, no request for increased costs will be granted.

103.43 Notice to Proceed and Submittals.

The Authorized Representative shall issue the Contractor a Notice to Proceed which shall establish the date for commencement of the time for Contract Completion. The Contractor shall, within ten Days of the date of the Notice to Proceed, furnish the Engineer the following submittals:

- (a) Contract Cost Breakdown;
- (b) Preliminary schedule including shop Drawings and submittals;
- (c) List of Subcontractors;
- (d) List of Material Suppliers;
- (e) Outline of qualifications of proposed Superintendent.

103.44 Wage Rates and Payment Dates.

The Bidder shall base its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour bureau or the U.S. Department of Labor, as applicable, for the Project as provided in Sections 4115.03 and 4115.14, ORC, or the Davis-Bacon Act, respectively. The Contractor shall, within ten Days of the date of the Notice to Proceed, provide to the Engineer for the prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

103.45 Written Submissions in lieu of Electronic Bidding Service.

Where a Bidder is required by a provision in this Item 103 to make a submission through the Electronic Bidding Service, such submission may be made in paper form only upon prior written authorization from the Engineer. The determination whether to grant such prior written authorization is left to the Engineer and may be exercised by the Engineer's sole unfettered discretion. Submissions outside the Electronic Bidding Service without such prior written authorization may result in a determination that the Bid is non-responsive.

XI. ITEM 104 GENERAL REQUIREMENTS

- 104.01 Contract Documents
- 104.02 Applicable Law and ODOT Matters
- 104.03 Jurisdiction
- 104.04 Assignment of Antitrust Claims
- 104.05 Captions
- 104.06 Nondiscrimination Generally
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- 104.15 Access to Documents
- 104.16 As-Built Drawings
- 104.17 Substitutes for Standards or Approved Equals
- 104.18 Sales and Use Taxes

104.01 **Contract Documents.**

The Contractor, the Engineer and the Authorized Representative shall be familiar with all provisions of the Contract Documents.

104.02 **Applicable Law and ODOT Matters.**

The Contractor and the City shall comply with all applicable Federal, State and local codes, statutes, ordinances and regulations in the performance of the Work on the Project. When the Federal government or the State pays all or any portion of the cost of the Project, the Work shall be subject to the inspection of the appropriate federal or State agency. No such inspection shall make the Federal government or State a party to the Contract and will in no way affect the rights and obligations of the City and the Contractor under the Contract. Any such inspection is solely for the benefit of the City and the Federal or State agency making it, and neither the Contractor nor the Surety shall be entitled to rely upon it for any purpose. References to ODOT matters shall be as set forth in the CMS current as of the Bid Deadline. In such instances, the CMS is incorporated only to the extent that it is not inconsistent with the Specifications.

104.03 **Jurisdiction.**

The Montgomery County Court of Common Pleas, or the United States District Court for the Southern District of Ohio if required by law, shall be the exclusive jurisdiction in which any action or proceeding concerning any Bid, Contract, agreement or performance under the Contract Documents or in connection with the Project shall be filed. In any such action or proceeding the Contract Documents shall be construed in accordance with the laws of the State which shall govern to the exclusion of the law of any other jurisdiction.

104.04 Assignment of Antitrust Claims.

By executing the Contract Form, the Contractor assigns, conveys and transfers to the City any right, title and interest to any claims or causes of action it may have or acquire under State or Federal antitrust laws relating to any goods, products, or services purchased, procured or rendered to the City pursuant to the Contract.

104.05 Captions.

Captions throughout the Contract Documents are for convenience and reference only and the words contained in a caption shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of the Contract Documents. Rights and responsibilities of the Contractor, the Engineer and the City are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience.

104.06 Nondiscrimination Generally.

During the performance of the Contract, the Contractor agrees that in the hiring of employees for the performance of Work, including without limitation Work to be performed by a Subcontractor, no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, religion, national origin, age, sex, disability, or color, discriminate against any citizen in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates. The Contractor further agrees that no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, national origin, age, sex, disability, or color. In the event of the Contractor's noncompliance with the nondiscrimination clauses, the contract may be terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further City Contracts or such other sanctions as provided by law. Any provision of a hiring hall Contract or agreement which obligates a Contractor to hire, if available, only such employees as are referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement Contract unless, at the date of execution of such hiring hall Contract or agreement, or within thirty Days thereafter, such labor organization has in effect procedures for referring qualified employees for hire without regard to race, color, religion, national origin, or ancestry and unless such labor organization includes in its apprentice and journeymen membership, or otherwise has available for job referral without discrimination, qualified employees.

104.07 City's Nondiscrimination Requirements.

The Contractor shall comply with RCGO, Section 35.14 which provides as follows and any amendments thereto:

- (A) The [Contractor] shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. The [Contractor] shall take affirmative action in accordance with terms outlined in its [Proposal] and the provisions of this [Contract] to insure that applicants are

employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The [Contractor] agrees to post in conspicuous places, available to employees and applicants, notices to be provided by the [City] setting forth the provisions of the nondiscrimination clauses.

