

# **ATTACHMENT D**

## **SECTION 00824**

### **GENERAL**

#### **TERMS AND CONDITIONS**

#### **CONSTRUCTION CONTRACTS**

#### **COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

##### **SECTION 1 - CITY NOT OBLIGATED TO THIRD PARTIES**

The City will not be obligated or liable hereunder to any party other than the Contractor.

##### **SECTION 2 - INDEMNIFICATION**

The Contractor shall indemnify and save harmless the City of New Orleans against any and all claims, demands, suits, judgements of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act of omission or the operation of the Contractor, his agents, servants or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Contractor hereunder, and shall also hold the City harmless from any and all claims and/or liens for labor, services or materials furnished to the Contractor in connection with the performance of his obligation under this agreement.

##### **SECTION 3 - MONITORING AND EVALUATION OF PROJECT ACTIVITIES**

The execution of the contract by the Contractor shall be subject to monitoring and evaluation by a person or persons designated by the City. In the event the aforesaid person or persons determines that the Contractor is not performing the contracted services in a satisfactory and proper manner, the City shall so notify the Contractor in writing of said determination, specifying the correction of performance desired and a specific time period in which the deficiency must be corrected. Failure to correct said deficiencies within the specified time period is cause for termination of the contract or suspension of the funding to the Contractor.

##### **SECTION 4 - CHANGES**

The City may request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the City and the Contractor, shall be incorporated in written amendments to this contract.

##### **SECTION 5 - UNEARNED PAYMENTS**

Unearned payments under this contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by the City or HUD at any time; or if the grant to the City of New Orleans under the Housing and Community Development Act of 1992, as amended, is suspended or terminated.

##### **SECTION 6 - PAYMENT OF CONTRACT FUNDS**

**Conditions Prerequisite to Payment of Contract - Notwithstanding provisions of this contract,**

the City may elect not to make a particular payment on account of the contract if:

- A. **Misrepresentation - The Contractor (with or without knowledge) shall have made any misrepresentation of a material nature or with respect to any information furnished to the City.**
- B. **Litigation - There is then pending litigation with respect to the performance by the Contractor of any of its duties or obligations hereunder which may jeopardize or adversely affect the undertaking of or the carrying out the contract.**
- C. **Unauthorized Actions by Contractor - The Contractor shall have taken any action pertaining to the contractor which requires City approval without having been advised by the City that it has no objection to the proposed action.**

#### **SECTION 7 - ACCESS TO RECORDS AND ACCOUNTING SYSTEM**

- A. **At any time and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, there shall be made available to the City, HUD and/or representatives of the Comptroller General for examination all of its records with respect to all matters covered by this contract and will permit the City, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts and/or copies of transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this contract. These representatives shall be permitted to interview employees of the Contractor during working hours on the job.**
- B. **The Contractor shall have an accounting system which accounts for cost in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable costs among activities. Allowable activity costs shall be determined in accordance with OMB Circular A-122, Cost Principles for Non-profit Organizations and 24 CFR Part 570.201, CDBG Eligible Activities. The Contractor must propose and account for costs in a manner consistent with his normal accounting procedures.**

#### **SECTION 8 - RECORDS**

- A. **Establishment and Maintenance of Records - Records shall be maintained in accordance with requirements prescribed by HUD and/or the City with respect to all matters covered by this contract. Except as otherwise authorized by HUD, or the City such records shall be maintained for a period of three years from the date of acceptance of the final audit, except as provided in item B.**
- B. **Retention of Records - The Contractor shall retain all of its records and supporting documentation applicable to the contract with the City, for a period of three years except as follows:**
  - 1. **Records that are subject to audit findings shall be retained for three (3) years after such findings have been resolved.**
  - 2. **Records for non expendable property which was acquired with federal grant funds shall be retained for three (3) years after its final disposition.**
  - 3. **Records for any displaced person shall be retained for three (3) years after he has received final payment.**

**All such records and supporting documentation shall be made readily available, upon request, for inspection or audit by representatives of the City, the Secretary of Housing and Urban Development and/or the Comptroller General of the United States or authorized representatives. In the event that the**

Contractor goes out of existence, it shall turn over to the City all of its records relating to the program to be retained by said City for the required period.

- C. **Inspection of Records** - The Contractor agrees to permit the City of its designated representatives to inspect, as it deems necessary, all records of this project as related to finances, as well as other records that may be required by relevant directives of funding sources of the City. The Contractor further understands and agrees that said inspection may be made without notice.

#### **SECTION 9 - REPORTS**

At such time and in such forms as HUD or the City may require, there shall be furnished to HUD or the City such statements, records, reports, data and information, as HUD or the City may request pertaining to matters covered by this contract.

