

**Community Development Department**  
**Construction Rehabilitation Projects General Conditions**

**ARTICLE 1: CONTRACT DOCUMENTS**

- 1.1 Defined: The Contract Documents shall consist of, but is not limited to, the Property Owner/Rehab Contractor Contract (herein called Contract or Agreement), Work-Item-List, Plans (Drawings), Addendums, Alternates, Code Violation Notice, Contractor's Bid, Neighborhood Development's Performance Manual, Rehab Contractor's Handbook, General Conditions of the Property Owner/Rehab Contractor Contract, and any other documents listed in the Contract and Modifications issued after the execution of the Contract.
- 1.2 Include: The intent of these documents is to include all labor, materials, appliances and services of every kind necessary for the proper execution of the work, and the terms and conditions of payment thereof.
- 1.3 Administration: The contract document will be administered as comprising one general contract, and each document will be construed equally with all other documents.

**ARTICLE 2: THE PROPERTY OWNER (herein called Owner)**

- 2.1 Definition: The Owner is the person or entity identified as such in the Property Owner/Rehab Contractor Contract.
- 2.2 Information and Services Required of the Owner: The Owner will furnish any documents or information that describes the physical or legal limitations of the site, secure and pay for necessary approvals required for construction other than the permits and fees related to the Work. Owner decisions will be made promptly to avoid delay of the Work.
- 2.3 Owner's Right to Stop the Work for Corrections: The Owner may order the Contractor to stop the Work if the Contractor fails to carry out Work in accordance with the provisions of the Contract Documents. The order must be in writing, signed by the Owner and sent by certified mail, and remains in effect until the cause of the order is eliminated.
- 2.4 Owner's Right to Carry Out the Work: The Owner may elect to correct Work if the Contractor fails to commence correction of deficiencies within fourteen (14) days after receipt of the Owner's written notice. A Change Order shall be issued to account for the cost of such work, and that amount will be deducted from the Contract Price.
- 2.5 Responsibility: The Owner assumes responsibility for obtaining and reviewing the qualifications and for selecting the contractor.

**ARTICLE 3: CONTRACTOR**

- 3.1 Definition: The Contractor is the person or entity identified as such in the Property Owner/Rehab Contractor Agreement.
- 3.2 On June 26, 2006 the City Council of the City of Rockford enacted the Minority and Women Business Enterprises Procurement Policy. The City of Rockford is committed to ensuring the participation of certified minority-owned business enterprises (MBE) and women-owned business enterprises (WBE) in its' procurement of commodities and services, construction contracting, and professional services. In conjunction with this policy the City of Rockford has established a program

for certifying minority and women-owned business enterprises as those entities are defined in the policy.

Contractors responding to information for bids (IFBs) and request for proposals (RFPs) will be required to register with the City of Rockford and provide information on their MBE or WBE status of their subcontractors, including completion of a certification. The Equal Opportunity Compliance (EOC) Officer will provide certification information and assistance to MBEs and WBEs. FAILURE TO FOLLOW THE TERMS OF THE MINORITY AND WOMEN BUSINESS ENTERPRISES PROCUREMENT POLICY OR THE DIRECTIVES OF THE EOC OFFICER MAY RESULT IN DEBARMENT.

3.3 Performance Bond for Contract Contractors currently on probation: The Contractor, to whom a contract is awarded through the Finance Department, shall provide a Performance Bond, letter of credit, or cashier's check, in the amount of 20% of the Contract Price, to the City of Rockford prior to a Contract being signed. The Performance Bond shall be written by an insurance or surety company licensed to do business in the State of Illinois. The Performance Bond shall be kept in full force and effect until such time that the contract has been fully completed and the Certificate of Final Inspection has been issued. An Irrevocable Letter of Credit from a bank doing business in the State of Illinois, which essentially provides the same coverage and protection, is an acceptable substitute for a Performance Bond.

In the case of default of this Contract by the Contractor, Neighborhood Development, at its discretion, may secure the Performance Bond, Letter of Credit, or cashier's check of the Contractor to pay for any loss or damage to Neighborhood Development or the Owner.

3.4 Review of Contract Documents and Field Conditions: The Contractor shall carefully study and compare the Contract Documents and verify field conditions. Errors, omissions or inconsistencies in the Contract Documents that are discovered as a result of these investigations and study are to be reported to Neighborhood Development prior to execution of a contract or within 24 hours of discovery.

