

**Closeout Agreement
between the
State of Vermont
Agency of Commerce and Community Development
and the Town of East Montpelier**

This Closeout Agreement is effective as of October 01, 1999, by and between the State of Vermont, Agency of Commerce and Community Development (the "Agency") and the Town of East Montpelier, Vermont, Grantee under Grant Agreement #0197/96IG(17) (the "Grantee").

The Vermont Community Development Program (the "VCDP") funds disbursed pursuant to said Grant Agreement have generated, are generating, or may in the future generate income to the Grantee. The Agency and the Grantee, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. Definitions

The following terms, as used in this Agreement, shall be defined as follows:

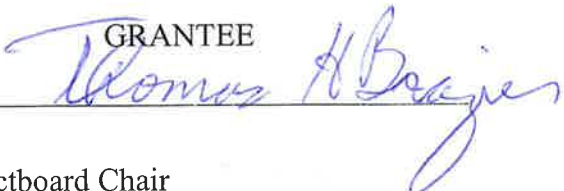
- (a) "Federal Act" shall mean Title I of the Housing and Community Development act of 1974, as amended from time to time.
- (b) "Federal Regulations" shall mean title 24, part 570 of the Code of Federal Regulations (24 CFR 570), as amended from time to time.
- (c) "General Administration" costs may include, among others, costs for overall administration, coordination, monitoring, evaluation, and similar costs associated with financial, legal and audit requirements.
- (d) "Program Income" or "PI" shall have the meaning set forth in the Federal Regulations at 24 CFR §570.489(e), including:
 - (i) Except as defined below as "Unrestricted Revenue," income received by a VCDP grantee, or a subgrantee that is not a Target of Assistance, from activities supported by VCDP funds, including loan principal, loan interest, and funds resulting from the sale or lease of assets purchased with VCDP grant funds;

IN WITNESS WHEREOF, the parties hereto have caused this Closeout Agreement to be executed and the signatures of the undersigned indicate that each has read this Closeout Agreement in its entirety and agrees to be bound by the provisions enumerated herein.

Dated at ^{East} Montpelier, Vermont, this 21st day of February, 2005
4 March

By:  _____
AGENCY

John S. Hall, Commissioner
Department of Housing and Community Affairs
for: Kevin L. Dorn, Secretary
Agency of Commerce and Community Development

By:  _____
GRANTEE

Selectboard Chair
Town of East Montpelier

- (ii) Income received by the Grantee and/or subgrantee from activities supported by VCDP funds during the Period of Performance of a VCDP grant agreement, without regard to the amount received.
- (e) **“Program Management”** costs may include, among others, costs for marketing, rehabilitation, counseling, inspections, preparation of loan specifications, loan processing, and other costs related to assisting owners, tenants, contractors, or other entities to participate in these activities.
- (f) **“Target of Assistance”** shall mean the person or entity that uses VCDP funds to perform VCDP-eligible activities where such activities provide the benefit that achieves the national objective required under the VCDP grant agreement.
- (g) **“Unrestricted Revenue”** or **“UR”** shall mean:
 - (i) Income received by a VCDP Grantee, or any subgrantee that is not a target of assistance, for VCDP-funded activities from one or more grants, where the total amount of such income does not exceed \$25,000 during the fiscal year period. Where the gross income exceeds \$25,000 during the fiscal year, the total amount of income becomes Program Income.
 - (ii) Income received from loans originated by an NCDO;
 - (iii) Repayments from second-generation loans originated by a municipality, assigned to an NCDO, and re-loaned by the NCDO;
 - (iv) Unrestricted revenue that is re-loaned.

2. Plan for Use of Income

Grantee shall use Program Income generated under Grant Agreement 0197/96IG(17) loan repayments from the Sandy Pines Project, to establish the East Montpelier Revolving Loan Fund (EMRLF) for the purpose of funding community development activities in the Town of East Montpelier. Specific uses of funds may include, but not be limited to, the implementation, management and administration of loan activities involving affordable housing, small business development, and infrastructure improvements to support community and economic development. Primary beneficiaries will continue to be low and moderate-income residents of the Town of East Montpelier.

3. Management Plan

Grantee’s Selectboard shall appoint the East Montpelier Revolving Loan Advisory Committee, which will provide oversight of the program and determine uses of the Program Income. Administrative and management tasks performed by third parties shall be pursuant to written contract ratified by the Selectboard, or duly authorized agent. General Operating Procedures and Eligibility requirements shall be defined in the Policies and Procedures as developed by the Advisory Committee and ratified by the Selectboard. Grantee shall provide a copy of the adopted Policies and Procedures and any amendments or revisions to the Agency..

4. Income

Income generated by VCDP funds and received by a VCDP grantee and any subgrantee that is not a Target of Assistance shall be governed by the provisions of the *Grants Management Guide*, Chapter 22, “Agency Procedures.”

5. Program Income

The use of Program Income shall be subject to all requirements governing the use of VCDP funds, including those set forth in the Federal Act and the Federal Regulations.

6. Unrestricted Revenue

Except as set forth in this Agreement, the requirements of the Federal Act and Federal Regulations need not apply to the use of Unrestricted Revenue. However, Unrestricted Revenue shall be used only for activities that are eligible under the Federal Act.

