

**WHEN RECORDED MAIL TO:**  
Office of Economic Development  
Attention: Megan Yonke  
201 W. Colfax Ave., Dept. 204  
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

---

**THIRD AMENDMENT AND MODIFICATION AGREEMENT**

**THIS THIRD AMENDMENT AND MODIFICATION AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER**, whose address is 777 Grant Street, Denver, CO 80203 ("**Borrower**" or "**Contractor**"), (together, the "**Parties**").

**WITNESSETH:**

**WHEREAS**, the Parties entered into that certain Loan Agreement dated April 3, 2007, as amended by that certain Amendatory Agreement dated September 10, 2012, and recorded on September 19, 2012 under Reception No. 2012127614 of the records of the City and County of Denver, State of Colorado, and that certain Second Amendment and Modification Agreement dated August 1, 2017, and recorded on August 4, 2017 under Reception No. 201702199 to lend the Borrower the sum of \$1,200,000.00 of Home Investment Partnership Program funds to be used to finance the rehabilitation of affordable housing (the "**HOME Funds**"), and the sum of \$65,752 of City general funds to supplement the sale price of certain units at the 525\* Condominiums located at 525 Jackson Street, Denver, Colorado (the "**General Funds**") (as amended, the "**Loan Agreement**"); and

**WHEREAS**, Borrower executed that certain Deed of Trust (the "**Deed of Trust**"), for the benefit of the City, dated August 31, 2007, and recorded on September 21, 2007 at Reception No. 2007147354 of the records of the City and County of Denver, State of Colorado, and encumbering fourteen (14) parcels of real property listed on Exhibit A of the April 3, 2007 Loan Agreement (the "**Property**"); and

**WHEREAS**, the Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note dated August 31, 2007 (the "**HOME Funds Promissory Note**") (the

Loan Agreement as amended, the 2018 General Funds Promissory Notes, the 2018 Covenant, the 2018 Deed of Trust, and the IHO Covenant (as later defined) the “**Loan Documents**”); and

**WHEREAS**, the Property is also encumbered by a covenant dated August 31, 2007 and recorded on September 21, 2007 at Reception No. 2007147353 of the records of the City and County of Denver, State of Colorado, restricting the use and affordability of the living units at the Property (the “**Covenant**”); and

**WHEREAS**, the September 10, 2012 Amendatory Agreement authorized the Director of the City’s Office of Economic Development or his designee to execute releases or partial releases of the Deed of Trust and execute a deed of trust for certain parcels designated on Exhibit A-1 of the September 10, 2012 Amendatory Agreement; and

**WHEREAS**, the September 10, 2012 Amendatory Agreement also amended restrictions on the use of the Property to remove the requirement that Borrower provide certain units on the Property for persons who were formerly homeless; and

**WHEREAS**, the Parties entered into a Second Amendment and Modification Agreement in order to clarify the property subject to the Deed of Trust, to clarify the types of affordable units provided on the Property, to extend the term of the Covenant, and to amend the property encumbered by the Covenant; and

**WHEREAS**, the Parties also entered into the Second Amendment and Modification Agreement to provide the General Funds to the Borrower upon the sale of two units subject to affordability restrictions to income-qualified buyers; and

**WHEREAS**, the General Funds were to be deferred so long as Borrower was in compliance with the terms and conditions of the Loan Agreement, as amended, and a promissory note evidencing the loan of the General Funds (the “**General Funds Promissory Note**”); and

**WHEREAS**, repayment of the General Funds would be forgiven upon the sale of units 104 and 207 located at 525 Jackson Street, Denver, Colorado and within the 525\* Condominiums complex presuming Borrower was in compliance with the Loan Agreement, as amended, and the General Funds Promissory Note; and

**WHEREAS**, the Second Amendment and Modification Agreement required that Borrower sell units 104 and 207 within twelve months of the effective date of the Second Amendment and Modification Agreement, which was August 7, 2017; and

**WHEREAS**, Borrower is under contract for the sale of Unit 104, review of said income qualified buyer of said Unit is still under review by the City; and