3.5 Supervision: The Contractor is solely responsible for the construction methods, sequence of work, procedures and coordination of the Work. The Contractor shall supervise and direct the Work with the attention and skill required, and is responsible to the Owner for the acts and omissions of any persons performing portions of the Work. The Contractor is responsible for the order, discipline and safety of the workers on the site. The Contractor shall not permit the employment of workers unfit or unskilled in tasks assigned them.

3.6 Taxes: The Contractor pays all sales, use and similar taxes affecting the Work that are legally enacted when negotiations are concluded.

3.7 Failure to perform: The City of Rockford reserves the right, in case of default, to procure the services desired from other sources and hold the defaulting firm responsible for any excess costs occasioned thereby. The City also reserves the right to remove the firm from the City's bidder list and/or invoke the Disbarment Policy.

3.8 Prevailing Wage. When this Contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* ("the Act"). The Act requires Contractors and subcontractors to pay laborers, workers, and mechanics performing services on public works projects no less than the "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed.

For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website at: <http://www.state.il.us/agency/idol/rates/rates.HTM>. All Contractors and subcontractors rendering services under this Contract must comply with all requirements of the Act, including but not limited to, all wage, notice, and record keeping duties.

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#### **ARTICLE 4: NEIGHBORHOOD DEVELOPMENT**

- 4.1 Definition: The role of Neighborhood Development is one of lender, facilitator, mediator and interpreter of the Contract Documents. As such, Neighborhood Development represents neither the Owner nor the Contractor nor is Neighborhood Development the agent of either party.
- 4.2 Duties of Neighborhood Development: Neighborhood Development will, as the need arises, issue bulletins to clarify the intent of the Contract Documents and prepare Change Orders when modification of the Contract Documents is necessary. Neighborhood Development will inspect the Work in progress periodically to insure its conformance with the Contract Documents. Neighborhood Development will communicate the results of these inspections to both the Owner and the Contractor and will advise each of any action required. Based on these inspections, Neighborhood Development will review payment requests executed between the Owner and Contractor and submitted by the Contractor, certify the amounts due the Contractor, and submit them for payment according to the terms of the Contract. Neighborhood Development does not warrant the work of the Contractor. Satisfactory inspections are not a release of claims against the Contractor for non-conforming work.

#### **ARTICLE 5: PRE-BID INSPECTION**

- 5.1 Inspection Requirement: All bidders should have attended **required pre-bid meeting** at the site and examined all structures located thereon. The Work-Item-List shall be compared with the existing field conditions. The Contractor shall be responsible for all unusual conditions or deviations which exist at the time of his/her examination and these should have been noted and reflected in his/her bid price.
- 5.2 Verification of Measurements: No extra compensation will be allowed because of differences between actual measurements and dimensions shown on the Work-Item-List.
- 5.3 Omitted Items: During the course of repairs, the Contractor shall notify Neighborhood Development of any condition or repair not covered in the Work-Item-List, which is necessary for satisfactory completion or basic building code compliance. Defects that become evident as the work progresses shall be reported, not concealed.

#### **ARTICLE 6: INDEMNIFICATION OF OWNER AND NEIGHBORHOOD DEVELOPMENT**

- 6.1 The Contractor shall indemnify and save harmless the Owner from liability for any injury or damages to persons or property resulting from his prosecution or work under the Contract.
- 6.2 Indemnification and hold harmless. The Contractor shall indemnify, keep and save harmless the City of Rockford, or any of its agents, officials or employees, against all suits or claims that are alleged to have occurred in the course of the performance of this contract by the Contractor or its employees; and the Contractor shall, at its own expense, pay all charges of attorneys, and all costs or other expenses arising therefrom shall be rendered against the City of Rockford in any such action. The Contractor shall, at its own expense, satisfy and discharge the same.
- 6.3 Non-liability: The Owner and Contractor agree that they are the sole parties to this contract and are solely responsible for its performance. The parties agree that neither Neighborhood Development nor the United States Department of Housing and Urban Development assumes any liability or responsibility whatsoever for the performance of any terms of this Contract.
- 6.4 Fines and Penalties. The Contractor has full selection and control over the method and means of execution of the work. Therefore the Contractor agrees to pay for all fines and judgments levied by government agencies, regional or federal, with regards to execution of the work including but not

limited to OSHA, EPA, the Clean Water Act, local health laws and federal requirements for the reduction of lead in housing. In cases where Federal or State law so requires, workers must be certified in lead abatement practices and be supervised by a Certified Lead Supervisor.