#### **SECTION 10 - FINDINGS CONFIDENTIAL**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization or communication media representative other than an agency of the United States Government, without the prior written approval of the City.

#### **SECTION 11 - PERSONNEL, EQUIPMENT AND FACILITIES**

- A. The Contractor represents that he has, or will secure all personnel, equipment and facilities required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City.
- B. All of the services required hereunder will be performed by the Contractor or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- C. No person who is serving sentence in a penal or correctional institution shall be employed on work under this contract.

#### **SECTION 12 - USE OF CONTRACT FUNDS**

Contract funds disbursed by the City to the Contractor shall:

- A. Be used only for the purposes of this contract.
- B. Not be used to advance funds to any individual or organization other than travel advances for travel outside the metropolitan area.
- C. Not be used for pre-paying expenses in anticipation of reimbursement by individual or organizations.
- D. Not be used to advance funds for any other purposes, programs or activities which are being carried out by the Contractor.

#### **SECTION 13 - POLITICAL ACTIVITY PROHIBITED**

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

#### **SECTION 14 - CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The Contractor as signatory to this agreement certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **SECTION 15 - GRATUITIES**

The Contractor is advised that in contracting with or expending Federal funds received for this contract no officers, employee, or agents of the City shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

#### **SECTION 16 - ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or notation) without the prior written approval of the City, provided, however, that claims for money due or to become due the Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

#### **SECTION 17 - CONCURRENCE ON SUBCONTRACTS**

None of the services covered by this contract shall be subcontracted without the prior written consent of the City. The Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by him. The Contractor shall include these special provisions in all subcontracts.

#### **SECTION 18 - COVENANTS AGAINST CONTINGENT FEES**

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this condition shall give the City the right to terminate this Contract or, at its discretion, to deduct from the Contractor's fee the amount of such commission, brokerage, or contingent fee.

## SECTION 19 - CONFLICT OF INTEREST

- A. **Interest and Members of City** - The Contractor is advised that no member, officer, or employee of the City and no public official of the City who exercises any functions or responsibilities with respect to this contract or the Housing and Community Development Act of 1992, as amended, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this contract.
- B. **Interest of Contractor and Contractor Employees** - The Contractor covenants that no person who exercises or have exercised any functions or responsibilities with respect to this contract or the Community Development Block Grants Program under the Housing and Community Development Act of 1992, as amended, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, has any interest, direct or indirect, in this contract or any 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 for one year thereafter. This provision applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Contractor, or of any designated public agencies, or subrecipients which are receiving funds under this contract. The Contractor shall incorporate, or cause to be incorporated, this provision in all contracts, subcontracts, or agreements.
- C. **Interest of Certain Federal Officials** - No member or delegate to the Congress of the United States, or employee of the U. S. Department of Housing and Urban Development, and no Resident Commissioner, shall receive any share or part of this contract or agreement or benefit to arise from the same.
- D. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's professional responsibility to the City, the Contractor agrees to decline any offer of employment if its independent professional work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent, professional work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.
- E. The Contractor shall promptly notify the City in writing of any known or suspected conflict of interest, describing the nature of conflict. The City may grant, with the concurrence of the U. S. Department of Housing and Urban Development, an exception to the provisions of this section of the contract on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Housing and Community Development Act of 1992, as amended, and the effective and efficient administration of this contract. An exception may be considered only after the Contractor has provided the following in writing to the City:
1. A full disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and documentation as evidence that the public disclosure was made; and
  2. An opinion of the Contractor's attorney that the interest for which the exception is sought would not violate State or local law.

## SECTION 20 - COMPLIANCE WITH SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 AS AMENDED

During the performance of this contract, the Contractor agrees as follows:

- A. The work to be performed under this contract is on a project assisted under a program

providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 U -Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR-135 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.**
- C. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.**
- D. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR-135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.**
- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR-135 and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR-135.**

#### **SECTION 21 - MAINTENANCE OF EFFORT**

**It is expected that compensation paid to the Contractor hereunder will be in addition to the total amount of funds from other sources currently receivable, to be received, available or expected to be available for the use of the Contractor for services similar to the services required herein and will not for the term of the contract or any extension thereof, serve to supplant, replace, substitute for, or otherwise cause, directly or indirectly, a reduction of such total amount; and will not be applied to the employment of individuals whose employment is being funded or would be funded with monies from such other sources.**

#### **SECTION 22 - REFUNDS**

**The Contractor agrees to refund to the City any payment or portions of payment which the City determines were not properly due to the Contractor under the terms of this contract.**

#### **SECTION 23 - DUPLICATE FUNDING**

**The Contractor shall immediately notify the City in writing if duplicate Federal funding becomes available to the Contractor for similar purposes for any portion of the time provided for in this agreement. The City reserves the right to terminate that portion of the contract**

allocable to the period of time after such duplicate Federal funding becomes available.