**WHEREAS**, Borrower has not requested the General Funds nor executed the General Funds Promissory Note, and has requested an extension of the deadline for the sale of units 104 and 207 as required by the Loan Agreement, as amended; and

**WHEREAS**, the Parties now wish to amend and modify the Loan Documents to clarify the repayment of the General Funds, to extend the deadline regarding the sale of units 104 and 207 at the 525\* Condominiums, to amend and restate the Deed of Trust in order to clarify the Property securing repayment of the HOME Loan Funds, and to amend and restate the Covenant in order to extend the term of the Covenant and amend the property encumbered by the Covenant.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Documents.

2. Exhibit A-2 is deleted in its entirety and replaced by Exhibit A-3. Exhibit A-3 reflects an amendment to Exhibit A-2 which deletes the descriptions for certain parcels (stricken through) (the “**Deleted Parcels**”), and replaces the Deleted Parcels with the new descriptions indicated by underlined text in **Exhibit A-3**, attached hereto and incorporated herein, (the “**Replacement Parcels**”). All references to Exhibit A-2 in the Loan Agreement shall now be to Exhibit A-3, except as provided herein.

3. Section 3 of the Second Amendment and Modification Agreement is deleted in its entirety.

4. Section 4 of the Second Amendment and Modification Agreement is deleted in its entirety.

5. Section 1 of the Loan Agreement, **LOAN TO BORROWER**, is amended to read as follows:

“A. Subject to the terms of this Agreement, the City agrees to lend Borrower the sum of One Million Two Hundred Thousand Dollars (\$1,200,000) (the

**“HOME Funds”**). Repayment of the HOME Funds shall be deferred so long as Borrower is in compliance with the terms and conditions of this Loan Agreement and a promissory note in form satisfactory to the City evidencing this loan (the **“HOME Funds Promissory Note”**). Presuming such compliance, repayment of the HOME Funds shall be forgiven on February 1, 2047.

B. In addition, the City agrees to lend Borrower the sum of Sixty Five Thousand Seven Hundred Fifty Two Dollars (\$65,752) (the **“General Funds”**) to be used by Borrower to supplement upgrades and the sale price of units 104 and 207 of the 525\* Condominiums located at 525 Jackson Street, Denver, Colorado (each a **“Unit”** and collectively, the **“Units”**). Repayment of the General Funds shall be deferred so long as Borrower is in compliance with the terms and conditions of this Loan Agreement and three (3) promissory notes in form satisfactory to the City evidencing this loan in the amounts of: (a) \$35,752 which is unsecured (the **“525 Jackson General Funds Promissory Note”**); (b) \$15,000 related to Unit 104 (the **“Unit 104 General Funds Promissory Note”**); and (c) \$15,000 related to Unit 207 (the **“Unit 207 General Funds Promissory Note”**) (collectively, the **“2018 General Funds Promissory Notes”**). The Parties agree that the Unit 104 General Funds Promissory Note and the Unit 207 General Funds Promissory Note may be secured by a collateral assignment of notes and deeds of trust from the first income-qualified buyer, in forms satisfactory to the City. Presuming such compliance, repayment of the 525 Jackson General Funds Promissory Note outlined in subsection (a) above in the amount of \$35,752 of the General Funds shall be forgiven upon the sale of both of the Units to income-qualified buyers and subject to affordability restrictions and the 525 Jackson General Funds Promissory Note in the amount of \$35,752 shall be cancelled. Fifteen Thousand dollars (\$15,000.00) of the General Funds shall be repaid by Borrower when the first income-qualified buyer of each Unit sells that Unit to another buyer, and the City shall release the applicable deed of trust securing the Unit 104 General Funds Promissory Note or Unit 207 General Funds Promissory Note in the amount of \$15,000 with respect to such Unit sold. No interest shall accrue on the 2018 General Funds Promissory Notes.