- (B) The [Contractor] shall in all solicitations or advertisements for employees placed by or on behalf of the [Contractor], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap.
- (C) The [Contractor] shall send to each labor union or representative of workers with which [the Contractor] has a collective bargaining agreement or other contract or understanding, a notice to be provided by the [City] advising the labor union or workers' representative of the [Contractor's] commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (D) The [Contractor] shall comply with all rules, regulations, and relevant orders promulgated by the Human Relations council pursuant to its duties created by ordinance.
- (E) The [Contractor] shall file, and shall cause each of [the Subcontractors and Material Suppliers] to file, compliance reports with the Human Relations Council as may be directed. Compliance reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs and employment statistics of the [Contractor, Material Supplier, or Subcontractor] and shall be in such form as the Human Relations Council may prescribe.
- (F) The [Contractor] shall furnish all information and reports required by this [Contract] and by the rules, regulations, and orders of the Human Relations Council pursuant hereto, and shall permit reasonable access to the [Contractor's] books, records, and accounts by the Human Relations Council or its representative, as necessary for purposes of investigation to ascertain compliance with this [Contract] and rules, regulations and orders.
- (G) In the event of the [Contractor's] failure to comply with the equal employment opportunity and affirmative action provisions of this [Contract], including the affirmative action undertaking outlined in it is [Proposal], or with any of the rules, regulations, or orders herein referred to, it is agreed that the [City], at its option, may do any or all of the following:
 - (1) Cancel, terminate, or suspend this [Contract], in whole or in part [...].
 - (2) Declare the [Contractor] ineligible for further [City Contracts].
 - (3) Recover from the [Contractor] by set-off against the unpaid portion of the [Contract], or otherwise pursuant to this [Contract], the sum of fifty dollars per [Day], as [Liquidated Damages] and not as a penalty, for each [Day] that the [Contractor] shall fail to comply with these provisions of the [Contract], as determined by the Human Relations Council in accordance

with its rules and regulations, the said sum being fixed and agreed upon by and between the [Contractor] and the [City] because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the [City] would sustain in the event of such a breach of contract, and that amount is agreed to be the amount of damages which the [City] would sustain.

- (4) Impose such other sanctions as may be imposed by the Human Relations Council pursuant to ordinances passed by the Commission, or seek such other remedies as may be provided by law.
- (H) The [Contractor] shall include the provisions of this [Contract] in every subcontract, so that such provisions shall be binding upon each [Subcontractor]. The [Contractor] shall take such action with respect to any subcontracts as the Human Relations Council may direct as means of enforcing such provisions, including sanctions for noncompliance. However, in the event the [Contractor] becomes involved in, or is threatened with litigation with a [Subcontractor] as a result of such direction by the Human Relations Council, the [Contractor] may request the City to enter into such litigation to protect the interests of the City.

104.08 Notice of Commencement.

The Authorized Representative shall prepare a Notice of Commencement in affidavit form identifying the name and address of the City, the Project, the name, address of the Contractor, the date of execution of the Contract, and the name and address of the Surety for the Contractor, in addition to the name and address of the Authorized Representative upon whom a Claim Affidavit may be served. The Notice of Commencement shall be made available upon request.

104.09 Giving Notice.

Whenever any provision of the Contract Documents requires the giving of any notice after the execution of the Contract Form, such notice shall be deemed to have been validly given if delivered personally to the Person for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such Person known to the giver of the notice. All notices provided to the Contractor by the Engineer shall be copied to the Authorized Representative. All notices provided to the Engineer by the Contractor shall be copied to the Authorized Representative. All notices provided to the Authorized Representative by the Contractor shall be copied to the Engineer.

104.10 Computation of Time.

When any period of time is referred to in the Contract Documents by Days, it shall be computed to exclude the first and include the last Day of such period. If the last Day of any such period falls on a Saturday, Sunday or a legal holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

104.11 Facsimile Transmission and Electronic Mail.

Any notice required to be given by the Contract Documents may be given by facsimile transmission or electronic mail, provided the original signed notice is delivered within two Days after the date of the facsimile transmission or electronic mail. Facsimile transmittals in excess of 10 pages are discouraged.

104.12 Intent.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contractor shall provide all labor, Equipment and Materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferred therefrom to produce the intended results. The Specifications may not be superseded or amended by the Drawings unless so provided in supplemental Specifications or Special Provisions prepared by the Engineer and approved in writing by the Authorized Representative.

The Drawings shall generally govern dimensions, details and locations of the Work and calculated dimensions shall govern over scaled dimensions. The Specifications shall generally govern quality of Materials and workmanship. The organization of the Specifications in divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. In the event of inconsistencies within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work, and shall comply with the stricter requirement. Unless otherwise specified in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

104.13 Requests for Information.

If the Contractor finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including without limitation, the Drawings and Specifications, or between any of the Contract Documents and any applicable provision of law, the Contractor, before proceeding with the Work, shall submit a written Request for information to the Engineer for an interpretation or clarification. The Contractor shall be responsible for the prompt delivery of any such Request for information. The Engineer shall respond in writing to any and all requests for information within three business Days of receipt. Any interpretation or clarification of the Contract Documents made by any Person other than the Engineer, or in any manner other than in writing, shall not be binding and the Contractor shall not rely upon any such interpretation or clarification. If any change to the Work is made to accommodate unforeseen circumstances, the Engineer shall initiate the appropriate action and notify the Authorized Representative.