#### **SECTION 24 -REDUCTION OR TERMINATION OF FUNDING BY FUNDING SOURCES**

It is further understood that funds provided for under the terms of this contract are subject to all regulations of the Department of Housing and Urban Development of the United States of America, and as such, the City of New Orleans reserves the right to terminate or reduce the funding level of this project if, for any reason the United States of America, whatsoever, the U. S. Department of Housing and Urban Development, or any related Federal Agency withdraws or reduces the funding level committed to the City of New Orleans under the Housing and Community Development Act of 1992, as amended, commonly referred to as the Community Development Block Grant Program.

#### **SECTION 25 - COMPLIANCE WITH LOCAL LAWS**

The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the City harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

#### **SECTION 26 - ACKNOWLEDGMENT OF EXCLUSION OF WORKERS' COMPENSATION COVERAGE**

Contractor herein expressly declares and acknowledges that he is an independent contractor, and as such is being hired by the City under this contract of hire, as noted and defined in R.S. 23:1472 (E); and therefore, it is expressly declared and understood between the parties hereto, in entering into this contract, or contract for hire and in connection with unemployment compensation coverage only, that:

- A. Contractor has been and will be free from any control or direction by the City and over the performance of the services covered by this contract; and
- B. The service(s) to be rendered by Contractor is outside the normal course and scope of the City's usual business, and;
- C. Contractor has been independently engaged in performing the service(s) listed herein prior to the date of this contract.

Consequently, neither Contractor nor anyone employed by Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

#### **SECTION 27 -ACKNOWLEDGEMENT OF EXCLUSION OF WORKERS' COMPENSATION COVERAGE**

Contractor herein expressly agrees and acknowledges that he is an independent Contractor as defined in R.S. 23.1021 (6) and as such it is expressly agreed and understood between the parties hereto, in entering into this contract, that the City of New Orleans shall not be liable to the Contractor for any benefits of coverage as provided by the Workers' Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for purpose of Workers' Compensation Coverage.

#### **SECTION 28 - DISCRIMINATION PROHIBITED**

During the performance of this contract, the Contractor agrees as follows:

In all hiring or employment made possible by, or resulting from this contract, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Contractor's employees are treated during employment without regard for their race, color, religion, gender, sex, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

#### **SECTION 29 - COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES**

No employee of the Contractor shall be discharged or in any other manner discriminated against by the Contractor because, the employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the provisions of this contract.

#### **SECTION 30 - ARCHITECTURAL BARRIERS ACT OF 1968**

The Contractor shall comply with the provisions of the Architectural Barriers Act of 1968, 42 USC 4151 which requires that the design of any facility constructed comply with the "American Standard Specification for Making Buildings and Facilities Accessible, and Usable by the Physically Handicapped", Number A-117.IR-1971, as modified (41 CFR 101-19.603).

#### **SECTION 31 - LEAD BASE PAINT**

Notwithstanding any other provision, the Agency and Contractor agree to comply with the regulation issued by the Secretary of Housing and Urban Development set forth in 24 CFR 35, Subpart A and Subpart B and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structure undergoing Federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract including painting, pursuant to such Federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting of the use of lead-based paint.

#### **SECTION 32 - COMPLIANCE WITH AIR AND WATER ACTS**

All contracts of amounts in excess of \$100,000 shall comply with the following provisions:

This contract is subject to the requirements of the Clean Air and Water Pollution Control Acts and the regulations of the Environmental Protection Agency as published at 40 CFR, Part 15. In accordance with these regulations, all contractors or subcontractors with contracts in excess of \$100,000 shall certify prior to signing the contract that:

- A. No facility to be utilized in the performance of the contract is listed on the List of Violating Facilities issued by the Environmental Protection Agency.
- B. The Contractor will promptly notify the City of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

- C. The Contractor will comply with all the requirements of the Clean Air and Water Pollution Control Acts, and
- D. The Contractor will include or cause to include these provisions in all non-exempt subcontracts and will take such actions as the Government may direct as a means of enforcing these provisions.

