

0.2015-001

**CITY OF ALBUQUERQUE  
CITY COUNCIL**

2/5/15

**INTEROFFICE MEMORANDUM**

**TO: Richard J. Berry, Mayor**

**FROM: Jon K. Zaman, Director of Council Services**



**SUBJECT: Transmittal of Legislation**

Transmitted herewith is Bill No. F/S(2) O-14-34 Amending The Workforce Housing Opportunity Act To Revise The "Priorities And Uses Of Funds" To Be More Accommodating To The Fluctuations In Changing Development And Housing Conditions; And Address Requirements Of The State Of New Mexico Affordable Housing Act (Benton), which was passed at the Council meeting of February 2, 2015 by a vote of 8 FOR AND 1 AGAINST.

**Against: Harris**

In accordance with the provisions of the City Charter, your action is respectfully requested.

JKZ:mh  
Attachment

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1 (D) On any given night in Albuquerque, at least 1,200 people are sleeping  
2 outside or in shelters, including families with children, veterans and people with  
3 disabilities and their path to independent living depends upon permanent,  
4 affordable housing; and

5 (E) Working families having safe, decent and affordably priced housing in  
6 stable neighborhoods is advantageous for personal success in school and work  
7 and is therefore a prerequisite for the economic success of our community; and

8 (F) The Workforce Housing Trust Fund created by the Workforce Housing  
9 Opportunity Act has created almost 800 units of affordable housing over the  
10 period of 2007 to present; generated over 4 times the City contribution in private  
11 investments and supported near 1,000 construction jobs; and

12 (G) In order to maintain production of workforce housing to meet the needs  
13 of working families an adequate and stable source of funding is required.”

14 SECTION 4. That Section 14-9-4 ROA 1994 is amended to read as follows:

15 “(A) Beginning with the 2017 General Obligation Bond Program, the Mayor is  
16 authorized and directed to set aside up to 8% of the biannual General Obligation  
17 Bond Capital Improvement Program, up to a maximum of \$10,000,000 per two-  
18 year cycle, to be directed to the Trust Fund for the purpose of providing  
19 workforce housing. This set aside shall be presented as a separate bond question  
20 which solely addresses permanently affordable housing. If this question is turned  
21 down by the voters no CIP funds from that election shall be spent on workforce  
22 housing. All interest earnings of funds in the Trust Fund shall be re-appropriated  
23 to the Trust Fund. No funds in the Trust Fund can be appropriated or used for any  
24 other purpose than as described in the Workforce Housing Opportunity Act.

25 (B) The Fund income and interest earnings shall be appropriated for the  
26 purposes set forth in this article after recommendation by the Mayor and approval  
27 of the Council.

28 (C) *Programming and Selection.* The projects funded by the Trust Fund shall  
29 be selected and programmed as provided below:

30 (1) *The Affordable Housing Committee.* The Affordable Housing  
31 Committee shall serve as the advisory committee to develop the Workforce  
32 Housing Plan and Needs Assessment and shall conduct an annual review of Plan  
33 progress.

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1           **(2) *Workforce Housing Plan and Needs Assessment.*** The Committee, with  
2 the staff support of the Department of Family and Community Services (the  
3 Department) or its successor and technical support from representatives of the  
4 Office of Economic Development and the Planning Department, shall develop a  
5 Five Year Workforce Housing Plan (the Plan), which shall be updated every five  
6 years. The Plan shall be based on a thorough needs assessment conducted by  
7 the Department showing the housing conditions of families at and below 80% of  
8 median income broken out by community planning areas, income classification,  
9 special needs, seniors, homeless and addressing the displacement of low income  
10 families. The Plan shall identify the change in the City of Albuquerque of the  
11 number of market rate, affordable and non-affordable housing units, by income  
12 category and tenure, over the previous five years. The Plan shall include all  
13 resources available to address affordable housing needs including, but not  
14 limited to, CDBG, HOME, other grants, the City General Fund, Enterprise Funds,  
15 other City Housing Funds, State of New Mexico, and Low Income Housing Tax  
16 Credits, and New Market Tax Credits, five year goals and objectives and one year  
17 objectives, recommended strategies for implementation and standards for  
18 monitoring and evaluation of completed projects. The Plan shall include a matrix  
19 showing the annual and five year housing production goals and objectives and  
20 organizations committed to its production. The Plan shall address expansion of  
21 the capacity of the non-profit housing development organizations and identify  
22 resources necessary to carry out needed expansion. The Plan shall identify,  
23 based on housing market data standards, city neighborhoods as "stable",  
24 "disinvesting", or "gentrifying" and shall make it clear that different housing and  
25 affordable housing strategies are being pursued within the different categories of  
26 neighborhoods. The Committee shall hold at least three public hearings on the  
27 draft plan prior to making recommendations to the Mayor and the Council. The  
28 Plan shall serve as the housing component of the Consolidated Plan after review  
29 and comment by the Albuquerque Citizen Team. The Plan shall be conveyed by  
30 the Mayor to the Council by a resolution within 12 months of the enactment of this  
31 article and shall be adopted by the Council with or without amendments. The Plan  
32 shall be reviewed and progress evaluated annually by the Committee and a report  
33 sent to the Council.

