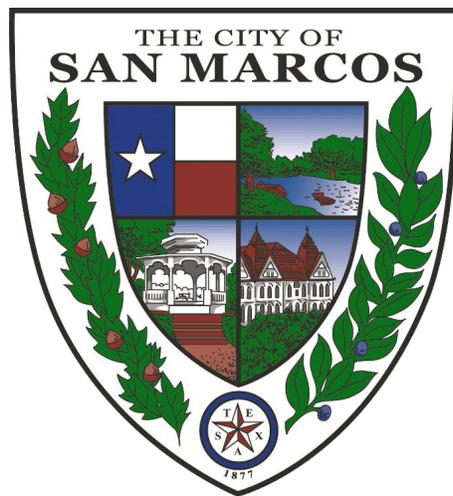


CITY OF SAN MARCOS  
Infrastructure and Mitigation Projects  
Construction Policies & Procedures



Community Development  
Planning & Development Services

Draft Version 1, Revision 0

## VERSION POLICY

This manual will be updated as necessary to conform to changes in local or state law, federal regulations, and material changes to the City's organizational structure as these events occur. It will also be revised to incorporate efficiencies and better practices noted documented during the performance of acquisition and relocation activities.

Version history is tracked in the table below, with notes regarding version changes. The dates of each publication are also tracked in the table.

Future substantive policy changes will result in additional revision and the issuance of a new primary version number such as 2.0, 3.0, etc.

Non-substantial changes, such as minor wording and editing or clarification of existing policy that do not affect the interpretation or applicability of the policy, will be included in minor version updates denoted by a sequential number increase behind the primary version number. Such changes would result in a version number such as 2.1, 2.2, etc.

## VERSION HISTORY

Version Number	Description of Revisions	Approval Date
1.0		

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DRAFT

## I. Overview and Purpose

The City of San Marcos receives federal grant awards from the U.S. Department of Housing and Urban Development (HUD) for community development, disaster recovery and mitigation through the Community Development Block Grant (CDBG), CDBG - Disaster Recovery (CDBG-DR) and CDBG – Mitigation (CDBG-MIT) programs. CDBG funding is an annual allocation, whereas the CDBG-DR and CDBG-MIT funds are intended for use in addressing impacts from presidentially declared disasters and implementing measures to limit damage from future events.

### A. Disaster Recovery & Mitigation Allocations

CDBG-DR funding has been provided for the following disaster events through Public Law 114-113:

- **DR-4223** (Severe Storms, Tornadoes, Straight-line Winds and Flooding): An historic flood event, called the "Memorial Day Flood," occurred between May 23 - 25, 2015. The Blanco and San Marcos rivers rose rapidly as a combined result of higher than average rainfall for the month (causing saturated ground) and a heavy rain event, resulting in property damage and loss of life.
- **DR-4245** (Severe Storms, Tornadoes, Straight-line Winds and Flooding): Also an historic flood event, called the "All Saints Flood" on October 30, 2015 that caused flooding from the Blanco and San Marcos rivers, as well as the Cypress Creek in Wimberley (just north of San Marcos), creating additional property damage and stalling recovery efforts from the May flood.

CDBG-MIT was allocated as supplemental funding for the recovery of DR-4223 and DR-4245 under Public Law 115-123. CDBG-MIT activities are defined as those that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

This document is to provide guidance for the use of CDBG-DR and CDBG-MIT supplemental funds appropriated under Public Laws 114-113 and 115-123. Unless otherwise noted in the CDBG-MIT Federal Register Notice<sup>1</sup>, all CDBG-DR procedures and grant management requirements apply to the administration of CDBG-MIT.

### B. Administration

CDBG, CDBG-DR and CDBG-MIT funds are administered through the Planning and Development Services Department, Community Initiatives Division and projects are set forth in HUD-approved Action Plans submitted for each allocation. Community Development is responsible for the oversight and management of expenditures and reporting on grant activities to maintain compliance with all applicable federal regulations and grant requirements under 24 CFR part 570, 2 CFR 200, the appropriation's Federal Register Notice, and any conditions within the grant agreement.

### C. Program Implementation

Infrastructure and construction projects funded with CDBG, CDBG-DR and/or CDBG-MIT will be managed through the Engineering Services Department. Infrastructure and construction projects

<sup>1</sup> Federal Register Notice 2019-18607 <https://www.govinfo.gov/content/pkg/FR-2019-08-30/pdf/2019-18607.pdf>

funded with CDBG, CDBG-DR or CDBG-MIT funds must follow all HUD regulations and grant requirements as stated.

The Community Initiatives Division will provide guidance and technical assistance on project requirements based on the funding source, and work in coordination with Engineering Services Department to design and implement construction projects that are in compliance with HUD regulations.

#### D. Program Requirements

As a component of any CDBG-funded project, construction projects must expend funds on eligible activities and meet a national objective. [Eligible activities](#) are critical to determine early in project design as they will impact on the development and administration of the project. The following sections outline the eligible activities that may be considered under construction, and how the project can meet a national objective.

##### 1. Eligible Activities and Costs

###### *Acquisition*

The purchase or long-term lease (greater than 15 years) of public or private property where a permanent interest is obtained by the City for the intended use at the time of project completion. For more details on Acquisition activities, refer to the *San Marcos Acquisition and Relocation Manual*.

###### *Disposition*

To cover costs related to the sale, lease, or donation of property as necessary for a project to meet a national objective. Gross proceeds from the disposition of the property using CDBG funds are considered program income.

###### *Public Facilities and Improvements*

The construction, rehabilitation (including the removal of accessibility barriers), or reconstruction of buildings or spaces that are either publicly owned, or owned by a nonprofit and open to the general public. Broadly, this can include improvements to facilities such as streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines or stations, flood and drainage improvements, parking lots and/or utility lines (see also *privately-owned utilities*). Shelters for persons with special needs that serve limited clientele or vulnerable populations may also fall into this category.

###### *Clearance*

CDBG funds may be used within a project to cover costs related to the demolition of buildings, removal of debris, removal and/or treatment of environmental contaminants on or around a property to render them harmless, and/or the movement of structures to other sites. Generally, these activities are treated as part of the overall construction costs for an infrastructure project and do not need to be documented separately from the overall project budget.

###### *Privately-owned Utilities*

A privately-owned utility may be defined as a publicly-regulated service which is provided through the use of physical distribution lines to private properties and that is owned and operated by a non-public entity. Utilities include, but are not necessarily limited to, natural gas, electricity, telephone, water, sewer, and television cable services. Construction,

installation of or improvements to utility lines qualifies and is documented in the same ways as *Public Facilities and Improvement* activities.

According to Federal Register Notice 2019-18607 (84 FRN 45838)<sup>2</sup>, CDBG-MIT may not be used to assist privately-owned utilities. If assistance to a privately-owned utility is necessary under a CDBG-MIT project, the City of San Marcos must request a waiver from HUD.

## 2. Mitigation Activities

MIT projects that meet the HUD definition of mitigation and generate a measurable resilience benefit can be funded with up to 100 percent of CDBG-MIT funding. CDBG-MIT infrastructure projects must fall under one of the following four categories:

- **General Infrastructure:** Increase resiliency and mitigate for future flooding by designing and implementing updated roads, bridges, culverts, etc.
- **Public Facility Hardening:** Increase resiliency and mitigation for future impacts from disasters for public facilities, public shelters, and all critical public facilities such as potable water facilities, wastewater treatment facilities, etc.
- **Critical Facility Generators:** Increase resiliency for critical public facilities such as fire and police stations, shelters, hospitals, etc.
- **Warning Systems:** Increase resiliency and safety from future severe weather in areas of vulnerable populations by installing warning systems necessary to assist with reducing damages and loss of life.