- 6.5 Employment Practices – Equal Opportunity: Contractor agrees to provide Equal Opportunity to all persons and small businesses, without discrimination as to race, color, creed, religion, national origin, sex, marital status, age, and status with regard to public assistance or disability. To the greatest extent feasible, opportunities for training and employment shall be given to lower income residents of the project area and contracts (agreements) for work in connection with the project be awarded to business concerns located in, or owned in substantial part by persons residing in the area of the project. In the event the Contractor has a collective bargaining agreement or other contract or understanding, if any, the Contractor will send to each labor organization or representative of workers under this contract, a notice of his commitments under this paragraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment and training.

## **ARTICLE 7: INSURANCE**

- 7.1 The Contractor: The Contractor shall be required to carry insurance covering Workers' Compensation and Public Liability Insurance, in accordance with all State and Federal requirements. The Contractor shall furnish a Certificate of Insurance showing same to be in effect before signing the contract.

The following insurance requirements shall apply to the successful firm for the duration of the contract unless explicitly waived by the Central Services Manager.

- a. Worker's Compensation Insurance – Covering all employed persons engaged in work under this Contract to the full statutory limits stipulated in the Illinois Workmen's Compensation Act.
- b. Comprehensive general liability insurance shall be required of the successful firm. Liability limits shall provide for at least \$500,000 per occurrence and \$1,000,000 aggregate per year. The insurance form must be written on an occurrence basis. Policies written on a claims made basis shall be unacceptable and will postpone execution of the contract until such time that the proper form of insurance is obtained. The City of Rockford shall be added as an additional insured on the comprehensive general liability policy. A certificate of insurance showing the additional named insured will be required within fifteen days following the award of the contract.
- c. Commercial vehicle insurance – Minimum limits as follows:
  - (BI) Bodily Injury \$250,000 per occurrence
  - (BI) Bodily Injury \$500,000 aggregate
  - (PD) Property Damage \$250,000
- d. The above requirements should not be interpreted to limit the liability of the Contractor under this Contract.
- e. A thirty day cancellation clause with notice to the City of Rockford shall be included; words modifying the cancellation clause such as "endeavor to" provide notice will be unacceptable and must be stricken.
- f. It shall be the Contractor's responsibility to provide or require similar insurance for each Subcontractor or to provide evidence that each Subcontractor carries such insurance in like amount prior to the time such Subcontractor performs under the Contract.

- g. The contractor shall carry LEAD Liability Insurance (POI), as required by the State of Illinois Department of Public Health.

7.2 The Owner: The Owner must carry homeowners insurance on the property but this insurance does not cover tools, equipment or materials stored in the property and owned by the Contractor. Owner shall submit copies of insurance as above stated to Neighborhood Development in a form acceptable to Neighborhood Development, which certificate or certificates shall provide that the policies shall not be changed or cancelled until ten (10) days written notice has been given to Neighborhood Development.

#### **ARTICLE 8: PERMITS/CODES/LICENSES**

Strict Compliance: The Contractor shall obtain and pay for all permits required in the Work-Item-List and necessary for the completion and execution of the work. Evidence of permits shall be made available to Neighborhood Development upon demand. The Contractor shall also have all necessary licenses required by local ordinance or state law to complete any and all work. Strict compliance with Municipal Codes and Ordinances along with state and federal laws shall be observed in all phases of the work. The Contractor shall perform all work in conformance with applicable local codes and ordinances whether or not covered by the Work-Item-List and Drawings for the work. The Contractor will be responsible for making sure that Subcontractors have all necessary permits and licenses.

#### **ARTICLE 9: FINANCING REQUIREMENTS**

- 9.1 Right of Rescission (applicable in Owner occupied projects when a mortgage is recorded): The Contractor is hereby notified that this Contract is subject to Right of Rescission and that the Owner shall have until midnight of the third business day following the signing of the Contract Documents to rescind this Contract without penalty. The Contract, upon the Owner's decision, shall become null and void and the Contractor shall return the executed Contract to the Owner without delay on notice to him/her of the decision.
- 9.2 Escrowing of Funds: The Owner will escrow all funds needed for construction and associated costs through Neighborhood Development.
- 9.3 Control of Disbursements: The Owner and Contractor authorize Neighborhood Development to control the disbursement of all escrowed funds and agree that Neighborhood Development may do so at its sole option because Neighborhood Development will apply the escrowed funds for payment of labor and material and other associated costs under this Contract and provide records of all escrowed deposits and disbursements.

#### **ARTICLE 10: CONSTRUCTION BY SEPARATE CONTRACTS**

- 10.1 Contractor and Owner agree not to enter into any formal or informal contracts to perform additional work or modify the contract during Neighborhood Development's involvement. Additional work may be performed after the final acceptance of all work done by Neighborhood Development.
- 10.2 The Owner agrees not to start or engage in any other additional work not included in the Work-Item-List until successful completion of this contract.