6. Proceeds from the General Funds will be used to renovate the Units in preparation for sale to income-qualified buyers, as well as to provide down-payment assistance to income-qualified buyers. The Borrower shall submit to the City requisitions with documentation of incurred costs for reimbursement, and otherwise comply with the financial administration requirements set forth in **Exhibit G-1** attached hereto and incorporated herein for so long as it owns the Units.” Where the City's funds are disbursed for hard costs, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers or Borrower.

7. Section 7 of the Second Amendment and Modification Agreement is deleted in its entirety and replaced with the following language:

“Borrower shall execute an amended and restated covenant (the “**2018 Covenant**”) in form satisfactory to the City, which shall set forth the rental and occupancy limitations described in subparagraphs A and B of Paragraph 6 of the Loan Agreement, which shall be recorded in the real estate records of the City and County of Denver, and which shall constitute a covenant running with the land and shall supersede the all previous covenants in favor of City. The 2018 Covenant shall encumber the property and parcels contained in Exhibit A-3 but excluding the Units for a period up to and including February 1, 2047. The Executive Director of the City’s Office of Economic Development (“**Executive Director**”), or his/her designee, is authorized to execute any and all partial releases of covenant necessary to effectuate the intent of the 2018 Covenant. Violation of said covenant shall be enforceable as an event of default pursuant hereto.”

8. Section 8 of the Second Amendment and Modification Agreement is deleted in its entirety and replaced with the following:

“Borrower agrees to sell the Units to income-qualified buyers as defined in the Denver Revised Municipal Code Article IV, Chapter 27 within twelve (12) months of the effective date of this Third Amendment and Modification Agreement. Upon the closing of the loan for the General Funds, Borrower shall execute a covenant in form satisfactory to the City, setting forth affordability limitations, restrictions on acquisition

and transfer of the units, and initial and resale price restrictions, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute covenants running with the land (the “**IHO Covenant**”). The IHO Covenant shall encumber the Units for a period of thirty (30) years from the date of its recording.

9. Borrower agrees to execute an amended and restated deed of trust on the property and parcels contained in Exhibit A-3 (but excluding the Units) to secure the repayment of the HOME Funds Promissory Note (the “**2018 Deed of Trust**”), in form satisfactory to the City and such 2018 Deed of Trust shall supersede the current Deed of Trust. All references in the Loan Agreement to the Deed of Trust, shall now refer to the 2018 Deed of Trust as of the Effective Date. The Executive Director is authorized to execute any and all partial releases of deeds of trust necessary to effectuate the intent of the 2018 Deed of Trust.

10. Borrower consents to the use of electronic signatures by the City. This Third Amendment and Modification Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Third Amendment and Modification Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Third Amendment and Modification Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

11. As of the Effective Date, the Loan Documents are hereby amended to reflect the amended terms of this Third Amendment and Modification Agreement.

12. Except as modified herein, the Loan Documents remain unmodified.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**Contract Control Number:** OEDEV-GE6A125-03

**Contractor Name:** HOUSING AUTHORITY CITY CNTY OF DENVER

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: OEDEV-GE6A125-03

Contractor Name: HOUSING AUTHORITY CITY CNTY OF DENVER

By: 

Name: ISMAEL GUERRERO  
(please print)

Title: EXECUTIVE DIRECTOR  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)







**EXHIBIT A-3  
LEGAL DESCRIPTIONS**

**Parcel A:**

Lots A and B, Resubdivision of Lots 17, 18, 19 and 20, Block 1, Clover Park, City and County of Denver, State of Colorado

For information purposes only the address for Parcel A is: 900 - 910 Lipan Street, Denver CO 80204

**Parcel B:**

The East 100 feet of Lots 21 and 22, and The East 100 feet of the South 20 feet Lot 23, Block 1, Clover Park, City and County of Denver, State of Colorado

For Information purposes only the addresses for Parcel B are: 903 - 905 Kalamath Street, Denver CO 80204 and 907 - 911 Kalamath Street, Denver CO 80204

**Parcel C:**

Lot 12 and the North ½ of Lot 13, Block 17, Smith's Addition to the City of Denver, City and County of Denver, State of Colorado.