### **SECTION 33 - IDENTIFICATION OF DOCUMENTS**

All reports, maps and other documents completed as a part of this contract, other than documents exclusively for internal use within or by the City of New Orleans, shall contain the following information on the front cover or title page (or in the case of maps, in an appropriate block): Name of the City of New Orleans, month and year of the preparation, name of the Contractor, and the following notation or similar notation covering Federal assistance:

The preparation of the (report, map, documents, etc.) was financed in part through a grant from the U. S. Department of Housing of Urban Development, under the provisions of the Housing and Community Development Act of 1992, as amended.

### **SECTION 34 - PATENTS**

If this contract involves research, developmental, experimental, or demonstration work, and any discovery or invention arises or is developed in the course of or under this contract, such discovery or invention shall be reported to the City. Matters regarding rights to inventions and materials generated under the contract are subject to regulations issued by the U.S. Department of Housing and Urban Development.

### **SECTION 35 - COPYRIGHTS**

If this contract results in a book or other copyrightable material the author is free to copyright the work, but the City and HUD reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use all copyrighted material and all material which can be copyrighted.

### **SECTION 36 - SUSPENSIONS**

The City may suspend payment of the contract in whole or in part for cause. Cause shall include the following: (1) ineffective or improper use of the contract funds; (2) failure to comply with either these terms and conditions of the contract or program; (3) submittal to City of reports which are incorrect or incomplete in any material respect; or (4) if for any reason the carrying out of this contract is rendered improbable or infeasible. The City may also withhold payment of any unearned portion of the contract if the Contractor is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations, or by other policy announced by City at any time. If the City withholds payment, it shall advise the Contractor within ten (10) days and specify the actions that must be taken and the number of days in which the corrective action must be taken as a condition precedent to the resumption of payments. The Contractor will remit any unexpected balance of the payments on account of the Grant as well as such other portions of such payments previously received as determined by City to be due the City. The action of the City in accepting any such amount shall not constitute a waiver of any claim which the City may otherwise have arising out of this contract.

### **SECTION 37 - TERMINATION OF CONTRACT FOR CAUSE**

The City may terminate this contract in whole or in part any time if the Contractor fails to fulfill his obligation under this contract: Provided, the Contractor is given written notice stating the cause and effective date of termination at least five (5) days before the effective date of termination and is given an opportunity to discuss the situation with the City prior to the

termination. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the Contractor and the City may withhold any payments to the Contractor, for the purpose of set off until such time as the exact amount of damages due the Contractor from the City is determined.

#### **SECTION 38 - TERMINATION FOR CONVENIENCE OF THE CITY**

(a) The City of New Orleans may terminate this contract in whole, or from time to time in part, for the Convenience of the City. The City shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the Contractor shall: (1) Immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the City of New Orleans all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the City, the City shall be liable only for payment for services rendered, and accepted by the City, before the effective date of termination.

(c) Any dispute with regard to this clause are expressly made subject to the terms of the Disputes/Arbitration clause (Section 40) of this contract.

#### **SECTION 39 - CLOSE-OUT/NOTICE OF TERMINATION**

- A. The Contractor shall notify the City's Office of Planning & Development, (60) days prior to the scheduled date for termination of this agreement to engage in accomplishing the close-out. The responsibility for notification resided with the Contractor with the assistance of Neighborhood 1. This procedure is also applicable to extend contracts, with the notification requirement date defined as sixty (60) days prior to the extended termination date.
- B. The Contractor shall comply with the following:
1. No additional supplies and materials, contractual services, and equipment shall be ordered or purchased sixty (60) days prior to termination of this agreement unless authorized by the Division of Housing and Neighborhood Development.
  2. Office Planning & Development shall be given a complete inventory of movable property thirty (30) days prior to termination of the project. A reconciliation is required at least ten (10) days prior to the termination of the inventory changes during the period, for example: if property is damaged, lost or stolen. The Contractor shall list and identify any equipment and furniture to be turned over to the Office Planning & Development.
  3. Office Planning & Development will take possession of the movable property and dispose of it in accordance with the appropriate federal regulations. When contractual requirements are in conflict with the City charter requirements, the Office Planning & Development with the Chief Administrative Office will coordinate disposition.
  4. A complete payroll documentation of employment termination is required by Neighborhood 1 not less than fifteen (15) working days prior to the close of the contract.

5. The Contractor shall review all employee's annual and sick leave, insurance coverage and etc., ninety (90) days before termination in order to initiate steps for employees to use accumulated time and to cancel or adjust insurance to reflect any changes in coverage.
  6. Prior to the Project close-out all staff personnel funded under this agreement should be notified of the scheduled date of termination sixty (60) days before the termination of the contract.
  7. If applicable, city advance funds are to be returned to the City not less than fifteen (15) working days prior to the close of the contract.
  8. Bank account(s) pertaining to the CDBG program are to be completely closed-out to ensure that no additional bank charges are incurred.
  9. If the Contractor will cease to operate with the termination of this agreement, the Contractor shall have all records pertaining to the project properly packed and turned over to Office Planning & Development on the termination date of the contract.
- C. A report of the project performance as described in its contract should be submitted fifteen (15) days before the termination of the project. The data included in the report should be the most current and accurate available information covering the latest contract period through the termination date.