CDBG-MIT funds may be used in conjunction with CDBG-DR funds for a single project should the proposed project include a scope that meets both program requirements. In order to meet both CDBG-DR and CDBG-MIT requirements, a component of the scope must satisfy the CDBG-DR tie-back requirement while a separate component of the project must meet the definition of mitigation.

## 3. National Objective

In accordance with [24 CFR 570.208](#), all CDBG-DR and CDBG-MIT funded activities must meet a national objective as required under [24 CFR 570.200\(a\)\(2\)](#). Under section 101(c) of the authorizing Act (42 U.S.C. 5301) the CDBG program must ensure that the funded activity meets one of the named national objectives. The two qualifying national objectives are:

- Benefiting low- and moderate-income persons; and
- Meeting an urgent need.

Qualifying a construction project under one of the following national objectives depends entirely on the eligible activities and the impacts of the project. A preliminary determination of national objective qualification may be based on the planned use after construction is complete.

Construction projects may qualify as meeting a national objective in any of the ways shown in the chart that follows.

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<sup>2</sup> Federal Register Notice 2019-18607 (August 30, 2019) <https://www.govinfo.gov/content/pkg/FR-2019-08-30/pdf/2019-18607.pdf>

National Objective Category	Subcategory	Required Documentation
LMI Benefit	LMI Area Benefit	1) Boundaries of service area of activity/project 2) Census data including the persons and percentage LMI 3) Evidence area is primarily residential 4) Survey documentation (if applicable)
	LMI Limited Clientele	Documentation that the beneficiaries are or are presumed to be LMI by category (e.g. senior housing, homeless shelters, etc.).
	LMI Housing	If applicable, income document for all household members 18 years of age and older.
Urgent Need	Urgent Need	Resolution from Subgrantee's city council, county board, or similar governing body stating that no other funds are available for the proposed project.

#### *Urgent Need Mitigation*

HUD has created a new National Objective - Urgent Need Mitigation (UNM) for CDBG-MIT programs. This National Objective provides a better fit for CDBG-MIT activities that aim to address risks that do not tie back to the disaster events of the CDBG-DR funding, or subsequent disasters.

Projects using the UNM national objective must provide documentation that demonstrates a measurable and verifiable impact on reducing risks at the completion of the activity. UNM projects must:

- Address the current and future risks as identified in the Mitigation Needs Assessment; and
- Result in a measurable and verifiable reduction in the risk of loss of life and property.

## II. Construction Phases

Development of a federally-funded construction project is conducted over several key steps or phases that ensure federal and grant requirements are met and the project maintains compliance throughout development. The following phases outline the project steps once design is complete and the project moves into set up and construction.

### A. Construction Services Bidding/Preconstruction Phase

Once a project meets all design requirements and receives approval for development as required by city polices or ordinances, the project is ready to move into the Preconstruction Phase. During preconstruction, the City will procure construction services and set up all requirements for the project to meet compliance with federal regulations.

#### 1. Construction Services Bidding

The City of San Marcos must advertise for competitive bids for construction contracts for public work in compliance with 2 CFR Part 200, State law, and local procurement policies, whichever is

the most restrictive. The contract shall be awarded to the lowest-priced, responsive, responsible bidder.

Upon completion of bidding, the project enters the preconstruction phase, which focuses on CDBG-DR and CDBG-MIT compliance. During this phase, specific preconstruction and construction phase technical assistance is provided to keep projects eligible. Note that no CDBG-DR and/or MIT project may proceed to construction until an environmental review is complete, and the Authorization for Use of Grant Funds is provided.

#### B. Pre-construction

In the preconstruction phase, Community Initiatives staff, Engineering Services staff, and contractors meet to discuss CDBG requirements including:

- Section 3/Equal Employment Opportunities (EEO)
- Labor standards
- Payroll reporting
- Project signs
- Payment procedures
- Inspection reports by project A/E and/or construction manager
- Change orders

The Community Development Compliance Specialist attends the Preconstruction meeting to address CDBG requirements applicable to the project. During this meeting, all interested parties receive an introduction/overview of federal requirements, applicable documents and reporting, and contact information for the Community Development Department.

#### C. Construction Phase

In the construction phase, Community Initiatives staff and Engineering Services staff ensure contractor conformance with all applicable CDBG regulations, particularly:

- Davis-Bacon and Labor standards
- Section 3
- EEO
- Financial management

#### D. Programmatic Management and Monitoring Phase

Community Initiatives staff and Engineering Services staff work with contractors throughout implementation of a project to ensure that:

- An approved project is being constructed and implemented in a manner that is consistent with project scope and Federal, State, and local procurement requirements;
- Approved activities are carried out and completed in a timely manner;
- Activities and certifications are conducted in accordance with the requirements and the primary objectives of the approved project scope, contractor agreement, program requirements, and other applicable State and Federal laws, rules, regulations, and policies; and
- Administrative systems, policies, and procedures provide adequate protection for the prevention and mitigation of fraud, waste, and abuse.

In addition, throughout implementation, Engineering Services staff conduct site inspections to identify weaknesses and verify contractor's work. TA is provided throughout the implementation phase to ensure that contractors have the continuing capacity to carry out the approved project and activities.

#### E. Closeout Phase

In project closeout, Engineering Services prepare closeout documents in coordination with Community Initiatives staff. Closeout documents will include all milestone reporting, all required federal reporting, such as Davis-Bacon and Section 3, and addressing all monitoring/audit findings that may have occurred during the course of the project. Community Initiatives staff reviews closeout documents, requests clarifications or revisions if needed, and notifies Engineering Services that they can issue the notice of completion for project.

### III. Pre-Construction

Once a project meets all design requirements and receives approval for development as required by city polices or ordinances, the project is ready to move into the Preconstruction Phase. During preconstruction, the City will procure construction services and set up all requirements for the project to meet compliance with federal regulations.

Environmental reviews and approvals are also completed during Pre-Construction. All federal regulation regarding lead-based paint, mold and asbestos, environmental review, procurement, labor standards, etc. apply to the project.

#### A. Environmental Review

The environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects, funded partially or in full by CDBG-DR and/or CDBG-MIT, and must be completed prior to any commitment of funds to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. More information about the environmental review process can be found on the HUD Exchange under [Orientation to Environmental Review](#).

An environmental review must be performed on the project prior to federal funds being committed or disbursed by the City. The environmental review shall document compliance with 24 CFR Part 58, National Environmental Protection Agency (NEPA), and all related laws, authorities, and executive orders. For Infrastructure, the Community Initiatives Division will work with Engineering Services to complete environmental reviews of all projects and submit complete Environmental Review Records to HUD to grant the authority to use funds.

Subsequent to procurement of a contractor for the use of CDBG-DR or CDBG-MIT funds, there can be no choice-limiting actions on the part of the City until environmental clearance is received in the form of an Authority to Use Grant Funds (ATUGF) from HUD or environmental clearance letter issued by the City. The concept of prohibiting choice-limiting actions is to prevent the City and its contractors from investing in a project before all necessary environmental clearances are obtained. Choice-limiting actions are defined as any activity that would have an adverse environmental impact or limit the choice of reasonable alternatives, such as acquisition by the contractor, construction, demolition of buildings or infrastructure, or rehabilitation or

reconstruction of buildings or infrastructure. Per 24 CFR Part 58.22, failure to comply with the prohibition against committing funds or taking physical action (using either HUD funds or non-HUD funds) before the completion of the environmental review process could result in loss of HUD assistance, cancellation of the project, reimbursement by contractor to the City for the amount expended, or suspension of the disbursement of funds for the affected activity.

Refer to the Planning and Development Department's *Environmental Review Procedures* for details on this process and the levels and requirements of environmental review for a HUD-funded project.

## 2. Activities in Floodplains

All construction projects shall demonstrate an improvement in flood risk. All activity within a SFHA will comply with the City's Flood Damage Prevention Ordinance and the requirements from E.O. 11988 and its amendments in E.O. 13590.

