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FINANCE

The contract between the community and the State will be an essential document throughout the life of the project. It identifies the description of the activities funded, budgeted costs (total and CDBG), general terms and conditions, and any special conditions which must be met before the State will release funds.

CDBG funds will be spent as a percentage of total costs according to the line item budget for all contracts with funding from other sources. The match rate that is required for all communities is determined by the community's ability to pay percentage. ECD distributes the ability to pay information, and it is available on the CDBG website.

PREPARATION OF ACH (AUTOMATED CLEARING HOUSE) CREDITS FORM AND AUTHORIZED SIGNATURE CARDS;

There are two forms that must be completed before CDBG funds can be requested. They should be completed after the Technical Assistance visit or when the contract is submitted. These are the "ACH (Automated Clearing House) Credits Form" and W-9 form (Exhibit B-1) and "Signature Authorization Form" (Exhibit B-2). These forms must be completed carefully. The ECD Project Representative will bring blank forms to the community during the Technical Assistance visit in the weeks after the grant announcement.

The "ACH (Automated Clearing House) Credits Form" tells the State where to send the transfer of CDBG funds. CDBG deposits may not draw interest. If interest is accumulated, ECD must be notified so it can be collected by the State for return to the U. S. Treasury. While cities have the option of establishing a separate bank account for CDBG funds, counties must deposit funds into the Trustee's account.

The "Signature Authorization Form" designates who is permitted to sign the community's "Request for Payment." It requires at least two signatures. Two copies of the "Signature Authorization Form" with original signatures on each must be submitted to the State.

If these forms need to be changed (e.g., using a different financial institution or staff members change), simply provide the State with copies of revised forms with original signatures.

REQUESTS FOR PAYMENT

The "Final Notice of Removal of Contract Conditions" (Exhibit B-10) must be received before any CDBG funds may be drawn. After that time, ECD expects grantees to request funds every 90 days. Funds are requested by using the "Request for Payment and Status of CDBG Funds Report" (Exhibit B-3). This form must be completely and accurately filled in or it cannot be processed. Incomplete forms and documentation slow down the process for reimbursement and cause more work for all involved. Questions about the form should be directed to a staff person in the financial section of

ECD. It is important that administrators responsible for submitting payment requests submit them to ECD as soon after they are received in their office as possible. It is difficult for small contractors to wait several weeks for the request to be submitted to ECD and then several more weeks for ECD to approve and pay it before they are paid.

If the request is in order and can be approved, the funds will be transferred to the designated bank account through the Automated Clearing House. If the request is not in order, ECD will contact the community/administrator to correct the deficiencies.

Drawdowns should be made only in amounts necessary to meet **current** disbursement needs (defined as the funds that will be expended in **three days**). This "three day rule" means that all drawdowns **must** be expended within three working days of the date of deposit. For example, if a CDBG check is deposited on Friday, checks totaling the entire amount must be written by close of business Wednesday. In order to disburse this money promptly, grantees should arrange for their financial institution to notify them the day a CDBG deposit is received. If for some reason money is remaining in the account after three working days, these funds must be returned to the State or an additional "Request for Payment" must be submitted, the total requested amount of which is equal to the total billing for this request **minus** the amount of the remaining funds. The easiest way to meet this requirement is to use local government funds to pay CDBG invoices; then reimburse the community for these payments with CDBG funds. If the community's cash flow will not permit this, inform contractors of the time period between receipt of their invoice and payment.

The "Request for Payment and Status of CDBG Funds Report" should be prepared in duplicate. Submit the **original** ❶ to the State and retain one copy for grantee records.

Section A of the request provides general information needed in processing the request. Section B provides information about the status of the funds on hand. Section C provides a detail of actual costs by line item. Detailed support for each line item (actual invoices) must be attached. Exhibit B-4 is an example of a completed form.

Explanation of the "Request for Payment and Status of CDBG Funds Report":

TOTAL PROJECT COST COLUMN

The "Total Project Cost" column is used to list the total costs billed on a particular "Request for Payment," including amounts paid from sources other than CDBG grants. **(Do not use total budget or cumulative drawdown figures in this column.)**

CDBG COSTS COLUMN

The "CDBG Cost" column is used to list the amounts that will be paid with CDBG funds. The total of this column should be equal to the amount on Line B-7 (Amount of this Request for Payment.) To obtain the figures for this column, multiply the Total Project Cost column by the percentage of the project paid by CDBG funds. ❷

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- ❶ The copy with the original signatures. Remember, it must be signed by two of the persons on the "Signature Authorization Form."
 - ❷ Obtained from the approved contract line item budget.

LINE ITEM DOCUMENTATION

Appropriate documentation must be submitted in order to process the "Request for Payment." The following is a brief summary of that documentation.

- Construction* This line item is documented with an invoice detailing description, quantity, unit price and total amount for each of the items as approved in the construction contract. The engineer must certify that the work has been completed. Five percent (5%) retainage must be deducted from the contractor's invoice. When the grantee is ready to submit the final invoice, the "Notice of Completion" for the project should be publicly advertised. This notice should request anyone having a claim against the project to notify the City or County. If no claims are made within ten days from the date of advertisement, a "Release of Liens" from the contractor may be accepted and submitted to the State with the contractor's final pay estimate so that final retainage may be released. A copy of the advertisement of the "Notice of Completion" should also accompany the final "Request for Payment."
- Construction Inspection, Engineering Design, Other Engineering Services* This line item is documented with an invoice from the firm stating specific tasks completed, the date of these services, and a detail of their costs. These items should be billed on a cost plus fixed fee or lump sum basis. Payment of engineering design costs cannot exceed seventy-five percent (75%) of the budgeted amount until plans and specifications have been approved by ECD.
- Legal Services* This line item is documented with an invoice stating specifically the service performed and the date of service.
- Appraisals* This line item is documented with an invoice from the appraiser stating the date the appraisal was done and the address of and/or a description of the appraised property.
- Acquisition* This line item is documented with a written "Offer to Purchase" (Exhibit D-9 in the "Acquisition Chapter") accepted by the property owner.
- Relocation* **Voluntary** - This line item is documented with the applicable claim form(s) (Exhibit F-2 in the Relocation Chapter).
All new housing is billed to the Relocation line item.
Involuntary - This line item is documented with the applicable claim form(s).
- Housing Rehabilitation* If there is to be an escrow account^⑤, this line item is documented with the following:
- Bid tabulation summary
 - Copy of housing rehabilitation contract
 - Copy of City's estimate
 - Certification of escrow by appropriate local official or administrator (one needed for each contract to be escrowed)

If the rehabilitation funds are not escrowed^④, this line item is documented with the following.

- Bid tabulation summary
- Copy of housing rehabilitation contract
- Copy of City's estimate
- Certificate of Completion and Final Inspection" (Exhibit G-14 in the "Housing Chapter")
- New construction is not billed to housing rehabilitation

NOTE: Whether funds are escrowed or not, payment requests for change orders must include a copy of that change order that has been approved by the homeowner, contractor and a local official.

Housing Inspection This line item is documented with an invoice detailing the name of the homeowner and address of the property that was inspected. Costs should be billed on a per unit basis.

Clearance This line item is documented with an invoice describing the work performed and the location of the property cleared.

ADMINISTRATIVE COST DETAIL

Detail of administrative costs must be included in "Section D." Any salaries being charged to the grant must be listed with inclusive payroll dates, name of employee, percentage of time spent on CDBG and amount of each salary charged. Time and effort reports should be maintained at the locality to support these costs. Do **not** submit them with the "Request for Payment."

In addition, any salaries or consultant billings must be further documented by task performed. A suggested format is included as Exhibit B-5. Claims for time spent on administrative activities will **not** be paid without this documentation.

Other documentation of administrative costs must be submitted (e.g., telephone bills, supply invoices, travel claims).

All travel and per diem costs to be charged to CDBG must conform to the Comprehensive Travel Regulations of the State of Tennessee. If a copy of the current travel regulations is needed, one may be obtained from ECD.

③ Periodic reports will be required to document disbursement of escrowed funds.

④ Requires ECD approval.