#### **ARTICLE 11: SUBCONTRACTORS**

- 11.1 Subcontractor List: The Contractor shall submit in writing to Neighborhood Development a statement listing all Subcontractors, a list of suppliers to be used on subject project, and a Job Cost Breakdown itemizing the cost of the work.

11.2 Contractual Responsibility: Subcontractors shall be bound by the terms and conditions of this contract insofar as it applies to their work. This applicability shall not relieve the Contractor, if such is awarded the contract, from full responsibility to the Owner and Neighborhood Development for the proper completion of all work to be executed under the terms of this Contract, and the Contractor shall not be released from this responsibility by any sub-contractual agreement he/she may make with others.

11.3 Coordination: Each Subcontractor is to examine the work done by the other Subcontractors to ascertain whether it is correct as to dimensions and locations, before proceeding to carry out their part of the contract, as each and every Subcontractor will be held responsible for the accuracy of their branch of the work when done.

11.4 Warranty: Contractor agrees that all the warranties contained herein shall apply to all work performed under the contract, including that performed by any Subcontractors.

## **ARTICLE 12: MATERIALS**

12.1 Manufacturer's Specifications: All work must be applied in accordance with the manufacturer's latest instructions. Any variation in these specifications and the manufacturer's instructions must be called to the attention of the Construction Specialist.

12.2 New Materials: All material installed shall be new (unless otherwise specified). All work is to be a finished product unless specified to the contrary.

12.3 Replacement: Materials and/or workmanship failing to meet these requirements shall be replaced at the Contractor's expense. Acceptance of materials and/or workmanship by an authorized representative of the Owner prior to completion of the contract does not relieve the Contractor from the obligation to produce materials and/or workmanship in first class condition at the completion of the contract.

## **ARTICLE 13: PROJECT MEETINGS**

Project Meetings will be arranged as the need arises. The Owner, Contractor and Neighborhood Development shall participate in these meetings.

## **ARTICLE 14: TEMPORARY UTILITIES**

14.1 Occupied Buildings: The Owner shall provide the Contractors with service of water and electricity at no charge to the Contractor and during the cold weather season the Owner shall provide and maintain adequate heat in the working area. In occupied buildings, the utilities shall not be disrupted without the approval of the occupants.

14.2 Unoccupied Buildings: The Contractor shall provide any temporary utilities needed to perform work until permanent utilities can be activated. Activating permanent utilities shall become the direct responsibility of the Owner. All costs for temporary utilities will be born by the Contractor. All costs for activating and maintaining permanent utilities will be born by the Owner.

## **ARTICLE 15: JOB SITE RULES**

Drug Free Workplace: No drugs or alcoholic beverages are to be allowed on the job site, before, during, or after work hours.

**ARTICLE 16: WORK IN OCCUPIED STRUCTURES**

- 16.1 Hours: Once the work commences, the Contractor shall have free access to all parts of the premises requiring work during weekday working hours from 8:00 A.M. to 5:00 P.M., unless otherwise stated by the Owner. Any weekend/holiday hours will be arranged between the Owner and Contractor.
- 16.2 Shared Use of Site: Persons residing at the site during construction are to be consulted by the Contractor in determining work schedules and sequence of work. The Contractor is to take necessary and reasonable precautions to protect living quarters during operations. Protection of small or valuable furniture, furnishings, accessories, and personal belongings is not the responsibility of the Contractor unless specifically listed in the Work-Item-List. The Contractor, Owner, and Neighborhood Development shall cooperate in the scheduling and sequencing of work by other contractors. The Contractor shall discuss any site related safety issues with the Owner prior to construction.
- 16.3 Storage: The Contractor shall be responsible for the storage and safety of his own materials. The Owner assumes no liability whatsoever for any damaged or stolen material on the premises, where such has not been attached to the building. Any damage to, or loss by theft or vandalism of any material, appurtenance, or appliance, after such has been attached to the building shall be the sole responsibility of the Owner.
- 16.4 Contractor's Work Area: It shall be the Owner's responsibility to move furniture, rugs, and remove excess debris/garbage to create open/clean working space for Contractors, unless so specified elsewhere in the Work-Item-List.

