



OFFICE OF ARTS & CULTURE
SEATTLE

Contract Number: CF190001
Expiration Date: **December 31, 2020**
Program Name: Seattle City Council Green Sheet 2-5-B-1

AGREEMENT FOR SERVICES
between
THE OFFICE OF ARTS & CULTURE
and
TOWN HALL

This Agreement is made between the **Seattle Office of Arts & Culture** (the Office) and **Town Hall** (the Recipient), to carry out activities associated with the City's desire to support capital projects at cultural facilities in Seattle.

ARTICLE I: ACTIVITIES

Section 100: Project Description

The Recipient shall perform the work under this Agreement, and arrange for reimbursement in the amount of **\$150,000**. The Recipient shall provide to the City reports as detailed in Section 301, and fulfill other responsibilities of the recipient as provided by this Agreement.

Project Description: Building the new Town Hall: Funds will support the renovation of Town Hall's historic Landmarked facility, including the upgrading of integral building systems, including electrical, plumbing, seismic, security, and energy systems.

Section 101: Term of Agreement

- A. The term of this Agreement for the provision of funds to the Recipient shall be effective **once signed by all parties**, until all funds are expended or by **December 31, 2020**, whichever is earlier. Any balances at the end of the term will not be available to be expended.

Public Benefit: The Recipient shall render certain services in connection with the construction or renovation of a cultural facility that will benefit the public. Such accessible services or opportunities can include events/presentations, rehearsals/previews, planning/research, meetings/consultations, workshops, scholarships, educational/interpretive programs, archives or discounted/free use of facilities/equipment targeting a broad segment of the city. The Recipient agrees to widely publicize its public benefit/service or opportunity, to track audiences, opportunities and numbers of those benefitting plus document value of benefit.

Associated with this capital project, Town Hall Seattle will offer up to 50 hours of free use annually to our Reading Room for city departments, 501c3 and/or community-based organizations engaged in private trainings or public programming devoted to issues of Race and Equity. The Reading Room is

an intimate, flexible and full-featured meeting (cap. 40) and presentation (cap. 70) space. Additional fees for personnel, setup, catering, and equipment may apply. Town Hall will publicly announce the offer to regional equity facilitators; city/county departments; and through Town Hall's print, web, and in-house communications platforms.

- B. General Reporting: The Recipient shall comply with the conditions and certification required by the Office. The monitoring agency shall be the Office. (See Section 301)

Section 102: Project Location

1119 8th Avenue
Seattle, WA 98101

Section 103: Project Maintenance

For the term of the maintenance period, the Recipient shall perform maintenance pursuant to the maintenance plan described as follows:

The Recipient shall develop a plan to provide adequate staffing, funding and hours of operation to maintain the facility in a safe and healthy manner for use by its staff/constituents and the public. The Recipient shall carry commercial general liability insurance as long as it operates the cultural facility. See Risk Management section.

Failure to maintain the project as noted above can exclude the Recipient from receiving future City funding. If the project is on City-owned property, failure to maintain the project may result in the City taking any action it deems appropriate to preserve the project and protect the public or City-owned property.

Section 104: Contacts

Written notices, requests, grievances, reports, invoices or adjustments to the Office shall be made to Matthew Richter, Cultural Space Liaison, Office of Arts & Culture, P.O. Box 94748, Seattle, Washington 98104-4748.

Written notices, requests, reports, grievances or adjustments for the Recipient shall be made to Kevin Malgesini, Capital Campaign Director, Town Hall, 1119 8th Avenue, Seattle, Washington 98101

ARTICLE II: FINANCIAL CONDITIONS

Section 200: Compensation

- A. The Office shall reimburse the Recipient its allowable costs for completed services identified in this Agreement in an award amount not to exceed **\$150,000**.
- B. The Recipient shall submit on such form(s) provided by the Office, an invoice describing project phases completed and award amount pursuant to this agreement. Final invoice shall include proof of displaying the Office sponsorship (See Section 301).
- C. All public announcements, programs, advertising, donor wall recognition, plaques, and other forms of recognition relating to the capital campaign for the funded improvements shall clearly show that such improvements are supported by the Office of Arts & Culture. A permanent element of acknowledgement (such as a plaque) must be installed at the site of the funded improvement under

this agreement. Such credit may be made by the use of the **approved logo** of the Office, and/or by the following wording unless other wording is approved by the Director:

"Seattle Office of Arts & Culture"

Section 201: Other Funds Raised

Recipient has asserted, in the course of applying for funding, that a minimum of 50% of the project's total budget has been confirmed through other sources. By signing this agreement, Recipient is affirming that those funds are secure and that the project has sufficient support to move forward.