## 3. Adoption of another agency's Environmental Review

Pursuant to 84 FRN 45838, the City may accept another federal agency's environmental review for CDBG-MIT funded projects if the environmental review incorporates the same scope of work. For example, HUD grantees are permitted to adopt FEMA's environmental review if that Federal agency has previously performed an environmental review for assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. In those cases, the work performed by FEMA and HUD must be exactly the same work. If the City determines to adopt another Agency's environmental review for a specific site, the following steps must be taken:

- Must notify HUD in writing of its decision to adopt another agency's environmental review.
- Must retain a copy of the review in the City's environmental records

No work may start on a proposed project, or proposed site acquisition, if applicable, before both the federal environmental review process, and other agency reviews as applicable, is completed, even if that work/acquisition is being done using non-federal funds. The City does not reimburse projects that have been determined to have a Finding of Significant Impact (FOSI).

## 4. Lead-Based Paint

For residential structures built prior to 1978 that may be included in construction, all exposed surfaces are inspected for the presence of defective surfaces (cracking, peeling, etc.). All defective surfaces are tested for lead based paint. Should any lead-based paint be found, coverage, removal, or other corrective actions taken are conducted in a manner that avoids further diffusion of lead particles throughout the residence, and in accordance with 24 CFR Part 35.

## 5. Mold and Asbestos

Asbestos is a mineral fiber and was used commercially in numerous building materials during the past century. Similar to lead, asbestos can be found in many older homes and requires special care to remove. Removing and disturbing materials that contain asbestos can release the tiny fibers into the air, creating a health risk to anyone in the area.

The EPA regulates asbestos procedures for rehabilitation or demolition actions under the Clean Air Act and require notification and strict work practices for asbestos handling, removal, storage and transport under 40 C.F.R. part 61, Subpart M. HUD does not have specific regulations related to asbestos. However, to ensure housing units are decent, safe, and sanitary, housing rehabilitation and demolition projects need to determine if asbestos is present. Homes built prior

to 1978 are tested for the presence of asbestos in areas needing repair, and more broadly if the house is demolished for reconstruction.

Contractors hired to abate and remove asbestos must be state-certified and licensed to handle and dispose of asbestos according to EPA and Federal OSHA standards. All Program applicants are to be notified of the dangers of asbestos and the risks involved in removing any materials containing asbestos. In addition, agreements with contractors shall contain language on exposure to and removal of materials containing asbestos in any home if applicable.

## 6. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the City shall assure that for activities related to new construction or rehabilitation of structures in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance.

As applicable, all new construction of or repaired structures within a 100 year floodplain will—at a minimum—adhere to the advanced elevation requirements established in section V.B. 1.D. of 84 FRN 45838, subtitled “Elevation standards for new construction, repair of substantial damage, or substantial improvement.” To this effect, future property damage will be minimized by requiring that any rebuilding be done according to the best available science for that area and at minimum be raised to two feet above base flood elevations.

## 7. Historic Preservation

In accordance with the *Environmental Policies and Procedures*, the Planning and Development Services Department will follow the Section 106 process as outlined in the [Historic Preservation Section 106 Consultation Checklist](#).

The City agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, to identify and avoid, minimize, or mitigate adverse effects on historic properties insofar as they apply to the performance of the contract agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## A. Sources and Uses

All HUD-funded projects must comply with the regulations under 2 CFR part 200 for post award requirements ([Subpart D](#)) and general cost principles ([Subpart E](#)), which require all projects demonstrate cost reasonableness through appropriate budget development and do not create a duplication of benefits.

### 1. Cost Estimate

Prior to procurement of construction services, a best estimate of project costs must be developed for the purpose of setting a project budget and determining reasonable costs for the scope of work. The Engineering Services staff leading the project design will be responsible for developing an estimated project budget or cost estimate. A cost estimate should be developed based on:

- The size and scope of the project,
- The types and quantities of materials required,
- Prior projects similar in size or scope,
- Labor rates and duration of construction, and
- Current market demands.

The cost estimate will be used to compare bids received once the project is advertised and helps the Community Initiatives Division appropriately allocate and project expenditures.

## 2. Funding Sources

All sources of funding should be identified at the outset of a project in order to determine all requirements in order to meet compliance needs. Projects are subject to all HUD regulations when any amount of CDBG-DR and/or CDBG-MIT are included as a source, as well as their related grant requirements. Projects may leverage CDBG-DR funding with other local, state or federal disaster recovery funding sources when available.

## 3. Duplication of Benefits

Any funding received for the same purpose of the grant funding must be accounted for and verified by the Program as a consideration of a duplication of benefits (DOB). In compliance with Section 312 of the Stafford Act, no project may use CDBG-DR and/or CDBG-MIT funding for a project for which it has already received funding for that activity from another source. All HUD-funded activities must undergo a DOB review and a calculation must be completed prior to funding awards and prior to close out. DOB occurs when a program beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. This includes all benefits available to a person or entity, including cash and other resources such as insurance proceeds, grants, FEMA, other local, state, or Federal programs, and private or nonprofit charity organizations (see Federal Register notice published November 16, 2011 (76 FR 71066) and Federal Register notice published June 20, 2019 (84 FR 28848)) to be identified and considered to prevent a duplication of benefit.

All projects will complete Form CDBG-DR OO 23-A.1 Infrastructure-Duplication of Benefits Summary (Appendix A). The Director of Engineering & Capital Improvements certifies that the Duplication of Benefits summary provided on the form for the federally-funded project is accurate, complete, and in conformance with the generally accepted accounting procedures on the date certified. The form must be updated if any additional funding is approved for the project to determine if there are new duplication of benefits. If duplication of benefits or over payment occurs, the duplicated funds will transfer into the appropriate CDBG-DR or CDBG-MIT account in accordance with applicable HUD regulations. In addition, all projects must complete the City of San Marcos Duplication of Benefits and Additional Certification Form.

## B. Procurement

The City must follow Federal, State, and local procurement rules when purchasing services, supplies, materials, and/or equipment, including procurement procedures in 2 CFR 200.318 – 326. All procurement transactions funded in whole or in part with CDBG-DR and/or CDBG-MIT funds, regardless of dollar amount, must be conducted to provide “maximum open and free competition.” Procurement of contractors for construction services will be conducted according to the *CDBG-MIT Financial Policies and Procedures* and in coordination with the Purchasing and Contracting Division.

2 CFR 200.318(i) requires that records be maintained in a manner that provide sufficient detail in conducting the procurement.

#### 1. Conflicts of Interest

Conflicts of interest between covered persons (e.g., recipients, program administrator, contractors, program staff) and other parties are strictly prohibited by Federal law.

A “covered person” is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of a unit of general local government, or any designated public agencies, or recipients that are receiving federal funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR or CDBG-MIT activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

The conflict of interest regulations contained in the contract between the contractor and the City prohibit locally elected officials, City staff, recipient employees, and consultants who exercise functions with respect to CDBG activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, from receiving any benefit from the activity either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.

The Program requires all program staff to disclose any relationship with a covered party. Project staff, recipients, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves, the Applicant, or the contractor. For example, a Customer representative may not perform work on the project information form of family. For purposes of this regulation, “family” is defined at 24 CFR 570.489(h).

The City may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) if the City has determined that the recipient has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the recipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii). The City considers whether the exception provides a significant cost benefit or essential degree of expertise; whether the opportunity was provided for under open competitive bidding or negotiation; whether the person affected is LMI, whether the affected person has withdrawn from his or her functions or responsibilities; whether the interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or whether undue hardship results from failure grant the exception. In addition, the City will take into account conflict of interest prohibitions under state law, including the prohibition against self-benefiting under a public contract (G.S. 14-243) and misuse of nonpublic information for private financial gain (G.S. 14-234.1).