**ARTICLE 17: PROTECTION OF WORK/PROPERTY/PERSONS**

- 17.1 Safety Precautions: The Contractor is responsible for implementing effective safety precautions on and around the Work site to protect workers and other persons who might be affected. The types of precautions include, but are not limited to:
  - a. Warning signs and barriers;
  - b. Enforcing safety regulations and good work practices;
  - c. Notifying owners and representatives of adjacent properties, utilities, and public safety agencies of work posing a hazard;
  - d. Controlling particles and fumes at their source;
  - e. Identification of known pollutants and toxins, following by appropriate action;
  - f. Safe storage of materials and supplies;
  - g. Maintaining means of extinguishing fires on site;
  - h. Adequate warning systems and evacuation procedures;
  - i. Protective materials and equipment typically associated with various portions of the Work, and
  - j. Maintaining first-aid supplies on the site.

17.2 Weather Protection: It is the responsibility of the Contractor to:

- a. Protective Covers: Provide constant protection against rain, windstorms, frost or heat so as to maintain work, materials, apparatus, and fixtures, free from injury or damage. At the end of day's work, the Contractor will cover work likely to be damaged.
- b. Notice: Protect work from damage during freezing weather. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work, and notify Neighborhood Development.

17.3 Asbestos: The Contractor shall notify Neighborhood Development if the Work involves disturbing or removing surfaces that may have been coated or covered with asbestos. Neighborhood Development will advise the Contractor how to proceed through an Addendum or Change Order.

17.4 Job Site Protection: Contractors and Subcontractors shall cover all carpets, rugs and furniture in their working area with drop cloths. No combustible materials or other fire hazards shall be left overnight or allowed to accumulate.

17.5 Repairs: Repairs shall be made at no additional cost to the Owner to all surfaces damaged by the Contractor resulting from his work. Where repair of existing work is called for in the Work-Item-List, the feature (floor, wall, ceiling, door, window, or trim, excluding ornamentation) shall be replaced in "Equal to New Condition." Such patching and replacement shall be made to blend with existing work so that the patch or replacement will be inconspicuous after finishing.

#### **ARTICLE 18: LEAD-BASED PAINT**

18.1 New Use Prohibition. The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface is prohibited.

18.2 Prohibitive Methods: The following methods shall not be used to remove paint that is, or may be, lead-based paint:

- a. Open flame burning or torching;
- b. Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control;
- c. Abrasive blasting or sandblasting without HEPA local exhaust control;
- d. Heat guns operating above 1100 degrees Fahrenheit or charring the paint;
- e. Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.02 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces, and
- f. Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations.

18.3 Laws and Ordinances: All lead-based paint activities performed, including waste disposal, shall be in accordance with applicable Federal, State, or local laws, ordinances, codes or regulations

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governing evaluation and hazard reduction. In the event of discrepancies, the most protective requirements prevail.

18.4 Records: Records must be kept of each evaluation, clearance or hazard reduction report for at least three years.

18.5 Means and Methods: The Contractor is fully responsible for the means and methods of executing the scope of work. Therefore, the Contractor and Subcontractor agree to hold the Owner and Neighborhood Development harmless in the event of any fines from federal or local agencies controlling the lead hazard reduction work. The Contractor or Subcontractor agree to immediately satisfy any and all fines or judgments presented by OSHA, EPA, the local or state health department, the state office of lead hazard control and any other governmental agency having jurisdiction over the lead hazard reduction work.

18.6 Worker Training. All workers involved in lead hazard reduction activities must be supervised by a State of IL Lead Supervisor and have received HUD-approved training in lead-safe work practices.

18.7 Occupant Protection During Lead Hazard Reduction: Actions must be taken to protect occupants from lead-based paint hazards if the units will not be vacant during the rehab project. Occupants may not enter the work site during the lead hazard reduction activities. Re-entry is permitted only after such activities are completed and the units have passed a clearance examination. Occupants of the unit do not have to be relocated under the following circumstances:

- a. Rehab work will not disturb lead-based paint or create lead-contaminated dust;
- b. Hazard reduction activities can be completed within one 8 hour daytime period and the work site is contained to prevent safety, health or environmental hazards;
- c. Exterior-only work is being performed where the windows, doors, ventilation intakes and other openings near the work site are sealed during hazard reduction activities and cleaned afterward, allowing for a lead-safe entry to be maintained;
- d. Hazard reduction activities will be completed within 5 calendar days and the work area is sealed, the area within 10 feet of the containment area is cleaned each day, occupants have safe access to sleeping areas, bathroom and kitchen facilities; and occupants are not permitted into the work sites until after clearance has been achieved.