Section 202: Reimbursement

The City shall reimburse the Recipient only for expenses in compliance with all items included in Article III Project Requirements. Note: The City cannot advance any funds but only makes reimbursement based on actual cash spent or expenses incurred. The reimbursement will be made approximately 4-6 weeks after submitting a properly executed invoice.

Section 203: Recipient's Obligation to Disburse Funds

It is the responsibility of the Recipient to disburse funds and pay the services performed by employees, contractors, and vendors and to insure that contractors are paying their subcontractors, vendors, taxes and other financial obligations with consideration of prevailing wage requirements (see <http://www.lni.wa.gov/workplacerrights/wages/minimum/>). When a reimbursement has been made by the Office to the Recipient for expenses, Recipient shall promptly pay vendors, personnel, and contractors or subcontractors, less any retainage prescribed in any agreement entered into between the Recipient and their contractors.

Should the aforementioned personnel or subcontractors not fulfill their contract/services during the course of this project, the Recipient can withhold funds until the project has been completed to satisfaction.

The Office shall not be held responsible for any amounts claimed by the Recipient's employees, suppliers, staff, contractors or subcontractors which have not been approved for payment by the City.

Section 204: Project Budget Revisions and Overruns

All project budget revisions and Cultural Facilities Fund funds must be approved by the Project Manager prior to expenditure. The City will not be responsible for any overruns and/or revisions incurred prior to its approval, unless such cost overruns result from requests by the City to change the scope of work of this Agreement or are the result of budget revisions made by the City. Budget revisions, which change the total amount awarded or significantly redirect the money from one cost category to another, will be authorized with an executed amendment to this agreement. For this purpose, changes which redirect more than 10% of the total Cultural Facilities Fund award between cost account categories, such as from personnel items to capital items, will be considered significant enough to require an amendment. Smaller shifts of dollars between line items or cost account categories may be approved verbally.

ARTICLE III: PROJECT REQUIREMENTS

The following requirements must be completed before the Recipient can proceed with the project and invoice for reimbursement.

Section 300: Method of Payment

- A. The Recipient shall submit an invoice, together with all reporting data. See the appropriate invoice, acknowledgement statement and reporting forms. The Office will initiate authorization for payment after receipt and approval of such invoice and will make payment directly to the Recipient.

Invoices shall be accompanied by copies of all receipts, purchase orders, payroll records, or vouchers which document the expenses claimed for individual expenses over \$500.

- B. The Office shall be excused from payments if funds allocated by the Office cease to be available for any cause other than misfeasance of the Office itself (See terms under Section 415).
- C. The Office reserves the right to withhold payments pending timely delivery of a properly executed invoice, Progress Report, or documents as may be required under this Agreement.
- D. All expenditures noted in the final invoice must be incurred by the closing date, as noted in Section 101, unless properly amended. The Recipient must send the final invoice with all necessary reports and acknowledgement statement no later than December 31, 2020.

Section 301: Required Opportunity for Access and Final Documentation:

A. Opportunity for Access - The Recipient agrees to make available, if asked by the program manager, up to five free uses of the renovated facility for the Office of Arts & Culture or the Seattle Arts Commission to use for an event, meeting, or workshop. Arrangements for this complimentary admission will be handled through the program manager.

B. Public Benefit

The Recipient agrees to provide services or opportunities that benefit the general public equal in value to the total award amount.

Upon completion of this project, the Recipient shall provide documentation of free or reduced-fee usage of the facility and/or programs or services donated to groups for activities and events that benefit the broader community, commensurate to the amount of this agreement.

C. Reporting Data

A Project Progress Report shall be submitted by the Recipient with each invoice to the Office, using the forms provided by the Office. It is the responsibility of the Recipient to submit the reports to the Office and it is the responsibility of the Recipient to complete the match and progress reports in a timely manner.