## IV. Construction Management

### A. Performance Standards

The City is committed to implementing performance standards that ensure projects meet requirements of the funding source and for contractors to ensure .

#### 1. Project Requirements

##### *CDBG-DR Tie Back*

Infrastructure programs using CDBG-DR must be able to demonstrate tie-back to the flooding covered by DR-4223 and/or DR-4245 through documentation of damages incurred at the time of the event.

##### *CDBG-MIT Resiliency*

The Repetitive Loss Infrastructure program is an eligible mitigation activity under the infrastructure criteria, as defined in the CDBG-MIT requirements and the CDBG-MIT Action Plan's Mitigation Needs Assessment. The program's purpose is to improve the stormwater drainage system in San Marcos. Project design will include measures that demonstrate the long-term resiliency of the project.

This documentation may also be used in reporting performance measures. For CDBG-MIT projects, documentation of the measurable and verifiable reduction in risk that will be achieved should be provided upon completion of each CDBG-MIT activity.

#### 2. Contractor Performance

HUD requires contracts to include performance milestones and penalties. Contractors will be expected to meet the project scope and timeline based on contract terms or be subject to the penalties provided in the contract.

The specific requirements and associated penalties to be included in each contract vary based on the type of service(s) or good(s) procured. For all contracts, performance requirements and penalties follow the below guidelines:

- Clearly define performance goals, benchmarks, and deliverables,
- Establish deadlines for the completion of each goal, benchmark, or deliverable,
- Account for the quantity and quality of services provided, including:
  - Outputs (the products or assistance delivered),
  - Outcomes (the consequences of the products or assistance),
- Establish methods for monitoring performance requirements,
- Outline penalties associated with failing to meet established deadlines,
- Define the nature of the penalty (e.g. liquidated damages for failing to meet a deliverable deadline),
- Establish the contractor's method(s) for curing noted deficiencies, and
- Adhere to established reporting schedules and methods.

If a contractor is not meeting the project schedule, the contract with the City allows for the withholding of extra retainage (10% instead of 5%) from monthly payments until the contractor is

**Commented [QR1]:** San Marcos please confirm what performance measures you are using for CDBG-MIT and how the performance measures will be documented.

**Commented [GC2R1]:** Please clarify this question. What commitment are you referring to?

**Commented [HJ3R1]:** Need to also make sure there aren't other commitments specific to DR as well. Especially for Kirk's construction with Uhland. I think we have to tie back and document to the Action Plan activities, but I'd argue this is not a good step to have unless we absolutely have to include this. Seems redundant if we are constructing the project per the plans that tie back to the purposes of the project. Seems like unnecessary documentation.

**Commented [AT4R1]:** Per our recent discussion, the resilience performance standards are the measures you are using to determine the long-term resiliency of a project. Added language here to clarify. Resiliency measures can include planning or changes to floodplain and wetland management, land-use, and zoning, or other data that can show the reduction of risk in future flood events.

Please add to CDBG-DR tie back as needed

**Commented [HJ5R1]:** complete

able to get back on schedule. If a contractor goes over the project schedule, liquidated damages may apply according to the terms of their contract.

For construction projects, Engineering Services will provide oversight on contractor performance and ensure work is completed in accordance with the project's scope, milestones and timeline.

## B. Contractor Requirements

### 1. Insurance and Property Management

For all projects in the Repetitive Loss Infrastructure Program, all contractors must procure and maintain bond insurance for the duration of the construction contract agreement to protect all contract assets from loss due to any cause, such as theft, fraud and physical damage. If CDBG-DR or CDBG-MIT funds are used to acquire real property or personal property, the City is responsible for ensuring that:

- The property continues to be used for its intended (and approved) purpose; and
- The City keeps track of, and takes care of, the property.

The City and its contractors must follow and comply with HUD requirements, as applicable. At a minimum, contractors must comply with the bonding requirements in 2 CFR 200.325, as applicable, and with the requirements of their contractor agreement.

### 2. Non-Collusion Certification

Contractors must complete a non-collusion affidavit certifying that they, their firm nor any of its other representatives have:

- Agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith;
- Not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the bidder or offeror herein or any competitor, or competitive bidding in connection with the Contract for which the enclosed bid or offer is submitted; and that no member of the Board of Commissioners of the Housing Authority of the City of Cumberland or Cumberland Housing Alliance, Inc., administrative or supervisory personnel or other employees of the Cumberland Housing Group (Housing Authority of the City of Cumberland, Cumberland Housing Alliance, Inc., or Cumberland Neighborhood Housing Services, Inc.) have any interest in the bidding company except as follows: (complete if applicable)

### 3. Confidentiality/Privacy

The City is committed to protecting the privacy of all of individual stakeholders, including the public and those individuals working on publicly-funded programs. The following policies describe how information is to be handled and protected. The purpose of this privacy policy is to establish when and under what conditions certain information relating to individuals may be disclosed.

The data collected from contractors or any other project applicants may contain personal information on individuals that is covered by the Federal Privacy Act of 1974 and Texas state laws. These laws provide for confidentiality, and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes:

**Commented [PW6]:** San Marcos, what type of agreement will you be using with contractors (professional or construction)?

**Commented [AK7R6]:** Ask purchasing about "type". Our project manual used in bidding lays out the contract details. Umland here: [P&DS - CDBG-DR/MIT - 220-212 Umland Road Improvements Final.pdf - All Documents \(sharepoint.com\)](#)

**Commented [HJ8R6]:** It would have to be "construction" for this. This is sealed bid procurement for the contract.

**Commented [AT9R6]:** Added

- a) Program staff may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.
- a) Independent Auditors, when hired by the program to perform a financial or programmatic audit of the program, for use in determining program compliance with all applicable HUD and Federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.
- b) The City may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
- c) Organizations assisting the City in executing the CDBG-DR or CDBG-MIT Programs must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but is not limited to, HUD, FEMA, FBI, and the Office of the Inspector General.

#### 4. Certification of Eligibility

The City certifies that it will maintain active registration with the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p 189) and 12689 (3 CFR part 1989 Comp., p 235), "Debarment and Suspension".

- a) City certifies that its contractors are not presently debarred, suspended, or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- b) (b) City will furnish a copy of the certification in accordance with 24 C.F.R. Part 24 (Debarment and Suspension). The City and all contractors will be active and not debarred on the website, [www.sam.gov](http://www.sam.gov) and provide a copy of the certification to the City before the entity performs work under this contract.
- c) The City must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" and the UAR. City will have each contractor and subcontractor complete an eligibility form (Appendix B). This form will provide the information necessary to verify eligibility for participation in a federally-funded contract.

**Commented [AT10]:** San Marcos: Please name the form or letter you use for contractors and subcontractors to state their eligibility/not debarred

#### 5. Bonding Information

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. (As of June 20, 2018, the simplified acquisition threshold is set to \$250,000 per a memo issued by the U.S. Office of Management and Budget.) If such a determination has not been made, the minimum requirements shall be as follows:

- a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## 6. Permits

Contractors are required to secure and maintain all necessary permits pertaining to the identified scope of work to be performed during the project. Contractors are required to obtain permits from the City's Department of Planning and Development Services. Once permits are pulled, work should begin within 30 days, unless otherwise communicated to the contractor. Prior to final payment, the contractor must successfully close all permits associated with the project and must receive the certificate of completion, as well as receive confirmation from Engineering Services and/or Planning inspectors that all work was completed to federal and program standards. All permits associated with the work of subcontractors will be filed under the primary permit, and the primary contractor will be responsible for ensuring all permits are successfully closed.