ESTABLISHING PROCEDURES FOR FINANCIAL MANAGEMENT OF CONTRACT FUNDS;

The following accounting procedures should be followed in order to comply with State and Federal requirements under the CDBG program. The accounting systems described provide a means for tracking and reporting CDBG funds that flow into and out of the community, funds that are controlled by the community and against which claims will be made. The established accounting procedures should systematize the collection, processing, evaluation, and reporting of these funds.

CDBG project funds should be accounted for separately within a community's accounting system. This separate fund should be established similar to a street or water fund.

ACCOUNTING RECORDS

Management systems are required to provide the following.

- ★ Accurate, current and complete disclosure of the financial results of each grant program.
- ★ Records that adequately identify the source and application of funds for grant-supported activities.
- ★ Effective control over and accountability for all funds, property, and other assets.
- ★ Comparison of actual outlays with budget amounts for each grant.
- ★ Accounting records that are supported by source documentation, such as invoices, bills of lading, purchase vouchers and payrolls.
- ★ A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The following accounting records are suggested to fulfill these requirements.

| | |
|-----------------------------------|---|
| <i>Cash Receipts Journal</i> | All receipts of cash which are deposited into the CDBG fund are recorded initially in this journal. |
| <i>Cash Disbursements Journal</i> | All expenditures are recorded in this journal. In order to facilitate completion of the "Request for Payment," accounts for all line item expenditures need to be established here (i.e., separate columns for recording of administration costs, construction costs, etc.) |
| <i>Journal Entry Voucher</i> | The accounts to be debited and credited, together with a description of the transaction are recorded in this journal. Accrual information may be recorded through the use of a journal entry voucher. |

General Ledger The status of all accounts is summarized in this book of final entry. All journal accounts should be posted monthly to the general ledger.

Fixed Asset Ledger All fixed assets acquired using CDBG funds are recorded in this ledger. Include the date of purchase, cost of item, etc.

Additionally, the following general guidelines are presented to assist communities in establishing procedures for financial management:

- ★ In all financial recordkeeping, grantees should account for administrative costs separately.
- ★ Grantees should never make payment without invoices and vouchers physically in hand. All vouchers/invoices should be on vendors' letterhead.
- ★ All employees paid in whole or in part from CDBG funds should prepare a timesheet indicating the hours worked on CDBG projects for each pay period. Based on these time-sheets and the hourly payroll costs for each employee, a distribution of payroll charges should be prepared and placed in the appropriate files.
- ★ All financial records are to be retained for a period of three years after close-out with access guaranteed to State, HUD or Treasury officials or their representatives.

Accounting requirements for local government are established by the Comptroller of the Treasury, State of Tennessee. Project Representatives can assist communities with any questions relating to their system, CDBG requirements and State accounting requirements by referring them to the proper source of information.

OMB CIRCULAR A-87

The U.S. Office of Management and Budget (OMB) Circular A-87 (link: http://www.hud.gov/offices/lead/library/grants/OMBCircular_A87_2004.pdf) establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and Local Governments.

ALLOWABLE COSTS

OMB Circular A-87 addresses which costs are allowable for federal grants; the list of allowable costs included in A-87 is too lengthy to be included in this manual. **Generally, to be allowable, a cost must be necessary and reasonable for proper and efficient administration of the grant program.**

UNALLOWABLE COSTS

The following costs are **specifically unallowable** under the provisions of Circular A-87:

- ★ *BAD DEBTS* Any losses arising from uncollectible accounts and other claims, and related costs.

- ★ *CONTINGENCIES* Contributions to a contingency reserve or any similar provision for unforeseen events.
- ★ *CONTRIBUTIONS AND DONATIONS*
- ★ *ENTERTAINMENT* Costs of amusements, social activities, and incidental costs relating thereto (i.e., meals, beverages, lodgings, rentals, transportation, and gratuities).
- ★ *FINES AND PENALTIES* Costs resulting from violation of or failure to comply with Federal, State and local laws and regulations.
- ★ *INTEREST AND OTHER FINANCIAL COSTS* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, except when authorized by Federal legislation.
- ★ *LEGISLATIVE EXPENSES* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.
- ★ *UNDERRECOVERY OF COSTS UNDER GRANT AGREEMENTS* Any excess of cost over the Federal contribution under the grant agreement is unallowable under other grant agreements.

COSTS ALLOWABLE WITH THE APPROVAL OF THE GRANTOR AGENCY

The following costs are **allowable only with ECD approval**:

- ★ Automatic Data Processing
- ★ Building Space and Related Facilities
- ★ Capital Expenditures
- ★ Insurance and Indemnification
- ★ Management Studies
- ★ Professional Services
- ★ Proposal Costs
- ★ Pre-agreement Costs

PROCUREMENT REQUIREMENTS

CONFLICTS OF INTEREST AND THE CODE OF CONDUCT

Many times competition can be restricted by organizational conflict of interest or non-competitive practices among contractors. Communities should be alert to issues of this nature which may adversely affect procurement practices.

Each community must have a written Code of Conduct which specifically prohibits elected officials, staff or agents from personally benefiting from CDBG procurements. The code must prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors, and it must provide sanctions or penalties for violations of the code of conduct by local government officials, staff or agents, or by contractors or their agents. "Standards of Conduct" prescribed by HUD's Office of Inspector General is included as Exhibit B-6 of this manual. A copy of these standards of conduct must be placed in your CDBG files. If the community already has a code of conduct, a copy of that code must be made and placed in the CDBG files in addition to the HUD Standards of Conduct.

OTHER MAJOR REQUIREMENTS

- ★ Procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to insure costs are "reasonable".
- ★ Invitations for bids or requests for proposals must be clearly written and must describe the technical requirements of the equipment or services without requesting a certain brand.
- ★ Positive efforts must be made to use small and/or minority-owned businesses. (See the "Equal Opportunity Chapter" for minority bid solicitation requirements)
- ★ The method of contracting (fixed price, cost plus fixed fee, purchase orders, etc.) should be appropriate. **Cost plus percentage of cost contracts are specifically prohibited if CDBG funds are involved.**

PROCUREMENT PROCEDURES

All cities, towns, and counties in the State of Tennessee are governed by some sort of procurement policy. Policies vary from community to community. If a town or county does not have a specific procurement policy or law, the County Purchasing Law of 1983, or the Municipal Purchasing Law of 1983 will apply. Both of these laws require formal bidding for all purchases of \$2,500 or greater. Some cities and counties in Tennessee have procurement policies that require formal bidding for purchases less than \$2,500.

NOTE: It is the grantee's responsibility to ascertain whether the local procurement policies or federal procurement policies apply. The stricter standard must always be used.

SMALL DOLLAR PROCUREMENT REQUIREMENTS

Informal methods that are sound and appropriate are allowed for the procurement of supplies and other property whose total cost is **not more than the local bidding limit** (\$2,500 in most cases).

SMALL DOLLAR PURCHASES OF EQUIPMENT, SUPPLIES, AND NON-PROFESSIONAL SERVICES:

Price or rate quotations must be obtained from at least three qualified sources. These quotations may be obtained over the telephone⁵. The contract should be awarded to the offerer with the lowest price quotation.

PROFESSIONAL SERVICE CONTRACTS

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price.

PROCUREMENTS THAT REQUIRE FORMAL BIDDING

Procurements of equipment, non-professional services and construction contracts whose total cost is **more than the local bidding limit** (\$2,500 in most cases) must formally advertise for sealed bids and a public bid opening in a newspaper of general circulation.

ADVERTISEMENT REQUIREMENTS

The invitation to bid must be published in a **daily** newspaper of general circulation at least **14 days prior** to the public bid opening.

NOTE: The Environmental Protection Agency (EPA) requires the invitation to bid to be published in an entitlement city⁶ newspaper at least 30 days prior to the bid opening; grantees must follow EPA's advertisement requirements if EPA funds are in the project.

⁵ Keep a written record of the price quotations in your grant files.