D. Final Reporting – Upon completion of the project, the Recipient shall submit on such form(s) as shall be provided by the Office of Arts & Culture, a written final report of the service rendered by the Recipient for which it requests reimbursement pursuant to this Agreement. This report shall include proof of the required credit described in Section 200-C, proof that required permits for the project were obtained, final budget and receipts for expenditures covered by this funding.

E. Post-Project Oversight and Documentation

The Office will have oversight of this project after construction for at least three years to ensure building uses meet City requirements. The Recipient shall work cooperatively with the Seattle Department of Construction and Inspections (SDCI) staff to meet SDCI usage requirements.

F. Permission For Use of Project Images – The Recipient is requested to provide photo images of the completed renovation, if available. The Office of Arts & Culture agrees that it will make use of such images for non-commercial purposes only, in connection with promoting the work of the Office and the cultural community. The Artist/Organization will provide photo captions and the names of the photographers to ensure that appropriate credit is given if images are used. By submitting photo images, the Recipient grants permission for such use and represents that he/she/it has the right to authorize the use of such images by the Office of Arts & Culture, *including necessary parental permission for photos that may include children under the age of 18.*

Section 302: Indemnification and Risk Management/Third Party General Liability Insurance

A. Indemnification

“Arts/Heritage/Service Organization” as the Recipient under this Agreement agrees to indemnify and save harmless the City, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind or nature, including attorney fees, arising out of, in connection with, or incident to the work of this Agreement, except to the extent caused by the negligence of the City, even though some act or omission, negligent or otherwise, of the City may also be a cause of the loss or damage. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee or volunteer of the Recipient, and the Recipient expressly waives all immunity and limitation on liability under the Washington State Industrial Insurance Act (Title 51, RCW).

B. Risk Management

It shall be the responsibility of the Recipient to exercise good risk management at all times to ensure that the project location is kept free from risk to those working on the project and the general public

C. Insurance

The Recipient shall, at all times during the term of this Agreement maintain continuously, *at its own expense*, a policy or policies of insurance know as: **(1) Commercial General Liability Insurance**, written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent, including premises/operations, products/completed operations, personal/advertising injury, contractual liability, independent contractors liability. The minimum limits of liability for bodily injury and property damage shall be \$1,000,000 each occurrence and \$1,000,000 general, products/completed operations aggregate; **(2)** If vehicles are used in the conduct of business, a policy of **Automobile Liability**, written on an insurance industry standard form (ISO form CA 00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles. The minimum limits of liability for Bodily injury and property damage shall be \$1,000,000 per accident; **(3) Worker’s Compensation** insurance for the state of Washington. **(4)** Such insurance, as provided under items (1), (2), above, shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as additional insured on ISO form CG2026 or equivalent, and shall

not be reduced or canceled without forty-five (45) days prior written notice to the City. (5) The Recipient's insurance shall be primary as respects the City and any other insurance maintained by the City shall be excess and not contributing insurance with the Recipient's insurance.

Section 303: Permit Requirements, Award Conditions and Approvals

The Recipient shall obtain required building permits before proceeding with construction.

Section 304: Site Control

Where private property will be used in the project, the Recipient shall furnish proof of permission to use the designated site for the project described in Section 102, and must submit a written statement from the site's owner that grants permission for the use of the property by the Recipient.

Section 305: Responsibilities of Recipient

The Recipient is responsible for the performance of the work and the long-term maintenance of the project. The Recipient is responsible for:

- Executing contracts with vendors, service providers to provide materials and services to accomplish the project goals.
- Maintaining the Project throughout its useful life (see Section 103.)
- Providing such documentation and evidence of services rendered, and materials purchased so as to satisfy the City's requirements for payment of funds.
- Comply with prevailing and minimum wage requirements of State law for the project.
- Maintains records, particularly as relates to compensation, matching funds, reports and insurance.
- Commits to making a good faith effort to comply with the City's affirmative action hiring requirements for the life of the project, as identified in Section 401.
- If required for the project, coordinates competitive bid process and subcontracting process.
- If required, maintains a third-party liability insurance policy, including other applicable insurance policies, for the project.
- Provides proper and visible acknowledgement of the Office of Arts & Culture for the funding.
- Provides documentation demonstrating the public benefit results from the capital project for which support is awarded.