### C. Davis-Bacon Labor Standards

The Davis-Bacon Act<sup>3</sup> and Related Acts (DBRA) applies to contractors and subcontractors carrying out federally funded or assisted contracts in excess of \$2,000 for corresponding work on similar projects in the area. In some cases, the State of Texas Prevailing Wage Law is in effect. In these cases, the higher prevailing wage rate between the Federal and State must be adhered to and made applicable. For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week. Additionally, the City must follow the reporting requirements per HUD and U.S. Department of Labor regulations. This requirement also extends to City subrecipients and contractors.

The Engineering Services Department, with the support of the Community Initiatives Office, ensure that construction projects under the CDBG-DR and/or CDBG-MIT programs are in compliance with DBRA by collecting certified payroll records of all work completed on site from the prime contractor, including no work weeks, and interviews of prime and subcontractor laborers. The Community Development Compliance Specialist reviews payroll records as they are received, and Engineering Services contacts the prime contractor to address any corrections required. All payroll records must be complete and accurate for the duration of a project.

The Davis-Bacon payroll record form is Appendix C, and the HUD Employee Interview form is Appendix D. Additional Davis-Bacon forms, including Spanish versions, can be found on HUD's Labor Standards Forms website at [https://www.hud.gov/program\\_offices/davis\\_bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrform).

### D. Section 3 Compliance

Section 3 of the Housing and Urban Development Act of 1968 requires that grantees, subrecipients, contractors, sub-contractors, and/or developers funded in whole or in part by

<sup>3</sup> 40 U.S.C. 3141 et seq.

Commented [HJ11]: Needs to take into account external permits. (PCN, Sand and Gravel, etc.)

Commented [HJ12R11]: I think this is a "catch-all" because env. consultants are liable for their permits as part of their scope.

Commented [AT13]: San Marcos: Add in the standard number of days for work to start after NTP and permits are pulled.

Commented [AT14]: San Marcos: Please confirm who will be responsible for reviewing Davis Bacon payrolls.

Commented [AK15R14]: We determined this would be Sylvia Ruiz at City

Commented [GC16R14]: Sylvia's title is Community Development Compliance Specialist

Commented [AT17R14]: Added

CDBG-DR and/or CDBG-MIT funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government assisted housing.

For those entities that receive more than \$200,000 in HUD assistance, and contractors that are awarded covered contracts that exceed \$100,000, the City requires that an approved Section 3 plan be in place before the project is awarded and approved. On a monthly basis, contractors submit Section 3 hiring reports. The Community Development Compliance Specialist reviews and tracks reports as well as calculates utilization rates.

The Community Development Compliance Specialist provides training, TA, and one-on-one support for all projects, especially in terms of developing and reviewing Section 3 plans, as well as implementing best efforts to meet Section 3 goals. The City also reviews Section 3 goal attainment and provides additional on the ground support where required. ]

The City agrees to include this Section 3 clause in every contract subject to compliance with regulations in 24 C.F.R. 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 contractor is in violation of the regulations in 24 C.F.R. Part 135. The City will not contract with any contractor where the City has notice or knowledge that the contractor has been found in violation of the regulations in 24 C.F.R. Part 135.

## E. Building Standards

The Planning and Development Services Department continuously refines building standards to ensure they comply with new or changing laws and regulations. Construction standards in the contract must meet or exceed all applicable requirements for housing or building construction. The services performed, as well as materials and equipment provided, shall be in full compliance with all applicable statutes, ordinances, codes, regulations and laws (collectively "laws"), and in actual conformance with the described scope of work. Unless expressly stated in the scope of work, all materials and equipment shall be new and with appropriate warranties. Selected contractors are responsible for providing warranties against the structural, functional, and aesthetic integrity of the structures, products, materials and/or equipment. Contractors that choose to use higher grade materials than allowed by the program will do so at their own expense. Luxury items and items outside the scope of work will not be reimbursed by the program.

### 1. Construction Standards

All new construction is required to pass quality inspections and code enforcement inspections over the development of the project. New construction and alterations must meet applicable accessibility standards and other requirements of the federal Fair Housing Act, substantially equivalent state and local laws, Titles II and III of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. The Planning and Development Services Department will require a one-year post construction warranty period for all work performed on CDBG-MIT projects, including work completed by subcontractors.

### 2. Green Building Standards

All new construction of residential buildings or replacement and/or reconstruction of substantially damaged buildings must incorporate Green Building Standards and rehabilitation of non-substantially damaged residential buildings must follow guidelines in the [HUD CPD Green](#)

**Commented [AT18]:** San Marcos: What TA or support are you able to provide for contractors to meet Section 3? Do you have Section 3 goals you are reporting on?

**Commented [AK19R18]:** Project Manual includes the federal requirements which includes Section 3 goals (see page 3 of 7 of the requirements). I'm not sure that we support contractors to meet them. We require them to meet them.

**Commented [GC20R18]:** The Community Development Compliance Specialist (Sylvia Ruiz) can provide TA as needed.

**Commented [HJ21R18]:** Community Development Compliance Specialist shall be present at Preconstruction meeting. During this meeting with all parties involved, introduction/overview of federal requirements, applicable documents and contact information shall be provided by Sylvia Ruiz. (One-on-one support and TA)

**Commented [AT22R18]:** Added here and under II-B (Pre-construction)

[Building Retrofit Checklist](#). Any construction subject to the Green Building Standards must meet an industry-recognized standard and achieve certification under at least one of the following programs:

- ENERGYSTAR;
- Enterprise Green Communities;
- LEED;
- ICC-700 National Building Standard;
- EPA Indoor AirPlus; or
- Any other equivalent comprehensive green building program deemed acceptable to HUD and approved by the Planning and Development Services Department.

### 3. Elevation Standards

The Planning and Development Services Department requires contractors to comply with the national floodplain elevation standards for new construction, repair of substantially damaged structures, or substantial improvements to residential structures in flood hazard areas. All structures designed for residential use within a 100-year (or one percent annual chance) floodplain will be elevated with the lowest floor at least two feet above the base flood elevation level and comply with the requirements of 83 FR 5850 and 83 FR 5861.

Costs of elevation will be included as part of the overall cost of construction or rehabilitation of a property. If a structure is within a 100-year floodplain, a cost estimate will be completed and compared with local and national averages comparable to the building's use, its size, number of feet required for elevation, and the geography of the location. Any building that has a total cost of repairs greater than 50 percent of the pre-disaster value of the property is considered substantially damaged and will require the entire building to be brought into code compliance.

Where a neighborhood or large tract of houses have substantial damage and also require elevation, the overall impact of elevation on the long-term affordability and maintenance of the housing stock for that area will be considered in determining the best and most reasonable way forward to provide repairs.

### F. Change Orders

All project-related change orders must be submitted for eligibility review and inclusion in the appropriate CDBG-DR and/or CDBG-MIT project files. The Engineering Services Department will review change orders to determine if the change order related costs are appropriate to the scope of the project, are HUD-eligible and procured according to CDBG program requirements including, but not limited to:

- Whether sufficient grant or local funds are available to meet any increased costs;
- Inclusion of documentation that all items listed on the change order were reviewed for price reasonableness;
- Inclusion of documentation that all items listed on the change order are included in the scope of the environmental review record; and
- Inclusion of documentation that all items listed on the change order are within the scope of
- the approved project information form.

If a change of scope or cost occurs after project approval, but before construction begins, the Engineering Department will issue a project amendment.

All change orders must be reviewed and considered for cost reasonableness. For each change order the following process will be followed by the Engineering Department and the contractor:

- When the need for a change order has been identified, the contractor notifies the Engineering Services Department of the requested change in writing, detailing the nature of the change and justification for the need. *No pricing is given at this time.*
- The Project Engineer will review the change request and verify the justification, and create an ICE for the change order by determining an estimated quantity and cost based on the contract pricing.
- Once an ICE is prepared, the Project Engineer will request pricing from the contractor for the change order, prepared on the Change Order Form available on the City's website at <http://sanmarcostx.gov/381/Construction>.
- The Project Engineer compares the change order quantities and cost to the ICE to determine if the change order is reasonable and provides justification for the determination.
- If approved by Engineering Services Department, the change order is routed to Community Initiatives for approval of grant funds, and Purchasing and Contracts Department for incorporation with the contract.