⁶ Bristol, Chattanooga, Clarksville, Hendersonville, Jackson, Johnson City, Kingsport, Knoxville, Memphis, Murfreesboro, Nashville, Oak Ridge, Morristown, Cleveland

SUGGESTION: An easy way to increase the circulation of an invitation to bid is to require the engineer to advertise in the Dodge Report. This advertisement is free of charge; however, it is not an acceptable substitute for advertisement in the newspaper.

NOTE: ECD will not accept advertisement in the Knoxville, Nashville, Chattanooga, or Memphis Dodge Report as a substitute for advertisement in a daily newspaper of general circulation.

DEDUCTIBLE AND ADDITIVE ALTERNATES

It is advised that bid specifications for construction projects contain deductible alternates. By definition, a *deductible alternate* is a portion of the project that can be deleted to bring construction costs within the budget if all bids received exceed the funds available for construction. The deductible alternates must not change the scope of the project.

If all bids received exceed the amount budgeted for construction, deductible alternates must be applied to the bid price in the order in which they are listed in the bid specifications.

The use of additive alternates is allowed for CDBG projects; as with deductible alternates, additive alternates must be applied to the bid price in the order in which they are listed in the bid specifications.

BID OPENING REQUIREMENTS

Sealed bids must be opened publicly at the time and place specified in the invitation to bid.

REJECTION OF IMPROPER BIDS

Any and all bids may be rejected when there are sound documented business reasons for rejecting bidders.

AWARD TO LOW BIDDER

A firm fixed-price contract must be awarded to the lowest responsive, responsible bidder whose bid conforms to all bid specifications. If the lowest cost bid is not accepted, rationale for why not should be presented to ECD for approval before accepting the bid.

PROHIBITION AGAINST NEGOTIATION WITH THE LOW BIDDER

If all bids received exceed the amount of the construction budget, a grantee **MAY NOT NEGOTIATE THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER**. Negotiation solely with the low bidder is a violation of CDBG policies and procedures.

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| <p>NEGOTIATION OF THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER WILL RESULT IN THE DISALLOWANCE OF CONSTRUCTION COSTS FOR REIMBURSEMENT WITH GRANT FUNDS.</p> |
|---|

ALLOWABLE ALTERNATIVES IF ALL BIDS EXCEED THE AMOUNT OF THE CONSTRUCTION BUDGET

If all bids come in over the amount of the construction budget, communities have three alternatives.

- ① Provide the additional funds needed to pay for the contract from local funds.
- ② Rebid the project.
- ③ Alter the project as follows.
 - ★ Consult with the project engineer and decide which items would be feasible to eliminate from the construction bid specifications.

NOTE: Changes to the bid specifications must not change the project's scope.

- ★ Submit a letter detailing all requested changes in the bid specifications to ECD for approval.
- ★ After receiving written approval of these changes, contact **all** bidders who submitted bids for the initial bidding **by certified mail** and request that they **resubmit sealed bids** without the removed items.

NOTE: Bidders must be informed that they have the right to change the unit price of **any** of the line items in their original bid, as long as they conform to the revised bid specifications.

- ★ Award the contract to the bidder submitting the lowest bid that conforms to the revised bid specifications (i.e., the original bid specifications less the deleted items).

If all bids received in the second bidding are still greater than the amount of the budget, grantees should repeat any of these three alternatives or decide that the project, as originally submitted in the application, cannot be performed for the amount of money budgeted and return the grant funds to the State.

COMPETITIVE NEGOTIATION

Competitive negotiation must be used for professional service contracts and may be used if no acceptable bids have been received after formal advertising (Contact ECD for permission before this occurs).

PROFESSIONAL SERVICE PROCUREMENT

This section applies to all professional service contracts paid in whole or in part with CDBG funds.

Common professional services that are used for CDBG projects include administration, housing rehabilitation inspection/management, relocation management, engineering, land surveying, architectural work, auditing, and legal counseling. If CDBG funds are not used for such services, this section will not apply.

IMPORTANT NOTE: Professional service procurement procedures must be performed **prior** to the performance of any work by the professional service contractor. **IF PROFESSIONAL SERVICE PROCUREMENT PROCEDURES ARE NOT PERFORMED CORRECTLY, FEES FOR PROFESSIONAL SERVICES MUST BE PAID WITH LOCAL FUNDS.**

However, procurement procedures do not have to be performed prior to the submission of the grant application if professional services are unnecessary in order to submit the grant application.

Example If a preliminary engineering report is to be a part of the application, the procurement procedures for the engineering services must be performed prior to selection of the engineer who then prepares the preliminary engineering report. Costs of application preparation are not CDBG eligible.

Prior to the performance of any professional services, a written request for statements of qualifications must be sent to at least three firms that offer the type of service the community wishes to procure. Copies of these letters must be on file. Advertising for statements of qualifications is not required. The contract must be awarded solely on the basis of qualifications, not price.

REQUESTS FOR PROPOSALS

Requests for proposals are used when advertising is not feasible because the products or services procured are of a specialized nature or when, after advertising, no acceptable bids have been received. Approval by the State is required prior to procurement by the use of requests for proposals.

SUGGESTED PROFESSIONAL SERVICE CONTRACTOR EVALUATION PROCESS

After receipt of the requested statements of qualifications or proposals, the review process begins. It should be thorough, uniform and well-documented. The preferred method is a review conducted by a committee of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review (i.e., family relationships, close friendships, or business dealings). Some criteria to consider include:

- ★ Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and with the complexity of the project.
- ★ Past performance on contracts with the community and other clients, including quality of work, timeliness, and cost control.
- ★ Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- ★ Familiarity of the firm with the type of problems applicable to the project.

Communities may also wish to establish an evaluation consideration for local firms if familiarity with local conditions is an important element for a successful project. The relative importance of these factors can be predetermined by assigning values to each

(e.g., specialized experience may be assigned 40 points out of a total possible 100 points).

REQUIRED CONTRACT CONDITIONS FOR PROFESSIONAL SERVICE CONTRACTS

Exhibit B-7 is a sample contract and Exhibit B-8 includes terms and conditions which must bind all professional services contracts, including:

- ★ Executive Order 11246 clause (7 paragraphs if contract above \$10,000, or 3 paragraphs Equal Opportunity provisions if \$10,000 or under).
- ★ Contractor's Certification regarding Equal Employment Opportunity.
- ★ Title VI clause pertaining to the Civil Rights Act of 1964.
- ★ Access to Records/Maintenance of Records statement.
- ★ Conflict of Interest clause.
- ★ Section 3 statement (written plan if contract over \$10,000) pertaining to the Housing and Urban Development Act of 1968, as amended.
- ★ Section 109 clause pertaining to the Housing and Community Development Act of 1974, as amended.

REQUIRED DOCUMENTATION FOR THE PROFESSIONAL SERVICE CONTRACT FILE

Grantees should establish a contract file and monitor the contract to assure that it is completed in a satisfactory and timely manner. The contract file **must** contain:

- q a copy of the professional service contract;
- q a list of the firms to which the request for statements of qualification was sent;
- q the actual statements of qualifications received;
- q a written statement explaining why/how the winner was selected.

NON-COMPETITIVE NEGOTIATION

Non-competitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive bidding or competitive negotiation procedures. This may be due to single source availability or inadequate competition, determined after solicitation of a number of sources. Approval by the State is required prior to procurement by non-competitive negotiation.

PROCUREMENT OF GOODS AND SERVICES FOR INDUSTRIAL LOCATION AND EXPANSION LOAN RECIPIENTS

If the procurement is done by the industry, Federal, State and local procurement laws do not apply when recipients of industrial location and expansion loans use loan proceeds to purchase equipment, construction services or professional services. If the community handles the procurement, Federal, State and local procurement requirements are applicable.

Example 1

XYZ Corporation receives a \$450,000 loan from Community Development Block Grant funds to build a new building. XYZ signs a contract with Butcher Construction Company for the building and signs a loan agreement to repay the loan over a fifteen year period. State, Federal and local procurement laws **do not apply** for the procurement of the construction contract.

Example 2

(Assume the same facts as in Example 1.)

XYZ also contracts for \$30,000 worth of engineering design work which will be paid for with loan proceeds. State, Federal and local procurement laws **do not apply** for the procurement of the engineering design contract.