18.8 Temporary Relocation During Lead Hazard Reduction: If occupied units are to undergo more extensive lead hazard reduction activities, the occupants must be temporarily relocated. Most often, furniture and occupant belongings can be covered and sealed with protective plastic sheeting, although storage of major furniture and removal of all small furnishings during the hazardous materials reduction work may sometimes be necessary. The Owners/Occupants are responsible for carefully packing all breakables, removing all clothing from closets, and protecting any personal property. During the hazard reduction work, only workers trained in lead hazard reduction may enter the work site. This means that neither owners nor occupants are permitted to return to the work site during the day or at night. If the Owner/Occupant has special needs to re-enter the site, contact the Construction Specialist. Only when the unit has been cleaned to the federally mandated standards and passed a clearance examination is it safe and permissible for the Owner/Occupant to return to their home. The Construction Specialist will notify the Owner/Occupant with an Authorization for Re-Occupancy. If work is done in stages, interim dust lead clearance must be obtained prior to re-occupancy by the owners or occupants and other non-lead related rehabilitation workers. Final lead dust clearance must be repeated following the rehabilitation work to verify that the residence is free of lead hazards.

18.9 Allowance: If needed, there shall be an allowance for relocation costs of \$300 per week for owner occupants. The Federal Uniform Relocation Act for temporary relocation costs will apply when tenants are required to relocate. Payment will be made once costs/expenses are verified. The total allowance has been made part of this contract and based upon the time designated in the bid for lead hazard removal.

## **ARTICLE 19: CLEANING UP AND CLEARANCE**

19.1 Daily Clean Up. The contractor shall keep the premises clean and orderly during the course of the work and all debris shall be removed on a continuous basis and not be allowed to accumulate.

19.2 Final Cleaning. All exposed interior surfaces shall be cleaned using a HEPA vacuum and wet washed with a detergent solution and clean water rinse to reduce the lead content.

19.3 Clearance: Clearance may not be performed sooner than one hour after completion of the final cleanup. Clearance dust sampling is for settled leaded dust and is a two-phase process. The initial clearance evaluation is a Visual Examination done by the City followed by “environmental sampling” for leaded dust.

- a. The visual examination determines that the work on all interior and exterior surfaces to be treated was completed, that there are no deteriorated paint surfaces, and that no visible settled dust or debris is present in interiors and within 10 feet of exterior walls if exterior work was performed.
- b. Environmental sampling involves dust sampling on the interior work area. The clearance examiner may decide that exact sampling scheme based on the type of treatment(s), visual observation, and professional judgement.
- c. Clearance samples must determine the lead dust levels of the work site prior to re-occupancy.
- d. Clearance must be performed by an individual who is independent from the Contractor hired to do the work. The following dust lead clearance thresholds must be met:  
Floors – 40 mg/ft<sup>2</sup>  
Interior window sills – 250 mg/ft<sup>2</sup>  
Exterior window troughs – 400 mg/ft<sup>2</sup>
- e. Clearance must be performed by an EPA or State certified Risk Assessor, Lead Paint Inspector or a Clearance Technician.
- f. If a component, such as a floor, fails the clearance dust standard, the floor in the room that failed must then be re-cleaned. A clearance dust sample must then be taken. The first clearance cost was made part of the total cost of rehabilitation. Subsequent cleaning and clearance costs shall be the sole responsibility of the Contractor.

19.4 Owner Maintenance. Owners shall be responsible for monitoring potential hazards, repairing damaged surfaces, and maintaining the property to prevent hazards from occurring after occupancy.

## **ARTICLE 20: PAYMENTS**

20.1 Owner’s Waiver: Payments shall be made as provided in the Contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens or from faulty work appearing thereafter, and of all claims by the Contractor,

except any previously made and still unsettled. Partial payment for work performed shall indicate acceptance of that work by the Owner.

20.2 Release of Liens: Before each progress payment is made after the initial payment, each contractor will be required to give Owner and Neighborhood Development good and sufficient evidence that the premises are free from all liens, damages, and anything chargeable to said Contractor as aforesaid, the Owner and Neighborhood Development shall have the right to retain out of the payment then due, or thereafter to become due, an amount sufficient to indemnify the Owner against all such liens, damages and claims until the same shall be effectually satisfied, discharged, and cancelled.

20.3 Withheld: Payments may be withheld on account of:

- a. Defective work not remedied;
- b. Claims filed;
- c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
- d. Damage to the Owner or another Contractor, or
- e. Persistent failure to carry out the work in accordance with the Contract documents.