#### 1. New Contract Costs

If a change order includes new items that were not provided as quantities in the bid proposal or contract budget, the following cost breakdowns should be included with the change order and verified by the Engineering Services Department.

##### *Direct labor*

Direct labor-costs normally include salaries at a regular time rate. Overtime premiums should be identified separately. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified.

Contractor should provide the categories of professional or technical personnel necessary to perform each major element of work under the additional scope of work. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any, should be used for the actual categories of labor contemplated.

Supporting records to be maintained by the contractor and which must be submitted or made available to the City upon request include:

- The method of estimating proposed hours worked.
- The computation technique used in arriving at proposed labor rates.
- The specific documents, books, or other records used as factual source material to develop proposed hours worked and labor rates.
- Detailed rate computations which were used in computing the information submitted on the form.

Commented [AT23]: San Marcos: Confirm this is the process for approving change orders with grant funds and update as needed.

Commented [HJ24R23]: Confirmed

### *Supplies and Equipment*

Additional or new supplies and their quantities should be totaled and provided within the change order costs. If special equipment is required to complete the additional scope, the cost for the equipment should also be included. The contractor should be able to indicate how they have determined these costs, including quantity cost breakdowns and any product information if necessary.

### *Profit*

The Federal Acquisition Regulation cost principles applicable to agreements with profit-making organizations (48 CFR Part 31.2 and 31.105) disallow certain types of costs which are sometimes incurred in the normal conduct of their business. Examples of costs which are not allowed under these cost principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debts. Because the government considers “profit” to be excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm’s experienced profit as it customarily computes it. The contractor should not include profit on a change order as a separate rate or line item.

## 2. Project Change Log

City approved project schedule and budget changes shall be documented in a Project Change Log and include the following:

- Description of the change made
- Reason for the change
- Any ramifications resulting from the change: specifically stating if there is or is not a change to the overall project schedule and/or budget. If there is a change how that change will be accomplished.

The Project Change Log will be included in the project file and updates will be provided by Engineering Services to the CDBG Program Manager as they are made.

## G. Inspections

City inspectors perform inspections on the project site daily to ensure all work completed complies with all required building codes and construction standards. Inspection reports are maintained in the project folder.

## H. Construction **Completion**

When a contractor has completed a project, or phase of project, they inform the City Permits office in writing and a report is filed in the project folder under Construction and Inspections. After the notice of completion of construction has been filed, the Engineering Services Department conducts a final site visit to validate that all activities detailed in the agreement are complete and in accordance with all program requirements, and state and local building codes. This step confirms that all work has been accepted by the inspector and that any required certificate of occupancy has been issued and/or a Substantial Completion notice has been provided with a final punch list for completion. Once the final punch list is addressed, the Engineering Department completes a final inspection form indicating that all construction activities are complete and satisfactory and notifies the Permit Office. Notification that Temporary Substantial Completion or Substantial Completion requirements have been satisfied will be sent electronically to the contacts listed on the permit through the Permit Center. The final inspection and signoff are also included with the project file. The Engineering Department also validates that the project file includes:

**Commented [QR25]:** San Marcos: Please confirm construction completion process. Also, please confirm if the Engineering department performs site inspections at different stages of construction.

**Commented [AK26R25]:** Mike can weigh in this. City inspectors perform inspections, daily. When contractor believes they've completed project, or phase of project, they inform us in writing and report is filed in the project folder under Construction and Inspections. We do a walkthrough and develop punch list items for contractor to complete. Then do final walkthrough. Contract documents may speak to this also.

**Commented [AT27R25]:** Updated section

- All required permits and building inspection reports,
- Any construction site inspections conducted during the project,
- Final Program inspection,
- Documentation on release of liens,
- Certificate of occupancy, if applicable,
- All environmental reports and remediation details,
- Substantial completion notice, and
- Construction warranties and any associated material or product warranties.

Engineering Services files the Final Acceptance to complete the construction phase, and the contractor is able to file for a Lien and Privilege certificate with the City Clerk's office.

For project and contract close out, see Section IX "Close Out."

### I. Grievances

Contractors have the right to appeal the program decisions made by the Planning and Development Services Department. The contractor must submit their appeal in written form.

The Planning and Development Services Department Director, or their designated representative, shall review the appeal and then discuss the merits of the appeal with the Housing and Community Development Manager before rendering an independent decision concerning the appeal. The decision of the Director, or their designated representative, of the Planning and Development Services Department shall be final.

## V. Financial Management

Expenditures and payments for all construction projects will follow the processes outlined in the *CDBG-MIT Financial Policies and Procedures Manual*.

### A. Project Payment Milestones

Payments will be made according to the performance milestones and schedule agreed to within in the contract with the prime contractor. Any requested for changes to the payment schedule would need to be submitted in writing by the contractor. Engineering Services and Community Initiatives would review and determine if the change is reasonable and feasible, and may require a contract amendment.

### B. Invoice Submission and Review

#### 1. Engineering Review

Invoices are to be submitted to the Engineering Services Project Manager for initial review. The Engineering Project Manager verifies the work has been completed as documented and that quantities are correct as reported on the invoice. The Project Manager ensures that all required reporting for Davis-Bacon and Section 3 are up to date and that any additional source documents needed to process the invoice are provided by the contractor.

When the Program Manager is confident the invoice, reporting and source documents are accurate and complete, the invoice is submitted to Community Initiatives for a compliance review.

#### 2. Community Initiatives Review

The assigned Community Initiatives Program Manager receives the invoice from Engineering Services and verify the invoice against the performance milestones, terms of the contract, and grant budget. The Program Manager will verify that all compliance requirements are being met

for the project to receive the grant funding. If the invoice meets all compliance requirements, the Program Manager submits the invoice for approval and payment. If there are concerns or outstanding items, the Program Manager works with Engineering Services and the contractor to correct and complete the invoice prior to approval.

### C. Payment Process

Once an invoice is determined to be complete and accurate, and all required documents are provided as backup, the City will process the invoice and provide payment to the contractor within 30 days of approval according to the *Financial Policies and Procedures* and Accounting processes.

#### 1. Retainage

Project invoices may be subject to a rate of retainage set by the City. Retainage will be held until after project completion when a clear Lien is released to show all subcontractors and vendors have been paid for work related to the project, and the final notarized pay requisition has been submitted.]

Commented [HJ28]: follow on this one with team on how we manage this.

#### 2. Improper Payments

If any review of prior invoices and funds disbursement determines that payment was made for ineligible expenses for HUD funding, the amount of CDBG-DR or CDBG-MIT funds provided to reimburse the expenses must be recaptured by the City. The reasons for a recapture of funds by the City include, but are not limited to, the following:

- The contractor does not comply with the terms of the agreement executed by the contractor and the City for the project;
- The contractor withdraws from the project prior to completion of the work; and/or
- The project fails to meet a National Objective.

The contractor may be required to return the amount determined ineligible by the City, or funds may need to be repaid to the grant from a city source depending on the circumstances of improper payment. Refer to the Planning and Development Services Department's administrative policies for recapture provisions and requirements.

#### 3. Final Payment

When the final payment request is submitted by the contractor, it is reviewed and approved by the Engineering Department and Community Initiatives. Once both departments have approved, the final pay request is sent to Purchasing and Contracts.

Purchasing verifies and reconciles the contract amount, ensuring the terms of the consent of surety, and the signed and notarized pay requisition from the contractor includes all required signatures.