Example 3

The City of West Linn receives a \$200,000 grant to build a water line that will provide XYZ Corporation with water for its production process; the budget allows for \$20,000 for engineering design and \$180,000 for construction. West Linn **must follow** and document compliance with all State, Federal and local procurement laws in connection with the engineering service and construction contracts.

PROPERTY MANAGEMENT STANDARDS

Unless acquisition of property is an approved part of the State contract, prior approval must be obtained from the State for any real or personal property to be acquired using grant funds.

Questions relating to property management, should be addressed to a Project Representative.

PROGRAM INCOME

Program income includes, but is not limited to, the following:

- ★ Proportional shares of proceeds of the sale of real property to the extent to which the original purchase was funded with CDBG monies.
- ★ Payments of principal and/or interest on loans made from CDBG funds.
- ★ Interest earned from investment of program income.

Program income must be returned to the State unless approval is obtained to retain it at the local level.

Any program income which the State has approved to be retained at the local level must be accounted for and, to the maximum feasible extent, disbursed prior to requesting additional CDBG funds from the State. Any program income generated prior to close-out of the project must be used following all Federal requirements which apply to CDBG funds.

BUDGET REVISIONS AND PROGRAM AMENDMENTS

If the line item budget needs a revision, a letter detailing the reason for any changes and a copy of the revised line item budget (Exhibit B-9) must be submitted to ECD. If contingency funds are to be used, a budget revision is required.

NOTE: The contingency funds line item must always match the grant rate. If some of the contingency funds are moved to a different line item, the remaining contingency funds in the CDBG costs column and other columns should match the grant rate for the project.

For all construction projects, once a bid has been accepted a budget revision should be submitted to adjust the construction budget to actual dollars required. A copy of the bid tabulation should be submitted with this budget revision. If the lowest bid exceeds the amount available in the budget for construction, a revised total cost budget must be submitted with a verification of the source of the additional funds.

If there are any change orders on construction contracts, these must be approved by ECD **prior to** work being done. A budget revision must be approved after the change order is approved.

In the case of projects funded jointly with funds from the Department of Environment and Conservation, change orders should be submitted to them for their approval. Once their approval is received, a copy should be sent to ECD. If the change order involves any change in scope, however, your Project Representative should be contacted prior to submitting it to Environment and Conservation.

Any change in the scope of the project requires prior written approval by the State. See the Introduction Chapter for a more detailed description of change orders and scope changes. You are strongly urged to contact your Project Representative if problems emerge which might lead to program modifications.

**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
ACH (AUTOMATED CLEARING HOUSE) CREDITS (Not Wire Transfers)**

NAME _____

Federal Identification Number or Social Security Number _____

(under which you are doing business with the State.)

I (We) hereby authorize the State of Tennessee, hereafter called the STATE, to initiate credit entries to my (our) (select type of account) _____ CHECKING or _____ SAVINGS account indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

This authority is to remain in full force and effect until the STATE has received written notification from me (or either of us) of its termination in such time and in such manner as to afford the STATE and DEPOSITORY a reasonable opportunity to act on it.

Do you currently receive payments from the State through ACH? _____ (Yes or No). If yes, do you intend for this account information to replace other existing account information currently used by the State? _____ (Yes or No). If yes, please specify the account that should be changed: ABA No. _____ Account No. _____.
Is this authorization only for certain types of payments? _____ (Yes or No). If yes, please indicate types:

Many banking institutions use different numbers for ACH. Please call your bank for verification of ACH transit and account number.

Bank official contacted: _____ Phone No. _____

DEPOSITORY/BANK NAME _____ BRANCH _____

CITY _____ STATE _____

ACH TRANSIT / ABA NO. _____ ACCOUNT NO _____

NAME(S) _____
(Please print names of authorized account signatory)

DATE _____ SIGNED X _____ SIGNED X _____

PLEASE ATTACH A VOIDED CHECK (OR FOR SAVINGS ACCOUNTS, A DEPOSIT SLIP):

PLEASE INDICATE ADDRESS TO WHICH YOU WOULD LIKE YOUR REMITTANCE ADVICES ROUTED WHEN PAYMENTS ARE PROCESSED:

Contact name: _____
Telephone no.: _____

| |
|----------------------------|
| FOR STATE USE ONLY: |
| Contact Agency: _____ |
| Contact Person: _____ |
| Telephone No.: _____ |



SUBSTITUTE W-9 FORM
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

1. Please complete general information:

Taxpayer Name _____ Phone Number _____

Business Name (if applicable) _____

Address _____

City _____ State _____ ZIP Code _____

2. Check the most appropriate category below: (please check only one)

- 1) Individual (not an actual business)
 - 2) Joint account (two or more individuals)
 - 3) Custodian account of a minor
 - 4) a. Revocable savings trust (grantor is also trustee)
b. So-called trust account that is not a legal or valid trust under state law
 - 5) Sole proprietorship (using a social security number for the taxpayer ID)
 - 6) Sole proprietorship (using a federal employer identification number for taxpayer ID)
 - 7) A valid trust, estate, or pension trust
 - 8) Corporation
 - 9) Association, club, religious, charitable, educational, or other non-profit organization (for entities that are exempt from federal tax, use category 13 below)
 - 10) Partnership
 - 11) A broker or registered nominee
 - 12) Account with the US Department of Agriculture in the name of a public entity that receives agricultural program payments
 - 13) Government agencies and organizations that are tax-exempt under Internal Revenue Service guidelines (i.e., IRC 501(c)3 entities)
-

3. Fill in your taxpayer identification number below: (please complete only one)

1) If you checked number 1-5 above, fill in your Social Security Number.

____ - ____ - _____

2) If you checked number 6-13 above, fill in your Federal Employer Identification Number (EIN).

____ - _____

4. Sign and date the form:

Certification - Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number. If I circled category 13 above, I also certify that my agency or organization is tax-exempt per Internal Revenue Service guidelines and not subject to backup withholding.

Signature _____ Date _____

Title (if applicable) _____

SIGNATURE AUTHORIZATION FORM

| Authorized Signatures for Requests for Payment on CDBG Account | |
|--|-------------------------------------|
| Community Name: | Address: |
| Contract Number (Leave blank if not assigned): | Community Contact Phone Number: |
| TWO SIGNATURES ARE REQUIRED ON EACH REQUEST FOR PAYMENT SUBMITTED TO THE STATE | |
| Typed Name and Authorized Signature | Typed Name and Authorized Signature |
| Typed Name and Authorized Signature | Typed Name and Authorized Signature |
| I certify that the signatures above are of the individuals authorized to sign Requests for Payment | |
| Date and Signature of Local Elected Official (This may not be any of the authorized signers above) | |

**STATE OF TENNESSEE
REQUEST FOR PAYMENT AND STATUS OF CDBG FUNDS REPORT**

A. GENERAL INFORMATION

| | |
|--|----------------------------------|
| 1. Contractor Name | 4. Contract Number: _____ |
| | 5. Amount of Request: \$ |
| 2. Bank Account Number: | 6. Date of Request: _____ |
| | 7. Request Number: |
| 3. Name/Address of Depository: Zip: | 8. Contact Person: Phone: |

B. STATUS OF FUNDS

| | |
|---|----|
| 1. CDBG funds received to date | \$ |
| 2. Program income received | \$ |
| 3. Subtotal | \$ |
| 4. Funds disbursed to date | \$ |
| 5. Cash on hand at time of this request | \$ |
| 6. CDBG funds previously requested but not yet received | \$ |
| 7. Amount of this Request | \$ |

C. LINE ITEMS FOR WHICH FUNDS ARE REQUESTED

| | Total Project Costs | CDBG Costs |
|----------------------------|---------------------|-------------|
| | _____ \$ | _____ \$ |
| Construction | \$ | \$ |
| Construction Inspection | \$ | \$ |
| Engineering Design | \$ | \$ |
| Other Engineering Services | \$ | \$ |
| Legal Services | \$ | \$ |
| Appraisals | \$ | \$ |
| Acquisition | \$ | \$ |
| Relocation | \$ | \$ |
| Housing Rehabilitation | \$ | \$ |
| Housing Inspection | \$ | \$ |
| Clearance | \$ | \$ |
| Administration | \$ | \$ |
| Environmental Review | \$ | \$ |
| Tap Fees for LMI | \$ | \$ |
| Other (Specify | \$ | \$ |
| TOTAL | \$ | \$ |