ARTICLE IV: GENERAL CONDITIONS

Section 400: Involvement of Former City Employees

The Recipient agrees to promptly inform the City of any former City officer or employee who terminated City office or employment in the last twelve (12) months and who will be working on or subcontracting for any of the paid work under this Agreement upon becoming aware of the person's status as a former City officer or employee. The Recipient further agrees that no paid work under this Agreement will be done by a former City officer or employee who terminated City office or employment in the last twelve (12) months and who, in the course of official City duties, was involved in, participated in or acted on any matter related to this Agreement.

Section 401: Discrimination Prohibited

Affording Equal Employment Opportunity under Seattle Municipal Code Ch. 20.44, as now or hereafter amended, during the performance of this Agreement is mandatory and the Recipients agree as follows:

- A. The Recipient of this Agreement, will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.
- B. The Recipient will, prior to commencement and during the term of this Agreement, furnish to the Director of the Seattle Office for Civil Rights (SOCR) or his designee upon his request and on such form as may be provided by the Director of SOCR therefore, a report of the affirmative action taken by the Recipients in implementing the terms of this section, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records by the Director of SOCR for the purpose of investigation to determine compliance with this section.
- C. If upon investigation the Director of SOCR finds probable cause to believe that the a Recipient has failed to comply with any of the terms of this section, the Director of SOCR and the Office shall give the Recipient an opportunity to be heard after 10 days' notice. If the Office concurs in the findings of the Director of SOCR, it may suspend the Agreement and/or withhold any funds due or to become due to the Recipient pending compliance by the Recipient with the terms of this section, if the organization has any employees.
- D. Failure to comply with any of the terms of this section shall be a material breach of this Agreement.
- E. The provisions of this section shall be inserted into all subcontracts for work covered by this Agreement.
- F. In the provision of services under this Agreement, the Recipient shall not discriminate against individuals because of non-membership in any Recipient-sponsored organization.

Section 402: Discrimination because of Certain Labor Matters

No person employed on the work covered by this Agreement shall be discharged or in any way discriminated against because he/she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to the employer.

Section 403: Americans with Disabilities Act

The Recipient must make a good faith effort to ensure it is in compliance with the Americans With Disabilities Act of 1990 which, in addition to existing federal, state, and city non-discrimination laws, extends the same civil rights protection to persons with disabilities which have already been granted on the basis of race, color, religion, sex, age and national origin requirements. The Recipient shall provide the following:

1. Provide advance notification of public meetings regarding the project with the statement, "accommodation for persons with disabilities upon request."
2. Hold public meetings in accessible locations.
3. Provide alternate forms of communication if requested.
4. Make programs or services provided to the public accessible.
5. Construct barrier-free physical projects; and
6. Increase general awareness of and sensitivity to people with disabilities.

Section 404: Women and Minority Business Enterprise Requirements

The following section pertains to those projects which must meet the Competitive Bid Process.

A. General:

City women- and minority-owned business (WMBE) utilization requirements shall not apply to this Agreement. No minimum level of WMBE sub-consultant participation shall be required as a condition of receiving award of the contract and no preference will be given to an Arts/Heritage/Service Organization for their WMBE utilization or WMBE status. Provided, however, that any affirmative action requirements set forth in any federal regulations or statutes included or referenced in the Agreement will continue to apply.

B. Non-Discrimination:

The Recipient shall not create barriers to open and fair opportunities for WMBEs to participate in all City contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with sub-consultants and suppliers, the Recipient shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Record-keeping:

The Recipient shall maintain, for at least 12 months after completion of this Agreement, relevant records and information necessary to document level of utilization of WMBEs and other businesses as sub-consultants and suppliers in the resultant Agreement and in its overall public and private business activities. The Recipient shall also maintain all written quotes, bids, estimates, or proposals submitted to the Recipient or proposer after the date of the issuance of this Addendum by all businesses seeking to participate as sub-consultants or suppliers in the resultant Agreement. The City shall have the right to inspect and copy such records. If this Agreement involves federal funds, the Recipient shall comply with all record-keeping requirements set forth in any federal rules, regulations or statutes included or referenced in the Agreement.