The Purchasing Manager signs the final pay request before sending it to the City Attorney for final signoff in accordance with:

- d) *Payment Requisition: It is the responsibility of the Project Manager, the contracted professional consultant, and the project inspector to ensure that the work is completed in accordance to the contract documents and that the correct payment requisition forms are obtained from the City and are properly completed. After the Department*

Director and the Purchasing Manager signatures are obtained on final payments, it will be reviewed and signed by the City Attorney. {rev amendment 4 30April2018}

## VI. Monitoring and Compliance Oversight

### A. Project Monitoring

Infrastructure projects shall be monitored with the Engineering Services Department through contract compliance, project expenditures and project schedules.

As detailed in the *CDBG-MIT Financial Policies and Procedures Manual*, the Community Initiatives Division and internal auditor will provide on-going desk monitoring of all infrastructure projects to verify that the project is moving forward towards meeting projected timelines and budget expenditures.

Additionally, construction projects will be monitored for compliance and performance according to the monitoring schedule and process provided in the Planning and Development Department's *CDBG Overall Management Policies and Procedures* in Section VIII "Performance and Financial Monitoring."

Construction projects are reported on internally bi-weekly (at minimum) basis and updated on the construction projects page on the city website on a monthly basis. Tracking of infrastructure project schedules and expenditures are included in a quarterly update to the Non-Housing Expenditure Projection in preparation for the required Quarterly Progress Report (QPR) to HUD, and will reflect any significant changes to the projected non-housing expenditures and schedule.

Any changes to the project outcomes or expenditures that require an Action Plan amendment will be made in conformance with Federal Register requirements.

Environmental compliance will be monitored through the use of the environmental review forms as provided in the *Design Procedures Manual*.

### B. Long Term Maintenance

CDBG-MIT projects require long-term management after completion. HUD expects CDBG-MIT grantees to contribute to their recovery through local resources for operation and maintenance costs in order to maintain resiliency and be better positioned in the face of future disasters.

The long-term efficacy and sustainability of the project, including operations and maintenance, should have been determined in the project design and budget development. The Community Initiatives Division will document how Engineering Services plans to ensure appropriate operations and maintenance is set up and managed for the duration of the CDBG-MIT grant and the expected life of the project.

## VII. Recordkeeping, Retention and File Management

In accordance with HUD regulations, the City of San Marcos Planning and Development Services Department, as the grantee and recipient of CDBG-MIT funds follow the records retention requirements cited in 2 CFR 200, which includes financial records, supporting documents, statistical records and all other pertinent records.

The Planning and Development Services Department, with the support of Engineering Services, shall retain all financial records, supporting documents, statistical records, and all other records

**Commented [PW29]:** San Marcos, was the time frame of quarterly updates determined due to HUD requiring the QPRs quarterly? Recommend more frequently then quarterly.

What actions will be taken if a project has stalled and is not meeting its performance requirements?

**Commented [HJ30R29]:** QPR is reported to HUD quarterly. However, each project is reported internally bi-weekly (at minimum) and updated to construction projects page on the city website on a monthly basis. This provides us with foresight if a project is running behind.

If the contractor is not meeting schedule the contract does allow the withholding of extra retainage (10% instead of 5%) from monthly payments until they get back on schedule. There's liquidated damages if they go over schedule.

City language for our contracts can be found in article 9 of the attached GC for Uhland Road Project.

**Commented [AT31R29]:** Update here and under performance standards.

pertinent to the project for three (3) years from the time of closeout of the CDBG-DR or CDBG-MIT grant or for the period provided in the CDBG regulations at 2 CFR 200.333. 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 retention period, then all such records must be retained until completion of the actions and resolution of all issues, or the retention period, whichever occurs later.

For complete recordkeeping policies and procedures and requirements for HUD grants, refer to the *CDBG Overall Management Manual*.

### A. Contractor Records Requirements

The contractor is required to maintain administrative, financial, and any other project files for a period of five years after project closeout.

#### *Administrative Records*

These are files and records that apply to the overall administration of the recipient's CDBG-MIT activities. They include the following:

- Personnel and payroll reports;
- Property management files;
- General program files, such as the contract and any amendments, program policies and guidelines, correspondence with grantee and reports, etc.; and
- Legal files: Articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

#### *Financial Records*

These may include the chart of accounts, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc. that may be related to the project invoicing and payments made to subcontractors and vendors.

#### *Project/Case Files*

Any other files that document the activities undertaken for the project with respect to specific individual beneficiaries, property owners, and/or properties.

### B. Reporting

As a recipient of CDBG-MIT funds, City of San Marcos Planning and Development Services Department has established reporting requirements for all recipients and contractors in their respective recipient and contractor agreements and contracts in accordance with 2 CFR 200. The Program reviews reporting requirements for stand-alone infrastructure projects at five different intervals, as applicable:

- a) At execution of agreements;
- b) Monthly;
- c) Quarterly;
- d) Annually; and
- e) As required.

Recipients and contractors submit the required documents and reports to the City at the times indicated in the contract agreement, and in the format prescribed by program staff. Deviations from this requirement must be pre-approved by program staff.

### C. Access to Records

Representatives of HUD, the Inspectors General, the Comptroller General of the United States, or any of their authorized representatives have the right of access to any documents, papers, or other records pertinent to a CDBG-DR or CDBG-MIT award to complete audits, examinations, excerpts, and transcripts. This right also includes timely and reasonable access to the City of San Marcos's personnel for interview and discussion related to such documents.

The City also provides citizens access to records regarding the use of CDBG-DR and CDBG-MIT funds on the CDBG-DR and CDBG-MIT websites. San Marcos protects personally identifiable information in the public access of CDBG-DR and CDBG-MIT records, consistent with State of Texas Public Records Law and providing limits on the collection, management, and dissemination of personal information by state agencies.

The availability of records is subject to the exemptions to public disclosure set forth in Texas Public Records Law. All Freedom of Information Act (FOIA) requests must be made in writing to City of San Marcos Planning and Development Services Department and will be processed in accordance with these procedures.

## VIII. Cross-Cutting Federal Regulations

The Planning and Development Services Department and contractors receiving federal funds must comply with all applicable federal regulations and laws, including but not limited to the identified cross-cutting federal requirements below. Further, all CDBG-MIT projects must comply with any and all applicable State of Texas, and locally adopted codes, regulations, and ordinances. This section provides a summary of the significant and applicable cross-cutting federal requirements for all construction activities.

### A. Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against "a qualified individual with a Disability" in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. HCD ensures that reasonable modifications or changes to policies and procedures are made in order to guarantee people with disabilities equal access to services and programs. Additionally, all activities are accessible, both structurally and administratively, to persons with disabilities.

### B. Fair Labor Standards Act of 1938, as Amended

The Fair Labor Standards Act of 1938, as amended (FLSA), establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in

part with assistance received under the CDBG-MIT program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

In some cases, the State of Texas prevailing wage rate and the Davis-Bacon prevailing wage rates both apply. In such instances, the higher of the two wage rates prevails. Exceptions to the FLSA include:

- Construction contracts of \$2,000;
- Real property acquisition;
- Architectural and engineering fees;
- Other services (such a legal, accounting, construction management);
- Other non-construction items (such a furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and

Debris removal demolition, and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

### C. Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, deductions from workers' pay be permissible as approved by the worker and in line with allowable deductions as outlined by DOL and HUD manuals, and that contractors maintain and submit weekly payrolls.

### D. Equal Employment Opportunity

Executive Order 11246, Equal Employment Opportunity, as amended, prohibits federal contractors and federally-assisted contractors and subcontractors, who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.<sup>4</sup>

### E. Section 504 Requirements

In accordance with Section 504 of the Housing and Rehabilitation Act of 1973 and 24 CFR §8, the Planning and Development Services Department ensures that all programs are accessible to and usable by persons with disabilities. In addition, the Planning and Development Services Department does not discriminate based upon disability in employment.

All new facilities constructed must be designed and constructed to be readily accessible to and usable by persons with disabilities. These measures must be documented in the project design.