For Informational purposes only the address for Parcel C is: 830 Inca Street, Denver CO 80204

**Parcel D:**

The West 79 feet of Lot 20, and The West 79 feet of the South 17 feet of Lot 19, Block 11, Elmwood Addition to the City of Denver, City and County of Denver, State of Colorado

For Informational purposes only the address for Parcel D is: 700 - 704 Elati Street, Denver CO 80204

**Parcel E:**

The West 79 feet of Lot 18, and The North 8 feet of the West 79 feet of Lot 19, and The North 8 feet of the East 46 feet of Lot 18, Block 11, Elmwood Addition to the City of Denver, City and County of Denver, State of Colorado

For informational purposes only the address for Parcel E is: 708 - 710 Elati Street, Denver CO 80204

**Parcel F:**

Lots 37 to 40 inclusive, block 27, Hallack's Subdivision of Blocks 27, 28, 38, 39 of Witter's First Addition to the City of Denver, City and County of Denver, State of Colorado

For informational purposes only the address for Parcel F is: 802 – 816 West 13<sup>th</sup> Avenue, Denver CO 80204

**Parcels G and H:**

Deleted under Second Amendment – Exhibit A-2

**Parcel I:**

Lots 1 and 2, Block 12, Hunt's Addition to Denver, City and County of Denver, State of Colorado,

For informational purposes only the address for Parcel I is: 926 – 934 West 14<sup>th</sup> Avenue, Denver CO 80204

**Parcel J:**

Lots 34 and the South ½ of Lot 35, Block 11, Hunt's Addition to Denver, City and County of Denver, State of Colorado

For Information purposes only the addresses for Parcel J is: 1355 – 1357 ½ Kalamath Street, Denver CO 80204

**Parcel K:**

Lots 31 and the South ½ of Lot 32, Block 11, Hunt's Addition to Denver, City and County of Denver, State of Colorado

For Information purposes only the addresses for Parcel K is: 1341 Kalamath Street, Denver CO 80204

**Parcel L:**

Lots 21, 22, and 23, Block 11, Hunt's Addition to Denver, City and County of Denver, State of Colorado

For informational purposes only the addresses for Parcel L are: 1301, 1305 and 1307 Kalamath Street, Denver, CO 80204

**Parcel M:**

Lots 19 and 20, Block 12, Hunt's Addition to Denver, City and County of Denver, State of Colorado

For informational purposes only the addresses for Parcel M are: 927 - 935 West 13<sup>th</sup> Avenue, Denver CO 80204 and 1300 - 1300 ½ Kalamath Street, Denver CO 80204 and 1306 Kalamath Street, Denver CO 80204

**Parcel N:**

The South ½ of Lots 23 and 24, Block 23, Hunt's Addition to Denver, City and County of Denver, State of Colorado

For informational purposes only the addresses for Parcel N are: 1103 West 10<sup>th</sup> Avenue, Denver CO 80204 and 1003 - 1009 Lipan Street, Denver CO 80204

**PARCEL O:**

Lots 15 and 16, Block 63, P.T. Barnum's Subdivision to the City of Denver, City and County of Denver, State of Colorado.

For informational purposes only the addresses for Parcel O is: 110-112 Hooker Street, Denver, CO 80219

**PARCEL P:**

~~CONDOMINIUM UNIT NO. 108, THE 525\* CONDOMINIUMS, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS SHOWN ON THE CONDOMINIUM MAP RECORDED NOVEMBER 4, 1983 IN BOOK 25, PAGES 41-43 UNDER RECEPTION NO. 1983083148, SUBJECT TO THE CONDOMINIUM DECLARATION FOR THE 525\* CONDOMINIUMS, RECORDED JUNE 12, 2000 UNDER RECEPTION NO. 2000081856, CITY AND COUNTY OF DENVER, STATE OF COLORADO RECORDS, TOGETHER WITH THE RIGHT TO THE EXCLUSIVE USE OF PARKING SPACE NO. 21 AND STORAGE SPACE NO. 5.~~