D. ADMINISTRATIVE COST DETAIL

| |
|--|
| |
|--|

E. CERTIFICATION

I hereby state that I have included and attached all required documentation to support this Request. I have satisfied all related terms and conditions of the above cited Contract. I also state that the data reported above is correct and that the amount of this Request is not in excess of current needs.

| | |
|-------|------------|
| Date: | Signature: |
| Date: | Signature: |

| | |
|---|------------|
| FOR STATE USE ONLY: | |
| <u>Approval of Request for Payment</u> | |
| Initial Review _____ | Date _____ |
| Final Review _____ | Date _____ |

**STATE OF TENNESSEE
REQUEST FOR PAYMENT AND STATUS OF CDBG FUNDS REPORT**

A. GENERAL INFORMATION

| | |
|---|---|
| 1. Contractor Name City of Anytown | 4. Contract Number: GG-00-00000-00 _____ |
| | 5. Amount of Request: \$ 276,927.00 |
| 2. Bank Account Number: #1-111-111 | 6. Date of Request: 9/5/XX _____ |
| | 7. Request Number: 5 |
| 3. Name/Address of Depository: First Federal Bank 100 Montgomery Anytown, TN Zip: 37000 | 8. Contact Person: Mary Simmons Phone: 111-555-5555 |

B. STATUS OF FUNDS

| | |
|---|--------------|
| 1. CDBG funds received to date | \$ 23,990.00 |
| 2. Program income received | \$ |
| 3. Subtotal | \$ 23,990.00 |
| 4. Funds disbursed to date | \$ 23,590.00 |
| 5. Cash on hand at time of this request | \$ 400.00 |
| 6. CDBG funds previously requested but not yet received | \$ 1,750.00 |
| 7. Amount of this Request | \$276,927.00 |

C. LINE ITEMS FOR WHICH FUNDS ARE REQUESTED

| | Total Project Costs | CDBG Costs |
|----------------------------|----------------------------|-------------------|
| Construction | \$ 273,510.00 | \$ 273,510.00 |
| Construction Inspection | \$ 25,000.00 | \$ |
| Engineering Design | \$ 3,000.00 | \$ 3,000.00 |
| Other Engineering Services | \$ | \$ |
| Legal Services | \$ | \$ |
| Appraisals | \$ | \$ |
| Acquisition | \$ 100,000.00 | \$ |
| Relocation | \$ | \$ |
| Housing Rehabilitation | \$ | \$ |
| Housing Inspection | \$ | \$ |
| Clearance | \$ | \$ |
| Administration | \$ 417.00 | \$ 417.00 |
| Environmental Review | \$ | \$ |
| Tap Fees for LMI | \$ | \$ |
| Other (Specify | \$ | \$ |
| TOTAL | \$ 401,927.00 | \$ 276,927.00 |

D. ADMINISTRATIVE COST DETAIL

| | | |
|------------------------|-------|--------------|
| August 1 – 31 | | |
| Payroll – Mary Simmons | 25% = | \$292.00 |
| Supplies | | 50.00 |
| Advertisements | | <u>75.00</u> |
| | | \$417.00 |

E. CERTIFICATION

I hereby state that I have included and attached all required documentation to support this Request. I have satisfied all related terms and conditions of the above cited Contract. I also state that the data reported above is correct and that the amount of this Request is not in excess of current needs.

| | |
|--------------|------------|
| Date: 9/5/XX | Signature: |
| Date: 9/5/XX | Signature: |

| | |
|---|------------|
| FOR STATE USE ONLY: | |
| <u>Approval of Request for Payment</u> | |
| Initial Review _____ | Date _____ |
| Final Review _____ | Date _____ |

| |
|---|
| <p>DETAIL OF ADMINISTRATIVE COSTS</p> <p>PERSON OR FIRM PROVIDING THE SERVICES _____</p> <p>FOR THE MONTH(S) OF _____ TO _____</p> |
|---|

| TASK | NUMBER OF HOURS SPENT | AMOUNT |
|---|-----------------------|--------|
| ENVIRONMENTAL REVIEW RECORD | | |
| Project not in floodplain | | |
| Project in floodplain | | |
| Project requiring archaeological survey | | |
| PROJECT FILES | | |
| Set up | | |
| Monthly Maintenance/Update | | |
| FAIR HOUSING/EQUAL OPPORTUNITY | | |
| Fair Housing Activity | | |
| Equal Opportunity | | |
| Section 3 Plan | | |
| On-site poster documentation | | |
| Contact Female/Minority contractors | | |
| Quarterly Contractor/Subcontractor Activity Report | | |
| ACQUISITION - FEE SIMPLE | | |
| Identification of properties to be acquire and locating property owners | | |
| Compilation of case files and ongoing recordkeeping | | |
| Coordinating services of title attorney, surveyor, and appraisers | | |
| Negotiation to purchase and final sale and closing | | |
| RELOCATION | | |
| Identification of relocation needs and available resources | | |
| Compilation of case files and ongoing recordkeeping | | |
| Identify comparables and maintain records on available housing market | | |

| TASK | NUMBER OF HOURS SPENT | AMOUNT |
|---|-----------------------|--------|
| HOUSING REHABILITATION | | |
| Identification of units and determination of eligibility | | |
| Compilation of case files and ongoing recordkeeping | | |
| Solicitation of contractors and pre-bid activity | | |
| Release of liens, certification of completion/final inspection | | |
| Pay requests and recordkeeping of escrow accounts | | |
| Quarterly performance reports | | |
| CLEARANCE | | |
| Identify properties and contractors | | |
| Bid process for demolition | | |
| Releases and payment to contractor | | |
| LABOR COMPLIANCE | | |
| Request wage rate | | |
| 5-10 day call/memo for files | | |
| Attend bid opening/prepare minutes | | |
| Notice of Contract Award/Pre-Construction Conference | | |
| Coordinate and conduct Pre-Construction Conference | | |
| Prepare minutes of Pre-Construction Conference | | |
| Bid advertisement documentation for files | | |
| Bid tabulation documentation for files | | |
| Executed bid document/specs including certifications regarding Equal Opportunity, Labor, and Section 3, Insurance/Bonding-documentation for files | | |
| Contractor recommendation letter | | |
| Contractor/Subcontractor eligibility verification | | |
| Notice to proceed | | |
| Conduct employee interviews and check site for posters | | |
| Check weekly payrolls/cross check with interviews | | |
| Consultation with engineer, State, other funding agency | | |
| Release of liens/certificate of completion/final inspection | | |

| TASK | NUMBER OF HOURS SPENT | AMOUNT |
|---|-----------------------|--------|
| FINANCIAL MANAGEMENT | | |
| Signature Authorization | | |
| Designation of Depository | | |
| Requests for Payment | | |
| Payment of invoices | | |
| Posting of accounting records (local level) | | |
| Budget spreadsheets | | |
| Budget revisions | | |
| Revised implementation schedule for project | | |
| STATE MONITORING | | |
| First technical assistance visit | | |
| Monitoring visit | | |
| Compliance close-out visit | | |
| Financial close-out | | |
| CLOSE-OUT | | |
| Survey of direct beneficiaries | | |
| Jobs form | | |
| Financial report in close-out package | | |
| File review | | |

Standards of Conduct

CDBG Subrecipients

Introduction

Elected officials, employees of Community Development Block Grant recipients, contractors and subcontractors are responsible for administering the program and are also responsible for the program integrity. Following sound business practices, prescribed standards of conduct and HUD requirements will not only protect HUD grant funds but also those who administer the program.

Purpose

This notice provides information on specific activities that you must avoid and identifies key HUD requirements that must be met. The prohibited activities listed here reflect areas that have resulted in problems for subrecipients in the past. The purpose of this flyer is to prevent fraud and program abuse by alerting key officials to these problems ahead of time.