### F. Fair Housing

The Fair Housing Act requires all Grantees, Subrecipients, and/or Developers funded in whole or part with HUD financial assistance for housing related activities to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. The Planning and Development Services Department enforces the Fair Housing Act by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements,

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<sup>4</sup> 41 CFR Part 60

provide a marketing plan, and report on compliance in accordance with the Fair Housing Act and the associated forms on the Planning and Development Services Department's website, where applicable<sup>5</sup>. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant affirmatively furthers fair housing throughout applicable disaster recovery programs.

### G. Uniform Relocation Act and Real Property Acquisition

When applicable, the Planning and Development Services Department must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987 (URA or Uniform Act). The URA contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program in which HUD financial assistance is provided. The implementing regulations, 49 CFR Part 24, include steps which must be taken with tenant occupants, including those who are not impacted by the HUD assisted activity. URA was amended by Public Law 105-117.

#### *Real Property*

If CDBG-MIT funds are used to acquire real property, the Planning and Development Services Department ensures that the property is acquired voluntarily and continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to protect and maintain it, and that if the property is sold, the Planning and Development Services Department is reimbursed for the CDBG-MIT share of the property's value. Refer to the Planning and Development Services Department's *Acquisition and Relocation Manual* for the requirements and process of any acquisition of property.

### H. Residential Anti-Displacement

When applicable, the Planning and Development Services Department shall make every effort to minimize displacement of families from their homes and/or neighborhood, according to the Planning and Development Services Department's *Acquisition and Relocation Manual*.

### I. Byrd Anti-Lobbying Amendment

Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier-up to the non-federal award.

### J. Federal Funding and Accountability Transparency Act

In accordance with the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act - P.L.109-282, as amended by section 6202(a) of P.L. 110-252), the Planning and Development Services Department maintains a single, searchable website that contains information on all Federal spending awards.

<sup>5</sup> <https://www.hcd.ca.gov/community-development/building-blocks/program-requirements/equal-housing-opportunity.shtml>

### K. Limited English Proficiency

The Planning and Development Services Department follows the Safe Harbor rule, contained in HUD's final guidance<sup>6</sup>, to determine when to provide translation of vital documents. The Safe Harbor rule for written translation of vital documents is based on the number and percentages of the market area-eligible population or current beneficiaries and applicants that are Limited English Proficiency (LEP). The Planning and Development Services Department ensures that all citizen have equal access to information about the programs, including persons with disabilities (vision and hearing impairments) and Limited English Proficiency persons.

### L. Religious Activities

Organizations that receive direct HUD funds may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing, as a part of the program or services funded by HUD. Inherently religious activities must be offered separately, in time or location, from the programs, activities, or services supported by direct HUD funds.

## IX. Close Out

At the completion of a CDBG-DR and/or CDBG-MIT project, Engineering Services and Community Initiatives must take steps to verify the project file is complete and the contract and project reporting are ready for closeout, including:

- The final request for funds;
- Review of Duplication of Benefits;
- Budget reconciliation of expenditures and draws;
- Documentation for beneficiaries; and
- If applicable, the final projects of the grant funding (planning studies, environmental review records, etc.)

### A. Budget Reconciliation

In order to ensure the proper disbursement of grant funds, the City must monitor obligations and expenditures against its approved budget(s) for CDBG-funded activities. The Grants Compliance Specialist is responsible for monitoring the compliance of completing the required reporting of grant procurement, contract compliance, reconciliation and financial reporting of the CDBG-DR and CDBG-MIT funds.

For construction projects using CDBG-DR and/or CDBG-MIT funds, the Grants Compliance Specialist will verify final quantities and costs for the project with Engineering Services and ensure all expenditures have been reasonable and eligible for the project and the grant. Any remaining balance that was not expended by the contractor at the time of Final Acceptance, expect retainage, will be reallocated.

### B. Duplication of Benefits Review

Prior to project close out, Form CDBG-DR OO 23-A.1 Infrastructure-Duplication of Benefits Summary (Appendix A) is reviewed and resubmitted for the final budget to capture all sources of funding that the project used. The Director of Engineering & Capital Improvements certifies that the Duplication of Benefits summary provided on the form for the federally-funded project is accurate, complete, and in conformance with the generally accepted accounting procedures on

<sup>6</sup> <https://portal.hud.gov/hudportal/documents/huddoc?id=finallep2007.pdf>

the date certified. If duplication of benefits or over payment occurs, the duplicated funds will transfer into the appropriate CDBG-DR or CDBG-MIT account in accordance with applicable HUD regulations.

### C. File Review

All files are reviewed for completion through documents that provide compliance with the following:

- Project design and approvals,
- All environmental reports and remediation details,
- Budget set up and DOB review,
- Procurement and contractor selection,
- Executed contract and change orders and amendments,
- Requests for payments and approvals,
- Davis-Bacon payroll records and employee interviews,
- Section 3 reports,
- Copies of required permits and building inspection reports,
- Any construction site inspections conducted during the project,
- Substantial completion notice,
- Certificate of occupancy, if applicable,
- Documentation on release of liens,
- National Objective and Beneficiary documentation, and
- CDBG-MIT performance measures documentation.

Engineering Services and Community Initiatives staff will coordinate to ensure all necessary files are a part of the project record for grant compliance and monitoring. All files are maintained for the duration of five years after the City's grant closeout with HUD, within the recordkeeping system.

### D. Contract Close Out

After the contractor has received a clear Lien release, the final request for payment may be submitted by the contractor to Engineering Services and reviewed for approval according to Section V, part C(3) of this manual.

The release of the final payment serves as acknowledgment of the end of the contract and that the scope of work and performance milestones have been met.

### E. Activity Close Out

After all payments have been released and the contract is closed, the project's DRGR activities may be closed. The City reviews and updates the following in DRGR:

- The total amount of funds drawn down for the activity,
- The activity type,
- The national objective, and
- The grant activity accomplishments

Individual activity completion should also be reflected in the QPR.

Further activity close out procedures are provided in the *CDBG-MIT Closeout Procedures*.

**Commented [AT32]:** San Marcos: Are there any other official steps for contract closeout that should be referenced here?

**Commented [AK33R32]:** We have a certificate of completion signed off by inspection manager, inspector and city PM. Note that in final payment, contractor certifies he has a clear Lien. We no longer request this document. Ask Lynda W about this if necessary.

**Commented [HJ34R32]:** Per Lynda Williams, Purchasing Manager:

Here is what the purchasing policy says regarding final payment for construction contracts over \$50k. The operating procedure is that when final payments have been revised and signed off by the Engineering Department and Grants, it comes to P&C. We verify/reconcile the contract amount, ensure we have the consent of surety, signed and notarized pay requisition from the contractor and all required signatures. I sign it before sending it to the City Attorney for final signoff.

d) Payment Requisition: It is the responsibility of the Project Manager, the contracted professional consultant, and the project inspector to ensure that the work is completed in accordance to the contract documents and that the correct payment requisition forms are obtained from the City and are properly completed. After the Department Director and the Purchasing Manager signatures are obtained on final payments, it will be reviewed and signed by the City Attorney. {rev amendment 4 30April2018}

We no longer require a separate lien release or affidavit of bills paid, because the pay requisition includes this information on the form and is required to be notarized.

**Commented [AT35R32]:** Added under payment process. Is the contractor encouraged to obtain a clear lien for their files in order to notarize the pay request? Recommend following this on federal projects.

## X. Appendices

Appendix A: Form CDBG-DR OO 23-A.1 Infrastructure-Duplication of Benefits Summary

Appendix B: Contractor and subcontractor Eligibility form

Appendix C: Davis-Bacon payroll record form

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf>

Appendix D: HUD Record of Employee Interview form

<https://www.hud.gov/sites/dfiles/OCHCO/documents/11.pdf>

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