Condominium Unit No. 108, THE 525\* CONDOMINIUMS, as shown on the Condominium Map recorded November 4, 1983 in Book 25, Pages 41 at Reception No. 1983083148 and Notice of Correction Regarding Condominium Map of 525\* Condominiums recorded August 16, 2018 at Reception No. 2018103319 of the City and County of Denver records, subject to the Condominium Declaration for THE 525\* CONDOMINIUMS recorded June 12, 2000 at Reception No. 2000081856, and Amendment to Correct Typographical Error recorded August 13, 2008 at Reception No. 2008112404 of the City and County of Denver records; together with the right to the exclusive use of Parking Space No. 21 which is part of The 525\* CONDOMINIUMS; all in the City and County of Denver, State of Colorado.

For informational purposes only the addresses for Parcel P is: 525 Jackson Street Unit 108, Denver, CO 80206

**PARCEL Q:**

~~CONDOMINIUM UNIT NO. 208, THE 525\* CONDOMINIUMS, CITY AND COUNTY OF DENVER, STATE OF COLORADO, AS SHOWN ON THE CONDOMINIUM MAP RECORDED NOVEMBER 4, 1983 IN BOOK 25, PAGES 41-43, SUBJECT TO THE CONDOMINIUM DECLARATION FOR THE 525\* CONDOMINIUMS, RECORDED JUNE 12, UNDER RECEPTION NO. 2000081856, CITY AND COUNTY OF DENVER, STATE OF COLORADO RECORDS.~~

Condominium Unit No. 208, THE 525\* CONDOMINIUMS, as shown on the Condominium Map recorded November 4, 1983 in Book 25, Pages 41 at Reception No. 1983083148 and Notice of Correction Regarding Condominium Map of 525\* Condominiums recorded August 16, 2018 at Reception No. 2018103319 of the City and County of Denver records, subject to the Condominium Declaration for THE 525\* CONDOMINIUMS recorded June 12, 2000 at Reception No. 2000081856, and Amendment to Correct Typographical Error recorded August 13, 2008 at Reception No. 2008112404 of the City and County of Denver records, all in the City and County of Denver, State of Colorado.

For informational purposes only the addresses for Parcel Q is: 525 Jackson Street Unit 208, Denver, CO 80206

**PARCEL R:**

Lot 34 and the South 1/2 of Lot 35, Block 18, Hunts Addition to Denver, City and County of Denver, State of Colorado

For informational purposes only the addresses for Parcel R is: 1155-1157 Lipan Street, Denver, CO 80204

## EXHIBIT G-1

### FINANCIAL ADMINISTRATION:

#### 1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to OED on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with OED policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

#### 1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.
  - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
  - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from OED.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
  - a. Amount of the request in total and by line item;
  - b. Period of services for current reimbursement;
  - c. Budget balance in total and by line item;
  - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to OED prior to the draw request.
- 1.2.8 The standardized OED "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

### **1.3 Payroll**

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

#### **1.4 Fringe Benefits**

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

#### **1.5 General Reimbursement Requirements**

- 1.5.1 **Invoices**: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 **Mileage**: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 **Pager/Cell Phone**: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- 1.5.4 **Administration and Overhead Cost**: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by OED.
- 1.5.5 **Service Period and Closeout**: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received



by OED within forty-five (45) days after the end of the service period stated in the contract.

## **2.1 Intentionally Omitted**

### **3.1 Financial Management Systems**

**The Contractor must maintain financial systems that meet the following standards:**

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

#### **4.1 Audit Requirements**

- 4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the OED Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to OED within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to OED funding, the Contractor shall prepare and submit a Corrective Action Plan to OED in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.
- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **OED Financial Management Unit**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

#### **5.1 Budget Modification Requests**

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services

provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

## **6.1 Procurement**

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

## **7.1 Bonding**

- 7.1.1 OED may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

## **8.1 Records Retention**

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

## **9.1 Contract Close-Out**

- 9.1.1 All Contractors are responsible for completing required OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.
- 9.1.3 OED will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, OED reserves the right to unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

## **10.1 Collection of amounts due**

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, OED may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.