D. Affirmative Efforts to Utilize WMBES:

The City encourages the utilization of minority-owned businesses (MBEs) and women-owned businesses (WBEs) (collectively, WMBEs), in all City contracts. The City encourages the following practices to open competitive opportunities for WMBEs:

1. Attending a pre-solicitation conference, if scheduled by the City, to provide project information and to inform WMBEs of contracting and subcontracting opportunities.
2. Placing all qualified WMBEs attempting to do business in the City of Seattle on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City of Seattle, in sufficient time to allow such businesses to respond to the written solicitations.
3. Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.
4. Establishing delivery schedules, where the requirements of this contract permit, that encourages participation by WMBEs.
5. Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the Agreement.
6. Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City of Seattle, and other organizations that provide assistance in the recruitment and placement of WMBEs.

E. Sanctions for Violation:

Any violation of the mandatory requirements of Paragraphs B and C in Section 404 shall be a material breach of contract for which the Arts/Heritage/Service Organization may be subject to damages and sanctions provided for by the Agreement and by applicable law.

Section 405: Title to Property Supplied

- A. Whenever Cultural Facilities Fund funds of \$500.00 or more are used towards the purchase or construction of **personal** property, ownership of such property shall rest with the City and such property shall be considered to be on loan to the Recipient. Upon the expiration of this Agreement, all personal property purchased or constructed with Cultural Facilities Program funds shall be returned to the City via the administering department for use or disposal by the City under the City's surplus procedures. The Office may choose to have the property remain with the Recipient beyond expiration of the Agreement when the property will continue to be used by the community as intended.
- B. All finished or unfinished documents and material prepared by the Recipient with funds provided by this Agreement shall be available for inspection and copying by the City and the public.
- C. Unless specified otherwise in this Agreement, the following conditions apply to properties used in this project:
 1. Property loaned by private persons, State or Federal agencies or the City, shall be returned to the owner.
 2. Property donated to the project shall become the property of the City and shall be accepted by the City for its use or disposal, unless the donor specifies that the property is donated to a private entity or person.
 3. The use of City-owned or funded property shall only be used for the purposes set forth in the Agreement and the Recipient shall be responsible for all maintenance, unless otherwise agreed.

4. The Recipient shall be financially liable for loss, damage or disappearance of any City-owned or funded property and shall report such loss, etc., to the Office immediately. The Recipient remains responsible for all such property until transferred to the control of the City and/or the Recipient is relieved of responsibility, in writing, by the City.
5. The Recipient shall provide permanent identification markings on all City-owned or funded properties acquired and shall maintain completed inventory records as required by the Office. Cost reimbursement shall be contingent upon satisfactory compliance with these requirements.
6. Any real property under the Recipient's control, that is acquired or improved in whole or in part, per the terms of this Agreement, must continue to be used for Project purposes or other public purposes approved by the Office for such periods of time as determined by the Office.

The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Agreement.

Any equipment purchased or reimbursed with City funds shall be the property of the City and shall be so marked. The equipment shall be made available to the Recipient for use in the Project for the purposes under this Agreement. Should the Recipient no longer need the equipment for the purposes provided in this Agreement or the City's participation in this project ends, the Recipient shall return the equipment to the City's Office of Arts & Culture. The Office may at its option either use the equipment, transfer it to other departments or dispose of the equipment according to its surplus procedures under SMC 3.18.824. The Office may choose to have the equipment remain with the Recipient beyond expiration of the Agreement when the equipment will continue to be used by the community as intended.

Section 406: Disclaimer Required

Any documents, in a printed, digital or video medium, prepared by the Recipient that is or will be made available to the public, unless specifically exempted by the Director of the Office, shall contain the following disclaimer:

This document has been funded in part by the City of Seattle's Office of Arts & Culture. The information contained herein does not necessarily reflect the policies, plans, beliefs, conclusions, ideas, etc., of the City of Seattle. The City does not warrant the accuracy of any of the information, ideas, conclusions, information, etc., contained in this document.

Section 407: Right to Review Documents Prepared for Public Use

The Office has the right to review any reports given to or prepared or assembled by the Recipient under this Agreement prior to distribution to the public and comment on it.

Section 408: Subcontracting

This Agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the consent of the other party. In the event of any approved assignment or subcontract, the Office shall continue to hold the Recipient responsible for proper performance of obligations under this Agreement. All provisions of this contract shall apply to all subcontracts entered into by the Recipient. The Recipient shall inform the Office of all subcontracts, including the process used for selecting a subcontractor.