Authorities

The pertinent laws and regulations that apply to the CDBG entitlement program that you should have copies of are:

- Housing and Community Development Act of 1974 as amended.
- Community Development Block Grant Regulations (24CFR Part 570).

If you do not have copies of these requirements or need further information, contact your local HUD office (or ECD).

Program Requirements and Prohibited Activities

1. Conflict of Interest

CDBG Regulations (24CFR, part 570.611) prohibit conflicts of interest. For any CDBG activities under your control or influence you *May Not*:

a. Obtain personal or financial interest or benefits including money, favors, gratuities, entertainment or anything of value that might be interpreted as conflict of interest.

b. Obtain a direct or indirect interest in any contract, subcontract or agreement for any CDBG activity. This prohibition extends to contracts in which your spouse, minor child, dependent or business associate may have personal or financial interest. This prohibition extends for a period of one year after you leave your position with a CDBG activity or program.

HUD may grant an exception to this conflict of interest provision if it determines that such an exception will enhance the effectiveness of the CDBG project. Request for such exceptions must be made in writing to the local HUD office (and be submitted to HUD by ECD).

2. Procurement and Contracting

OMB Circular A-102, Uniform Requirements for Assistance to State and Local Governments, Attachment O, applies to the CDBG program. It provides that you *May Not* engage in any of the following practices in your procurement and contract administration:

a. Circumvent competitive bidding requirements by:

- failing to advertise for sealed bids or soliciting proposals and engaging in competitive negotiation;
- failing to use established evaluation criteria in negotiations;
- splitting bids by breaking down contracts into small parts so that purchase order procedures can be used except to meet Minority/Women Business Enterprise goals;
- favoring or providing a competitive advantage to any one firm or individual;
- identifying the names of those invited to bid; and
- preparing fictitious bids to stimulate competition.

b. Fail to adhere to contract award requirements by:

- allowing excessive price changes;

- awarding contracts to other than the low bidder without adequate justification; and
- accepting a bid that does not contain a price for all items or services included in the Invitation to Bid form.

c. Fail to verify contractual and programmatic compliance by contractors by:

- authorizing payment for work not completed;
- falsifying inspection reports;
- altering contractor invoices; and
- misusing modification or change orders.

CDBG regulations state that you *Must Not* use firms and individuals on HUD's Consolidated List of Debarred, Suspended and Ineligible Contractors and Grantees.

3. Financial Management and Recording Systems

You *Must* comply with the following requirements of OMB Circular A-102, Attachments C, G, and CDBG regulations.

You *Must*:

a. Establish internal controls to safeguard cash, inventory and equipment.

b. Establish a special ledger account for all CDBG monies.

c. Maintain financial records including:

- a register of cash receipts and disbursements;
- a record of all noncash transactions;
- general ledger to show the status of each CDBG account;
- a fixed account ledger; and
- a record of lump-sum drawdowns, Treasury checks received and balances of Federal funds.

d. Ensure that you maintain financial records. Financial records and files must be maintained for three years.

e. Use income generated from grant activities for other eligible activities.

f. Use program income before drawing additional grant funds to pay for allowable program expenses.

You *Must Not* draw down more funds than are needed for your CDBG activities and those of subgrantees.

4. Cost Allowability

You *Must* comply with OMB Circular A-87, Cost Principles for State and Local Governments. You *May Not* spend CDBG funds on ineligible activities including:

a. Expenses required to carry out the regular responsibilities of the general local government.

b. Partisan political activities (e.g., contributions toward political campaigns, voter registration or candidate forums).

CDBG regulations state that you *Must Not* use CDBG funds to assist buildings used for the general conduct of government (e.g., city halls, county administration buildings, etc.).

5. Program Monitoring

OMB Circular A-102, Attachment I, states that you *Must* constantly monitor the performance of grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved.

HUD suggests that you:

a. Keep records of your on-site visits to subgrantees and contractors.

b. Place special emphasis on your monitoring of the highest risk subrecipients and contractors.

If you have a question about a specific situation or your responsibility, contact your local HUD Office (or ECD).

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification

STANDARD FORM OF AGREEMENT
BETWEEN
OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of _____, 20

between _____

_____ (OWNER) and

_____ (ENGINEER).

OWNER intends to _____

_____ (hereinafter called the Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

types described in paragraph 3.3 and assist OWNER in obtaining such data and services.

1.1. General

1.1.1. ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative of the Project, providing professional engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2.3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.

1.2.4. Provide analysis of OWNER's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.

1.2.5. Provide a general economic analysis of OWNER's requirements applicable to various alternatives.

1.2. Study and Report Phase

After written authorization to proceed, ENGINEER shall:

1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the

1.2.6. Prepare a Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved (including applicable requirements of governmental authorities having jurisdiction as aforesaid) and the alternative solutions available to OWNER and setting forth ENGINEER's findings and recommendations. This Report will be accompanied by ENGINEER's opinion of probable costs for the Project, including the following which will be separately itemized: Construction Cost, allowance for engineering costs and contingencies, and (on the basis of information furnished by OWNER)

allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others for OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. The total of all such costs, allowances, etc. are hereinafter called "Total Project Costs."

1.2.7. Furnish five copies of the Study and Report documents and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Study and Report Phase are amended and supplemented as indicated in paragraph 2 of Exhibit A "Further Descriptions of Basic Engineering Services and Related Matters."

1.3. Preliminary Design Phase

After written authorization to proceed with the Preliminary Design Phase, ENGINEER shall:

1.3.1. In consultation with OWNER and on the basis of the accepted Study and Report documents, determine the general scope, extent and character of the Project.

1.3.2. Prepare Preliminary Design documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.

1.3.3. Advise OWNER if additional data or services of the types described in paragraph 3.4 are necessary and assist OWNER in obtaining such data and services.

1.3.4. Based on the information contained in the preliminary design documents, submit a revised opinion of probable Total Project Costs.

1.3.5. Furnish five copies of the above Preliminary Design documents and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Preliminary Design Phase are amended and supplemented as indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

1.4. Final Design Phase

After written authorization to proceed with the Final Design Phase, ENGINEER shall:

1.4.1. On the basis of the accepted Preliminary Design documents and the revised opinion of probable Total Project Costs prepare for incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter called "Drawings") and Specifications (which will be prepared

in conformance with the sixteen division format of the Construction Specifications Institute).

1.4.2. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project, and assist OWNER in consultations with appropriate authorities.

1.4.3. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

1.4.4. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders (all of which shall be consistent with the forms and pertinent guide sheet prepared by the Engineers Joint Contract Documents Committee), and assist in the preparation of other related documents.

1.4.5. Furnish five copies of the above documents and of the Drawings and Specifications and present and review them in person with OWNER.

The duties and responsibilities of ENGINEER during the Final Design Phase are amended and supplemented as indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

1.5. Bidding or Negotiating Phase

After written authorization to proceed with the Bidding or Negotiating Phase, ENGINEER shall:

1.5.1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.

1.5.2. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.

1.5.3. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (herein called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.

1.5.4. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.

1.5.5. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

The duties and responsibilities of ENGINEER during the Bidding or Negotiating Phase are amended and supplemented as indicated in paragraph 5 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

1.6. Construction Phase

During the Construction Phase:

1.6.1. *General Administration of Construction Contract.* ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1983 edition) of the Engineers Joint Contract Documents Committee. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided in paragraph 6 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" and except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.6.2. *Visits to Site and Observation of Construction.* In connection with observations of the work of Contractor(s) while it is in progress:

1.6.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s)' work. In addition, ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.

1.6.2.2. The Resident Project Representative (and any assistants) will be ENGINEER's agent or employee and under ENGINEER's supervision. The

duties and responsibilities of the Resident Project Representative (and assistants) are set forth in Exhibit B "Duties, Responsibilities and Limitation of Authority of Resident Project Representative."

1.6.2.3. The purpose of ENGINEER's visits to and representation by the Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their work. Accordingly, ENGINEER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

1.6.3. *Defective Work.* During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s)' work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.6.4. *Interpretations and Clarifications.* ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.