104.14 Ownership and Use of Drawings and Specifications.

All Drawings and Specifications are the property of the City. In making copies of the Drawings and Specifications available, the City does not confer a license or grant permission for any use other than Work on the Project. Unless otherwise specified in the Contract Documents, the Engineer shall furnish to the Contractor, free of charge, 7 sets of Drawings and Specifications if the Contract price is five hundred thousand dollars or less, and 10 sets of Drawings and Specifications if the Contract price is in excess of five hundred thousand dollars. The Contractor may obtain additional copies of the Contract Documents from the Engineer, upon request, at the cost of reproduction, if any.

104.15 Access to Documents.

The Contractor shall maintain in good order at the Project site one copy of all Drawings, Specifications, Bulletins, Addenda, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, warranties, Change Orders, and other modifications, including As-built Drawings. The Contractor shall at all times permit access to the documents described in 104.15, and any other Contract Documents by the Authorized Representative and the Engineer.

104.16 As-Built Drawings.

For Projects administered by the Water Engineering Manager of the City's Department of Water, or the Planning and Engineering Manager of the Department of Aviation, the Contractor shall keep an accurate record of all approved changes made to the Drawings to show Work as actually performed where such Work varies from Work as originally shown, including the exact location and depth of underground utility lines. During the performance of the Work, the Contractor shall record, prior to the submission of each Contractor Payment Request, any approved changes on the Drawings, neatly in a contrasting color, noting new information not shown on the original Drawings.

Failure to so record such changes may cause payment to be withheld or delayed. Where shop Drawings are used, the Contractor shall cross reference the corresponding sheet numbers on the Drawings and sections of the Specifications. The Contractor shall note related Change Order numbers where applicable. The Contractor shall keep a record of any change made to the Specifications, noting particularly any variation from manufacturer's instructions and recommendations. 104.16 shall not apply to any Project administered by the Engineer of the Department of Public Works unless required in the supplemental Specifications or Special Provisions for the Project.

104.17 Substitutes for Standards or Approved Equals.

Requests for substitutes for standards or Approved Equals shall not be considered after the Bid Deadline unless listed on the Substitution sheet or after the Contractor can conclusively demonstrate to the Engineer one of the following conditions:

- (a) All applicable standards and Approved Equals are not available through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers;
- (b) All applicable standards and Approved Equals are no longer produced;
- (c) All applicable standards and Approved Equals will not perform as designed or intended.

104.18 Sales and Use Taxes.

Only those Materials which ultimately become a part of the completed Structure or improvement which constitutes the Project will be exempt from State sales tax as provided in Section 5739.02 ORC, and State use tax as provided in Section 5741.01 ORC. The purchase, lease or rental of material, Equipment, parts or expendable items such as form lumber, tools, oils, greases and fuels, which are used in connection with the Work, are subject to the application of State sales tax and State use tax.

1. Section 103.36 is hereby removed and replaced with the following:
103.36 Bid Guaranty. The Bidder must file with the Bid a Bid guaranty, payable to the City of Dayton, in the form of the signed Bid guaranty and Contract Bond contained in

the Contract Documents, for at least 10% of the full amount of the Base Bid plus any Alternates. The Bid guaranty shall be submitted through the Electronic Bidding Service. The Bid guaranty shall be in form and substance satisfactory to the City and shall serve as an assurance that the Bidder will, upon acceptance of the Bidder's Bid, comply with all conditions precedent for execution of the Contract Form and execute the Contract Form within the time specified by the City. ANY BID GUARANTY MUST BE PAYABLE TO THE CITY OF DAYTON. A Bid may be rejected if the Bid guaranty is payable to any other Person. IF THE BLANK LINES FOR THE AMOUNT ON THE BID GUARANTY AND CONTRACT BOND ARE NOT FILLED IN, THE PENAL SUM WILL AUTOMATICALLY BE THE FULL AMOUNT OF THE BASE BID PLUS ADD ALTERNATES. If those blank lines are filled in, the amount must not be less than the full amount of the Base Bid plus add Alternates, stated in dollars and cents. A PERCENTAGE IS NOT ACCEPTABLE. The Bid guaranty and Contract Bond must be signed by an authorized agent with Power of Attorney from a Surety. The Bid guaranty and Contract Bond must be issued by a Surety authorized by the Department of Insurance to transact business in Ohio. The requirements of Section 3905.41, ORC, may be applicable to require the Bid guaranty and Contract Bond be countersigned by an Ohio resident agent. The Bidder must determine whether this requirement is applicable to the Bidder's Surety. Bid guaranties will be returned to all unsuccessful Bidders seventy-five Days after the Bid Deadline or upon execution of the Contract Form by the apparently successful Bidder, whichever is earlier.