#### **SECTION 40 - DISPUTES AND ARBITRATION**

- (a) All disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof, which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the City. A claim by the City against the Contractor shall be subject to a written decision by the City.
- (c) The City shall, with reasonable promptness, but in no event more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the City's decision, shall notify the City in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) If the Contractor has (1) given notice within the time stated in subparagraph(c) above, and (2) excepted its submitted claim from any final release, the City's decision shall not be final or conclusive, but the dispute shall be determined as provided in paragraph (e) below.
- (e) All disputes arising under or relating to this contract, including all claims or counterclaims may be decided by Arbitration, upon the mutual consent of the parties, before an arbitrator located in New Orleans, Louisiana. In the event the parties do not agree to arbitration, then any suits shall be filed in the Civil District Court of the Parish of Orleans.
- (f) Pending any final resolution of any request for relief, claim, appeal, or action under this contract, the Contractor shall diligently proceed with performance of any remaining portion of the contract and comply with any decisions by the City with respect thereto.

#### **SECTION 41 - SEVERABILITY OR PROVISIONS**

If any provisions of this Contract are held invalid, the remainder of this contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

#### **SECTION 42 - PROGRAM INCOME**

The Contractor understands and agrees to remit to the City the total amount of Community Development Block Grant Program Income collected monthly by the fifth working day of the following month. The Contractor further understands and agrees that the City may withhold from payment of reimbursements under this agreement the amount of program income determined by the City which the Contractor fails to remit by the fifth working day of the following month. Should the total amount of program income be prorated between two or more funding sources, the Contractor personnel available in a timely manner, convenient to the City in order to identify, determine, and resolve the amount of program income to be prorated between the City and the other source or sources of funding no later than thirty (30) days from the date of this agreement.

#### **SECTION 43 - CHURCH/STATE PROVISION**

In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of public services with CDBG funds, pursuant to Title I of the Housing and Community Development Act of 1992, as amended, the Contractor:

1. represents that it is, or may be deemed to be, a religious or denominational institution or organization or an organization operated for religious purposes which is supervised or denominational institution or organization;
2. Agrees that, in connection with such public services:
  - a. it will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
  - b. it will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
  - c. it will provide no religious instruction or counseling, conduct no religious workshop or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;
  - d. the portion of a facility used to provide public services assisted in whole or in part under this Agreement shall contain no sectarian or religious symbols or decorations; and
  - e. the funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Provider and in which the public services are to be provided; Provided that, minor repairs may be made if such repairs (1) are directly related to the public services, (2) are located in a structure used exclusively for non-religious purposes, and (3) constitute in dollar terms only a minor portion of the CDBG expenditure for the public services.

#### **SECTION 44 - CORRECTIVE AND REMEDIAL ACTIONS**

The City shall take corrective and/or remedial actions against the Contractor as shall be determined by the City for the Contractor's failure to adhere to the provisions of this agreement, and applicable federal, State, and local laws and regulations. Such actions shall be designed to prevent a continuation of the performance deficiency, mitigate, to the extent

possible, the adverse effects or consequences of the deficiency; and prevent a recurrence of the deficiency. The City shall take one or more of the described below.

- 1. Issue a letter of warning advising the Contractor of the deficiency identified during the review of the Contractor's performance, or as may otherwise be brought to the attention of the City.**
- 2. Recommend, or request the Contractor to submit, proposals for corrective actions, including the correction or removal of the causes of the deficiency, through such actions as:**
  - a. Preparing and following a schedule of actions for carrying out the affected activities of this agreement, consisting of schedules, timetables, and milestones necessary to implement the affected activities.**
  - b. Establishing and following a management plan which assigns responsibilities for carrying out the actions identified in paragraph 2.a. above.**
  - c. Canceling or revising affected activities of this agreement which are no longer feasible to implement due to the deficiency and reducing the amount of compensation from such affected activities.**
  - d. Other actions which will serve to prevent a continuation of the deficiency, mitigate (to the extent possible) the adverse effects of consequences of the deficiency, and prevent a recurrence of the deficiency.**
- 3. Reduce the amount of compensation or reimbursement due the Contractor for each deficiency or occurrence as shall be determined by the City.**