20.4 Refusal of Owner to Compensate Contractor: If after Neighborhood Development has delivered to Owner the Certificate of Final Inspection and Owner shall be dissatisfied with Contractor's services, Owner shall notify Neighborhood Development in writing and list the alleged deficiencies in Contractor's work. Neighborhood Development, upon receipt of written notification from Owner, shall arrange an Inspection of the Owner's Premises. Present at the Inspection shall be the Owner, Contractor, and Neighborhood Development. If after the last inspection Neighborhood Development determines that the Owner's Premises do not conform to the work standards, Contractor shall be instructed in writing to perform the additional services. If Neighborhood Development determines that all work has been satisfactorily completed, Neighborhood Development shall inform Owner in writing by certified mail that the work has been satisfactorily completed. Owner shall have ten (10) days from receipt of said letter to approve payment to the Contractor. In the event Owner fails to approve payment to the Contractor, Neighborhood Development shall pay Contractor directly. Owner in failing to approve payment to Contractor as provided herein, shall release Neighborhood Development from its payment obligations under this Contract. Quality of work shall be determined by using the National Association of Homebuilders' Residential Construction Performance Guidelines (2000).

## **ARTICLE 21: CHANGES IN THE WORK**

21.1 Change Orders: Changes in the Work-Item-List may be accomplished after execution of the Contract, and without invalidating the Contract, by written Change Order. A Change Order is an agreement prepared by Neighborhood Development, signed by the Owner, the Contractor, and Neighborhood Development that modifies the work. It contains a description of the modification and the amount of the adjustment in the Contract Price. The Contractor may proceed with the change upon receipt of the written Change Order signed by the Owner and Neighborhood Development.

21.2 Emergency Changes: A Contractor may perform work not included in the Contract Documents in order to remedy a condition that poses an immediate threat to persons or property. Work of this nature shall be carried out only to the extent of bringing the condition under control. The Owner and

Neighborhood Development shall be notified immediately afterward. A Change Order will then be negotiated and executed for the work performed, and for work remaining, if any.

21.3 Minor Changes (Field Orders): The Owner or Neighborhood Development may verbally authorize minor changes in the work in order to prevent a delay in the progression of the work. These field orders may not involve a change in the Contract Price or be inconsistent with the intent of the Contract Documents.

21.4 Changes Due to Unknown Conditions: The Contractor is not responsible for Changes in the work that are due to conditions that were not reasonably observable or conditions that have changed. In such cases, the Contractor shall notify the Owner and Neighborhood Development, and a Change Order will be negotiated.

21.5 Cost Certified: Claims by the Contractor for extra cost must be made in writing to the Owner and Neighborhood Development for approval before executing the work involved. (Note: The Neighborhood Development's duly authorized representative is not authorized to approve change orders.) Changes in work limited to 5% overhead and 5% profit. Actual cost breakdowns will be required.

## **ARTICLE 22: DELAYS AND EXTENSION OF TIME**

22.1 Schedule: A work schedule shall accompany each signed contract.

22.2 Unforeseen Causes: Delays caused by strikes, acts of the Owner, by events and conditions not reasonably foreseeable and not the fault of the Contractor, will be reason for an extension of time commensurate with such period of delay.

22.3 Request for delivery date extension: No extension of time on account of delay due to unforeseen causes shall be granted if written application therefor is not filed by the Contractor with the Owner setting forth the reasons which is believed to justify the approval of the extension request. A written request for extension may not be made after the contract completion date. After the Contractor has filed a request for an extension of the completion allowance, Neighborhood Development shall notify the Contractor whether or not such extension shall be approved. If approved, the extended date shall then be considered as in effect the same as if it were the original date for completion.

22.4 Liquidated Damages: In the event the Contractor does not complete the work within the period designated, the Contractor shall be reduced by the sum of Fifty Dollars (\$50.00) a day, as liquidated damages and not as a penalty, for each and every day of delay until the Contract work is completed. Liquidated damages shall be deducted from the total amount of the payment due the Contractor under the Contract, which in essence will reduce the amount of the city rehabilitation loan.

## **ARTICLE 23: DISPUTES**

23.1 Mediation: The Owner and Contractor recognize the authority of Neighborhood Development to interpret the Contract Documents, and in the event of a claim or dispute between the Owner and Contractor involving the work, Neighborhood Development will act as the Mediator. When performing the role of Mediator, Neighborhood Development will offer opinions and resolutions that are consistent with the intent of the Contract Documents and directed toward settling the claim or dispute, without partiality to either the Owner or the Contractor. The Owner and Contractor understand that they are not obliged to accept the mediation as binding. Mediation is offered as an attempt to resolve conflicts at the least possible cost of the Owner and Contractor.