1.6.5. *Shop Drawings.* ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.6.6. *Substitutes.* ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.

1.6.7. *Inspections and Tests.* ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

1.6.8. *Disputes between OWNER and Contractor.* ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.6.9. *Applications for Payment.* Based on ENGINEER's on-site observations as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:

1.6.9.1. ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.6.9.2. By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents.

ENGINEER's review of Contractor(s)' work for the purposes of recommending payment will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s) compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interest or encumbrances, or that there may not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

1.6.10. *Contractor(s)' Completion Documents.* ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.

1.6.11. *Inspections.* ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so the ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.6.9.2.

1.6.12. *Limitation of Responsibilities.* ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor's or supplier's agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.6.1. thru 1.6.11 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

1.7. Operational Phase

During the Operational Phase, ENGINEER shall, when requested by OWNER:

1.7.1. Provide assistance in the closing of any financial or related transaction for the Project.

1.7.2. Provide assistance in connection with the refining and adjusting of any equipment or system.

1.7.3. Assist OWNER in training OWNER's staff to operate and maintain the Project.

1.7.4. Assist OWNER in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.

1.7.5. Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to ENGINEER and which ENGINEER considers significant.

1.7.6. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s) concerning corrections of such deficiencies, and make recommendations as to replacement or correction of defective work.

The duties and responsibilities of ENGINEER during the Operational Phase are amended and supplemented as indicated in paragraph 7 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1. Services Requiring Authorization in Advance

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.14, inclusive. These services are not included as part of Basic Services except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"; these will be paid for by OWNER as indicated in Section 5.

2.1.1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.3. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size,

complexity, OWNER's schedule, character of construction method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

2.1.4. Providing renderings or models for OWNER's use.

2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.6. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.7. Furnishing services of independent professional associates and consultant for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental thereto); and providing data or services of the types described in paragraph 3.4 when OWNER employs ENGINEER to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.4.

2.1.8. If ENGINEER's compensation is on the basis of a lump sum or percentage of Construction Cost or cost-plus a fixed fee method of payment, services resulting from the award of more separate prime contracts for construction, materials or equipment for the Project than are contemplated by paragraph 5.1.1.2. If ENGINEER's compensation is on the basis of a percentage of Construction Cost and ENGINEER has been required to prepare Contract Documents on the assumption that more than one prime contract will be awarded for construction, materials and equipment, but only one prime contract is awarded for construction, materials and equipment for the Project, services attributable to the preparation of contract documentation that was rendered unusable and any revisions or additions to contract documentation used that was necessitated by the award of only one prime contract.

2.1.9. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.

2.1.10. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except when such assistance is required to complete services called for in paragraph 6.2.2.5.

2.1.11. Providing any type of property surveys or related engineering services needed for the transfer of interest in real property and field surveys for design purposes and engineering surveys and staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.

2.1.12. Preparation of operating, maintenance and staffing manuals to supplement Basic Services under paragraph 1.7.3.

2.1.13. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project (except for assistance in consultations which is included as part of Basic Services under paragraphs 1.2.3 and 1.4.2).

2.1.14. Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2. Required Additional Services.

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6, inclusive (except to the extent otherwise provided in Exhibit A "Further Description of Basic Engineering Services and Related Matters".) These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such Additional Services which will be paid for by OWNER as indicated in Section 5.

2.2.1. Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.

2.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

2.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.

2.2.5. Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.

2.2.6. Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER:

3.1. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

3.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitation; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

3.4. Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters"), the following:

3.4.1. data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

3.4.2. appropriate professional interpretations of all of the foregoing;

3.4.3. environmental assessment and impact statements;

3.4.4. property boundary, easement, right-of-way, topographic and utility surveys;

3.4.5. property descriptions;

3.4.6. zoning, deed and other land use restriction; and

3.4.7. other special data or consultations not covered in Section 2;

all of which ENGINEER may use and rely upon in performing services under this Agreement.

3.5. Provide engineering surveys to establish reference points for construction (except to the extent provided otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters") to enable Contractor(s) to proceed with the layout of the work.

3.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulations, ordinance, code or order applicable to their furnishing and performing the work.

3.10. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11, inclusive and other costs of the types referred to in paragraph 1.2.6) so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

3.14. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15. Furnish, or direct ENGINEER to provide, Additional services as stipulated in paragraph 2.1 of this Agreement or other services as required.

3.16. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIODS OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto. If in Exhibit A "Further Description of Basic Engineering Services and Related Matters" specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

4.2. The services called for in the Study and Report Phase will be completed and the Report submitted within the stipulated period indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after written authorization to proceed with that phase of services which will be given by OWNER within thirty days after ENGINEER has signed this Agreement.

4.3. After acceptance by OWNER of the Study and Report Phase documents indicating any specific modifications or changes in the general scope, extent or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the stipulated period indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

4.4. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project within the stipulated period indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters."

4.5. ENGINEER's services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the Project.

4.6. After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Total Project Costs and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s) (except as may otherwise be required to complete the services called for in paragraph 6.2.2.5).

4.7. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

4.8. The Operational Phase will commence during the Construction Phase and will terminate one year after the

date of Substantial Completion of the last prime contract for construction, materials and equipment on which substantial completion is achieved.

4.9. If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.10. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within _____ calendar days (plus such additional time as may be required to complete the services called for under paragraph 6.2.2.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.11. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.12. In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases, in order to sequence and coordinate properly such services as are applicable to the work under such separate contract. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in Exhibit A "Further Description of Basic Engineering Services and Related Matters," and the provisions of paragraphs 4.4 through 4.10 inclusive, will be modified accordingly.

SECTION 5 - PAYMENTS TO ENGINEER

5.1. Methods of Payment for Services and Expenses of ENGINEER

5.1.1. *For Basic Services.* OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A "Further

Description of Basic Engineering Services and Related Matters") as follows:

5.1.1.1. *One Prime Contract.* If only one prime contract is awarded for construction, materials and equipment for the Project, a lump sum fee of \$_____ for all Basic Services (except services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1 and Operational Phase services furnished under paragraph 1.7).

5.1.1.2. *Several Prime Contracts.* If more than one but less than _____ separate contracts are awarded for construction, materials and equipment for the Project, a lump sum fee of \$_____ for all Basic Services (except services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1 and Operational Phase services furnished under paragraph 1.7).

5.1.1.3. *Resident Project Services.* For services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1, on the basis of the fixed hourly rates per Attachment _____ the total of which shall not exceed \$_____ for services rendered by principals and employees assigned to resident Project representation.

5.1.1.4. *Operational Phase Services.* For Operational Phase services furnished under paragraph 1.7, on the basis of the fixed hourly rates per Attachment _____ the total of which shall not exceed \$_____ for services rendered by principals and employees engaged directly on the Project.

5.1.2. *For Additional Services.* OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1. *General.* For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13), on the basis of the fixed hourly rates per Attachment _____ the total of which shall not exceed \$_____.

5.1.2.2. *Professional Associates and Consultants.* For services and Reimbursable expenses of independent professional associates and consultants employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefore times a factor of _____.

5.1.2.3. *Serving as a Witness.* For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding

in accordance with paragraph 2.1.13, at the rate of \$_____ per day or any portion thereof (but compensation for the time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph 5.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3. *For Reimbursable Expenses.* In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4. The terms "Salary Costs" and "reimbursable Expenses" have the meanings assigned to them in paragraph 5.4.

5.2. Times of Payments.

ENGINEER shall submit monthly statements for Basic and Additional services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3. Other Provisions Concerning Payment.

5.3.1. In the event of termination by OWNER under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of the fixed hourly rates per Attachment _____ the total of which shall not exceed \$_____ for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project. In the event of any such termination, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic services, and paid for all unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean Reimbursable Expenses directly attributable to termination.

5.3.2. Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.4. Definitions

5.4.1. The Salary Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits. For the purposes of this Agreement, the principals of ENGINEER and their current hourly Salary Costs are:

The hourly Salary Costs of principals of ENGINEER will be adjusted equitably to reflect changes in personnel and in ENGINEER's overall compensation procedures and practices.