Section 409: Documentation of Costs and other Financial and Reporting Requirements

- A. All costs shall be supported by properly executed payrolls, time records, receipts, invoices, vouchers or other official documentation for all expenses over \$500, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible, and the Office shall have the right to audit the records of the Recipient as they relate to the work, upon reasonable notice. The Recipient shall also:
1. Maintain an effective system of internal control over and accountability for all funds and property supplied and make sure the same is used solely for authorized purposes.
 2. Keep a continuing record of all disbursement by date, check number, amount, vendor, description of items purchased and line item from which money was expended, as reflected in accounting records. A receipt, invoice marked "Paid," or payroll record must substantiate the line item notations.
 3. Maintain payroll and financial records for a period of three (3) years after receipt of final payment under the Agreement.
 4. Permit inspection and audit of its records with respect to all matters authorized by this Agreement by representatives of the City the United States and the State Auditor, and at any time during normal business hours and as often as necessary.
 5. Repay to the Office any funds in its possession at the time of the termination of this Agreement that may be due to the City.
 6. Provide the Internal Revenue Service with appropriate and timely information regarding employee and/or consultant earnings.
- B. In the event that the United States or the State or the City shall determine that any funds were expended by the Recipient for unauthorized or ineligible purposes or constitute disallowed costs and order repayment of the same, the Recipient shall within thirty (30) days remit the same to the Office.
- C. Further, all financial records and fiscal control systems will be established and maintained in a manner to meet the approval of the City Comptroller and the State Auditor; records and reports submitted shall be satisfactory to meet the approval of the Director of the Office.

Section 410: Future Support

The Office makes no commitment of future support and assumes no obligations for future support of the activity contracted herein except as set forth in this Agreement.

Section 411: Reservation of Rights

Neither payment by the Office nor performance by the Recipient shall be construed as a waiver of either party's right or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

Section 412: Severability

If any provisions of this Agreement other than those provided in Article IV are held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the contemplated project and the Office.

Section 413: Quality of Performance

- A. The Recipient shall be responsible for the quality of services rendered and the suitability of the end product and/or service rendered and the suitability of the end product and/or service of the intended use. Its responsibilities hereunder shall not be reduced by recommendations or assistance received from the City which vary from the terms and conditions of this Agreement unless reduced to writing, signed by the responsible City Officer, the Director of the Office and made addenda to or amendments of this Agreement.
- B. The Office shall judge the adequacy and efficiency of work performed the sufficiency of records and the end product of services rendered. If during the course of the Agreement, the service(s) or product(s) rendered do not meet the desired results, the Recipient will correct, modify, remodel and/or repeat the process. Failure to make the necessary corrections shall be a material breach of Agreement and be cause for termination.
- C. All work shall be performed and services supplied in a manner to further project purposes and goals, and in compliance with guidelines for performance set by the US Government through the City, this Agreement, and general direction of the City.

Section 414: Termination of Agreement for Cause

- A. If, through any cause, the Recipient shall fail to fulfill in timely and proper manner their obligations under this Agreement, or if they violate any of the covenants, agreements, or stipulations of this Agreement, the Office shall thereupon have the right to terminate this Agreement by giving written notice to the Recipients of such termination and specifying the effective date thereof, at least five (5) working days before the effective date of such termination. In such event, The City shall have the right to copy for its unlimited use, all finished or unfinished documents, data, studies, and reports prepared by the Recipient under this Agreement shall, at the option of the Office, become the property of the Office.
- B. Notwithstanding the above, the Recipient shall not be relieved of liability to the Office for damages sustained by the Office by virtue of any breach of the Agreement by the Recipient, and the Office may withhold any payments to the Recipient for the purposes of set off until such time as the exact amount of damages due to the Office from the Recipient is determined. The Recipient will remit any unexpended balance of the payments on account of this Agreement as well as such other portion of such payments previously received as determined by the Office to be due it. The action of the Office in accepting any such amount shall not constitute a waiver of any claim which the Office or City may otherwise have arising out of this Agreement.

Section 415: Repayment

In the event that the City terminates this agreement due to misappropriation of funds or fiscal mismanagement, the Recipient shall return to the City all contract funds, which at the time of termination remain in its possession, and, shall pay to the City such funds as the City determines to be due to the City on account of the misappropriation or fiscal mismanagement.

Section 416: Termination for Convenience of Department

The Office may terminate this Agreement any time by a notice in writing from the Office to the Recipient. If the Agreement is terminated by the Office as provided herein, the Recipient will be paid an amount which