23.2 Claims and Disputes: Claims by either party must be made within 10 days after the claimant first recognizes the condition giving rise to the Claim. Claims must be by written notice via Certified Mail to the other party. Claims and Disputes are not to interfere with the progression of work by the

Contractor or the payments due the Contractor for its performance. Payment may be withheld only for the portion of Work that is under Claim.

23.3 Arbitration: All claims, disputes and other matters in question arising out of, or relating to, this Contract or the breach thereof, and except the claims which have been waived by the making or acceptance of the final payment shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall specifically enforceable under the prevailing arbitration law.

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

The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

All claims, which are related to or dependent upon each other, shall be heard by the same arbitrator(s) even though the parties are not the same, unless a specific contract prohibits such consolidation.

#### **ARTICLE 24: CONTRACTOR'S RIGHT TO TERMINATE CONTRACT**

Should the work be stopped by any public Authority for a period of sixty (60) days or more, through no fault of the Contractor, or should the work be stopped through an act or neglect of the Owner for a period of twenty (20) days, or should the Owner fail to perform any provision of the Contract, then the Contractor has up to ten (10) days for written notice to be sent by certified mail to the Owner. Owner may stop work or terminate the contract and recover from the Owner's escrow, payment for all work executed and any loss sustained and reasonable profit and damages.

#### **ARTICLE 25: OWNER'S RIGHT TO TERMINATE CONTRACT**

In case the Contractor fails to perform or violates any provision of the Contract, then the Owner shall have the right to declare the Contractor in default of this Contract. Owner shall send written notice by certified mail to the Contractor stating the Contractor has violated the Contract. Said notice to the Contractor shall also contain the reason for the Owner's intent to declare the Contractor in default. The Contractor has ten (10) days after the written notice to cure any violation or to agree with the Owner for its correction. If after ten (10) days written notice, the violation has not been cured, the Contractor will be in default and their right to proceed under the Contract terminated.

Neighborhood Development, at its discretion, may compensate from the Owners escrow account, the Contractor for work completed to date when the Owner terminates the Contract.

#### **ARTICLE 26: WARRANTY OF CONSTRUCTION**

26.1 One year Warranty: In addition to any other warranties set out elsewhere in the contract, the Contractor warrants that the work performed under this Contract conforms to the contract requirements and is free of any defect of equipment, material furnished, or workmanship performed by the Contractor or any of his/her Subcontractors or suppliers at any tier. The warranty shall commence on the date of the final payment for a period of one (1) year, unless winter weather conditions prevent the completion of all work. In this instance, a one (1) year warranty will be issued for all completed work on the date of the last payment for said work. A one (1) year warranty will then be issued on the date of the final payment for the remaining work once completed. Under

this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his/her own expense any damage to owner-owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one (1) year from the date of such repair or replacement. The one (1) year warranty does not cover damage caused by the abuse or misuse by the Owner.

26.2 Notice: The Owner or his/her representative shall notify the Contractor in writing via certified mail within a reasonable time after the discovery of any failure, defect, or damage covered. This notification must also be made prior to the one (1) year warranty anniversary date as the Contractor is not responsible for failures, defects, or damage not brought to their attention within the one (1) year warranty period.

26.3 Owner's Rights to Repair: Should the Contractor fail to remedy any failure, defect or damage described above within a reasonable time after receipt of notice thereof, the Owner shall have the right to replace, repair or otherwise remedy such failure, defect or damage. It shall be the Owner's responsibility to secure reimbursement from the Contractor.

26.4 Manufacturer's Warranty: The Contractor will assume responsibility for the delivery of all Subcontractors guarantees and manufacturer's warranties on equipment and materials to the Owner. The Owner will be responsible for seeking any remedy from manufacturer's or Subcontractors for failure, defect, or damage that is past the one (1) year warranty period but covered under a manufacturer's or Subcontractors warranty.

26.5 Owner's Furnished Items: Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his/her Subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Owner, or for the repair or damage which results for any such defect in owner-furnished material or design.

26.6 Latent Defects: The warranty specified herein shall not limit the Owner's rights under this Contract with respect to patent defects, gross mistake, or fraud.

**ARTICLE 27: INSPECTION BY NEIGHBORHOOD DEVELOPMENT**

The Neighborhood Development representative shall have the right to inspect the work at all times and at the completion thereof.

**ARTICLE 28: CONTRACTORS/AGENTS**

28.1 The Contractor shall be responsible to the Owner, for the acts and omissions of the Contractor's agents and Subcontractors.

28.2 Nothing contained in the contract documents shall create any contractual relation between any agent and the Owner.