The amount of customary and statutory benefits of all other personnel of ENGINEER will be considered equal to _____% of salaries and wages, subject to equitable adjustment to reflect changes in ENGINEER's overall compensation procedures and practices.

5.4.2. Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

SECTION 6 - CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost

The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by

others to OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. [Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.6.]

6.2. Opinions of Cost.

6.2.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.9.

6.2.2. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1. The acceptance by OWNER at any time during the Basic Services of the revised opinion of probable Total Project or Construction Costs in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2. Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

6.2.2.3. ENGINEER will be permitted to determine what types of materials, equipment and component systems are to be included in the Drawings and Specifications and to make reasonable adjustments in the general scope, extent and character of the Project to bring it within the cost limit.

6.2.2.4. If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2.5. If the lowest bona fide proposal or bid exceeds the established Construction Cost limit,

OWNER shall (1) give written approval to increase such cost limit, (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. In lieu of other compensation for services in making such modifications, OWNER shall pay ENGINEER, ENGINEER's cost of such services, all overhead expenses reasonably related thereto and Reimbursable Expenses, but without profit to ENGINEER on account of such services. The providing of such service will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

SECTION 7 - GENERAL CONSIDERATION

7.1. Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

7.2. Reuse of Documents.

All documents including Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3. Insurance.

7.3.1. ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

7.4. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

7.5. Successors and Assigns.

7.5.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 7.5.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.5.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

7.6. Arbitration.

7.6.1. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 7.6.3

and 7.6.4 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph 7.6 will be specifically enforceable under the prevailing law of any court having jurisdiction.

7.6.2. Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.6.3. All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$200,000 (exclusive of interest and costs) and the arbitrators will not have jurisdiction, power or authority to render a monetary award in response thereto against any party which totals more than \$200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount of controversy of any such claim, counterclaim, dispute or matter is more than \$200,000 (exclusive of interest and costs).

7.6.4. No arbitration arising out of or relating to, this Agreement may include, by consolidation, joined or in any other manner, any person or entity who is not a party to this Agreement.

7.6.5. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 7.6.3 and 7.6.4 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

Address for giving notices:

is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

7.6.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. §§10,11).

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

8.1. This Agreement is subject to the following special provisions.

8.1.1. CDBG Exhibit B-8 "CONTRACT FOR PROFESSIONAL SERVICES PART II - TERMS AND CONDITIONS" must be added at this point.

8.2. The following Exhibits are attached to and made a part of this Agreement.

8.2.1. Exhibit A "Further Description of Basic Engineering Services and Related Matters" consisting of _____ pages.

8.2.2. Exhibit B "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" consisting of _____ pages.

8.2.3.

8.3. This Agreement (consisting of pages 1 to _____, inclusive) together with the Exhibits and schedules identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or cancelled by a duly executed written instrument.

ENGINEER:

Address for giving notices:

CONTRACT FOR PROFESSIONAL SERVICES PART II - TERMS AND CONDITIONS

SECTION 1 TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONSULTANT shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this Contract shall, at the option of the CITY, become its property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the CONSULTANT 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 CONSULTANT, and the CITY may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the CITY from the CONSULTANT is determined.

SECTION 2 TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this Contract at any time by giving at least ten (10) days notice in writing to the CONSULTANT. If the Contract is terminated by the CITY as provided herein, the CONSULTANT will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the CONSULTANT, paragraph 1 hereof relative to termination shall apply.

SECTION 3 CHANGES

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

SECTION 4 PERSONNEL

(a) The CONSULTANT represents that he has, or will secure at his own expense, all personnel 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 CONSULTANT 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) None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

SECTION 5 ASSIGNABILITY

The CONSULTANT shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the CITY thereof: Provided, however, that claims for money by the CONSULTANT from the CITY under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION 6 REPORTS AND INFORMATION

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

SECTION 7 RECORDS AND AUDITS

The CONSULTANT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the CITY to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the CITY or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the CITY.

SECTION 8 FINDINGS CONFIDENTIAL

All of the reports, information, data, etc., prepared or assembled by the CONSULTANT under this Contract are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

SECTION 9 COPYRIGHT

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the CONSULTANT.

SECTION 10 COMPLIANCE WITH LOCAL LAWS

The CONSULTANT shall comply with all applicable laws, ordinances and codes of the State and local governments, and the CONSULTANT 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 11 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the CONSULTANT agrees as follows:

(a) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the CITY setting forth the provisions of this non-discrimination clause.

(b) The CONSULTANT will, in all solicitation or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

(c) The CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(d) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor.

(e) The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records and accounts by the CITY and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the CONSULTANT's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The CONSULTANT will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 12 CIVIL RIGHTS ACT OF 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

SECTION 13 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

(a) No persons in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

SECTION 14 "SECTION 3" COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

(a) The work to be performed under this Contract is on a project assisted under the State CDBG program which provides 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. 1701u. 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 CONSULTANT 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 workers' 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 CONSULTANT 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 Part 135. The CONSULTANT 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 Part 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 Part 135, and all applicable rules and orders of the Department issued hereunder 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. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, 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 Part 135.

SECTION 15 INTEREST OF MEMBERS OF A CITY

No member of the governing body of the CITY and no other officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

SECTION 16 INTEREST OF OTHER LOCAL PUBLIC OFFICIALS

No member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the CONSULTANT shall take appropriate steps to assure compliance.

SECTION 17 INTEREST OF CONSULTANT AND EMPLOYEES

The CONSULTANT covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

**STATE OF TENNESSEE
COMMUNITY DEVELOPMENT BLOCK GRANT
LINE ITEM BUDGET**

| | | |
|--|--------------------------------------|-------------------|
| Contractor Name and Address | Contact Person - Address & Phone No. | |
| Contract Number | | |
| ORIGINAL <input type="checkbox"/> REVISION NO. _____ | Date of Submission | |
| LINE ITEM | TOTAL COSTS | CDBG COSTS |
| Construction | \$ | \$ |
| Construction Inspection | \$ | \$ |
| Engineering Design | \$ | \$ |
| Other Engineering Services | \$ | \$ |
| Legal Services | \$ | \$ |
| Appraisals | \$ | \$ |
| Acquisition | \$ | \$ |
| Relocation | \$ | \$ |
| Housing Rehabilitation | \$ | \$ |
| Housing Inspection | \$ | \$ |
| Clearance | \$ | \$ |
| Project Contingency | \$ | \$ |
| Administration | \$ | \$ |
| Environment Review | \$ | \$ |
| Tap Fees for LMI | \$ | \$ |
| Other (<i>Specify</i>) | \$ | \$ |
| TOTAL COSTS | \$ | \$ |

**TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

FINAL NOTICE OF REMOVAL OF CONTRACT CONDITIONS

**(Pursuant to Section 104(h) of Title I of the Housing and Community
Development Act of 1974 as amended)**

| | |
|--|-----------------------------------|
| To: 1. (Name of Applicant) and to (Name and title of chief executive officer of Applicant) | Address & Zip Code of Applicant |
| With Copy to: 2. (Name of Grantee if other than applicant) | Address & Zip code of Grantee |
| Re: (Project, Title or Name) | Location (City, County and State) |

On _____ this office received your Request for Release of Funds and (Date Request for Release of Funds and Certification received) Certification pertaining to the above project.

No objections to the release of such funds or to the Certification have been received and a period of 15 days from _____ and after the receipt of such request and Certification has expired.

All objections to the release of such funds and to the Certification which were received by the Department of Economic and Community Development (ECD) within a period of 15 days from and after the receipt of such request and Certification have been considered by ECD.

Any and all conditions in the Contract No. _____, authorized by ECD on _____ respecting said project and funding thereof, to the extent the same are based upon the completion of environmental review and clearance, are hereby removed.

This notice constitutes your authority to use funds in the amount of \$ _____, granted to you under Title I of the Housing and Community Development Act of 1974, as amended.

| | | |
|---|-----------------------------------|------|
| Type Name and Title of Authorizing Official | Signature of Authorizing Official | Date |
|---|-----------------------------------|------|