7. Obligation of Grantee.

Grantee shall remain fully liable and obligated under this Closeout Agreement, notwithstanding any contract with any third party. Any contracts between the Grantee and any third party which is related to the expenditure of funds governed by this Closeout Agreement shall be in writing, and shall contain provisions which:

- (a) Bar conflicts of interest, as the term is defined in the VCDP *Grants Management Guide*, Agency Procedures;
- (b) Require compliance with 21 V.S.A. chapter 5, subchapter 6, the Fair Employment Practices Act;
- (c) Require that records related to performance pursuant to the contract be maintained for a period of three (3) years from completion of performance under the contract, and be made available upon request of this Agency; and
- (d) That the contract be performed in a manner consistent with this Agreement and all laws governing the VCDP.

8. Assessment of Program Income and Unrestricted Revenue

The Grantee shall return to the Agency fifty percent (50%) of the original loan principal of \$318,900, for a total of \$159,450. Grantee shall, within thirty (30) days of the close of each fiscal year, make a payment to the Agency in the amount of fifty percent (50%) of the repayments received during such fiscal year, until such time as the entire \$159,450 has been paid.

9. Recapture of Inactive Funds

The Agency reserves the right to recapture, after giving a 60-day notice of intent to do so, up to one hundred percent (100%) of the funds governed by this Closeout Agreement when the average annual disbursement, excluding any amount expended for Administrative and Management Costs, does not exceed twenty five percent (25%) of the total balance over a three-year period.

If at least twenty five percent (25%) of the cumulative balance is expended on eligible activities, excluding **Administrative and Management Costs**, within the 60-day notice period, the funds will be considered active. However, the fact a notice of intent to recapture inactive funds was issued shall be a consideration when awarding further grants.

10. Administrative and Management Costs

The Grantee may accumulate up to 20% of the gross income generated in each fiscal year by the funds governed by the provisions of this Closeout Agreement, to use to defray the costs of

administering the **Plan for the Use of Income** and Program Management costs and General Administration costs.

11. Financial Management

Grantee shall establish and maintain a financial management system that assures adequate control over and accountability for all funds and property subject to this Closeout Agreement. Unrestricted Revenue and Program Income governed by the provisions of this Closeout Agreement shall be maintained and administered separately, unless all income is administered by the stricter policies which apply to the use of Program Income.

All such funds shall be fully maintained in interest-bearing accounts, insured by the Federal Deposit Insurance Corporation (FDIC) or its equivalent. Any balance exceeding such coverage must be collaterally secured by U.S. Government obligations. Failure to properly maintain and administer Unrestricted Revenue may require the Agency to deem such Unrestricted Revenue as Program Income, subject to all the requirements of Program Income.

12. Limitations

The Agency may review any costs incurred and disbursements made from funds governed by the provisions of this Closeout Agreement. Through such review, the Agency may determine that items of expense are unallowable. In such event, the Agency shall notify the Grantee in writing of such disallowance, and may require the Grantee to reimburse such expense with funds other than Program Income or Unrestricted Revenue.

13. Annual Reporting

The Grantee shall report at least annually to the Agency within 30 days of the end of its fiscal year in a format prescribed by the Agency, and otherwise as may be requested by the Agency, on the use of funds governed by this Closeout Agreement. Such report shall include the fund balance carried forward and all receipts and expenditures for each fiscal year or portion thereof; from the effective date of this Closeout Agreement continuing for so long as funds governed hereunder exists.

The Legislative Body of the Grantee shall cause to be included in the municipality's Annual Report a report containing substantially the same information.

14. Access to Records

The Agency shall have access to all books, accounts, records, files and information in all forms, in the possession or control of the Grantee pertaining to performance under this Closeout Agreement, and as may be reasonably necessary for the Agency to perform audits, examinations, or both.

15. Indemnification

The Grantee shall indemnify, defend and save harmless the State and its officers and employees from any and all actions, suits, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising as a result of the performance of the obligations of this Closeout Agreement by, or use of Program Income or Unrestricted Revenue by, or occasioned wholly or in part by any act or omission of, the Grantee, its agents, contractors, subcontractors, employees, servants, invitees, licensees, or concessionaires. The liability of the

Grantee under this Closeout Agreement shall continue after the termination or completion of this Agreement.

16. Suspension or Termination

- (a) The Secretary of the Agency may suspend this Closeout Agreement, in whole or in part, at any time and prohibit the Grantee from incurring additional obligations with respect to the funds governed by the provisions hereof, should the Secretary determine that the Grantee has failed to substantially comply with the terms of this Closeout Agreement. In such event, the Secretary shall allow all necessary and proper costs which cannot reasonably be avoided during the period of suspension.
- (b) The Secretary, after reasonable notice and opportunity for hearing, may terminate this Closeout Agreement should the Secretary determine that the Grantee has failed to substantially comply with the terms hereof. The Secretary shall promptly notify the Grantee, in writing, of the determination and reasons for the termination, together with the effective date.
- (c) Recoveries by the Secretary pursuant to suspension or termination shall be in accordance with the legal rights and liabilities of the parties.

17. No Waiver

Any forbearance by the Agency in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

18. Entire Agreement.

This Closeout Agreement and the references set forth herein constitute the entire understanding between the parties with respect to the use of funds governed hereunder, there being no terms, conditions, warranties or representations other than those contained herein, and no amendments hereto shall be valid unless made in writing, approved by the Agency, and signed by the parties hereto. Notwithstanding the foregoing, nothing in this Closeout Agreement shall affect any continuing rights or unperformed obligations under Grant Agreement #0197/96IG(17).

- END OF PROVISIONS -