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1           **(3) *Priorities and Uses of Funds.*** When feasible and practical available  
2 funds in any biannual program may be used for land acquisition for workforce  
3 housing projects and subdivisions in areas designated as Metropolitan  
4 Redevelopment Areas, Centers and Corridors and land zoned for mixed use  
5 development under the zones called for in the adopted Planned Growth Strategy.  
6 Funds in any biannual program may be used for zero to low interest or, in certain  
7 cases, loans that may be forgivable that meet the requirements of the Workforce  
8 Housing Opportunity Act and fall within the geographic areas described above.  
9 Funds may be used for scattered site, single-family housing purchase, rehab,  
10 lease-to-own and resale of existing housing stock. The priorities for use of all  
11 funds shall be determined by reference to the program elements as shown in § 14-  
12 9-5, but in all cases the following requirements shall be met.

13           **(a)** Resources shall be allocated according to need in any biannual  
14 program with the goal that 50% of all resources benefiting families at or below  
15 50% of AMI and 30% of all resources benefiting families at or below 30% AMI.  
16 Loans that may be forgivable may be considered for use only in projects  
17 benefiting families whose income is at or below 30% AMI.

18           **(b)** Not more than 20% of resources shall be used for project related  
19 soft development costs as defined by the Plan.

20           **(c)** Workforce housing projects shall be accomplished by city  
21 approved builders and developers. Criteria for approval of projects shall be  
22 promulgated by the Family and Community Services Department.

23           **(d)** Projects receiving funding or land under the Workforce Housing  
24 Opportunity Act shall leverage non-city funds by at least a 4:1 ratio (non-city to  
25 city resources). The Plan may make exception to this ratio for certain hard to  
26 develop projects to be defined. Federal and state funds flowing through the city  
27 are not considered city funds for purposes of this requirement.

28           **(4) *Project Priorities.*** The Committee shall develop a policy-based ranking  
29 system so that proposed projects can be prioritized. The system of ranking shall  
30 be included in the Workforce Housing Plan. Priority shall be given to financially  
31 sound proposals that rank the highest according to the priorities based on  
32 guidelines found in the Program Elements. Priority with respect to newly  
33 constructed projects shall also be given to proposals that demonstrate a  
34 commitment to energy efficiency and utility conservation. The Committee can

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1 establish minimum standards below which a project will not be approved. The  
2 Department shall issue a standing request for proposals so that developers have  
3 adequate time to secure land and formulate proposals for city consideration.”

4 SECTION 5. That Section 14-9-5 (A) ROA 1994 is hereby amended as follows:

5 “A. *Neighborhood conditions.* Workforce housing should be designed,  
6 located and integrated into the community so as to serve to stabilize that  
7 neighborhood, with the long term goal of creating "stable" mixed-income  
8 neighborhoods, not "disinvesting" or "gentrifying" ones. Thus, in a disinvesting  
9 neighborhood, the goal is to increase housing and other investment, enhance the  
10 neighborhood image, preserve a mixed-income environment by upgrading the  
11 existing housing inventory, encourage higher income families and serve as a  
12 catalyst for additional investment. In a neighborhood with increasing housing  
13 prices the goal is to preserve a mixed income environment and avoid the  
14 dislocation of low income residents by creating a reserve of permanent workforce  
15 housing protected from price increases and danger of converting to market rate  
16 housing, allowing renters to own their housing, and otherwise financially  
17 insulating low income residents from financial burdens of gentrification while  
18 accruing its benefits.”

19 SECTION 6. Subsections 14-9-8 through 14-9-15 (Part 2 of Chapter 14, Article  
20 9) addressing requirements of the State of New Mexico Affordable Housing Act  
21 are hereby enacted as follows:

22 “§ 14-9-8 SHORT TITLE.

23 Sections 14-9-8 through 14-9-15 of this article may be cited as the  
24 Affordable Housing Opportunity Ordinance (“Ordinance”).

25 § 14-9-9 FINDINGS.

26 (A) The City of Albuquerque, New Mexico (the “City”) is a municipal  
27 corporation duly organized and existing under the laws of the State of New  
28 Mexico (the “State”); and

29 (B) Under the exception to the “anti-donation” clause as set forth in Article  
30 IX, Section 14 of the New Mexico Constitution, the City of Albuquerque is not  
31 prohibited from donating land it owns for the construction of affordable housing  
32 on the property; donating an existing building owned by the City of Albuquerque  
33 for conversion and/or renovation into affordable housing; or providing or paying  
34 the cost of infrastructure necessary to afford affordable housing projects; and

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1 (C) The Affordable Housing Act, NMSA 1978 6-27-1 et seq. (the “Act”)  
2 implements the provisions of Subsections E and F of Section 14 of Article 9 of the  
3 New Mexico Constitution; and

4 (D) The New Mexico Mortgage Finance Authority (“MFA”); has reviewed and  
5 approved the form and terms of this Ordinance prior to the final adoption hereof.

6 § 14-9-10 PURPOSE.

7 (A) To establish procedures to ensure that City housing assistance to  
8 grantees are Qualifying Grantees who meet the requirements of the Act, this  
9 Ordinance, and rules promulgated pursuant to such legislation both at the time of  
10 the award and throughout the term of any grant or loan under the Program; and

11 (B) To require long-term affordability of the City’s Affordable Housing  
12 Projects so that a project cannot be sold shortly after completion and taken out of  
13 the affordable housing market to ensure a quick profit for the Qualifying Grantee;  
14 and

15 (C) To require the City to enter into a contract with the Qualifying Grantee  
16 consistent with the Act, which contract shall include remedies and default  
17 provisions in the event of the unsatisfactory performance by the Qualifying  
18 Grantee and which contract shall be subject to the review of the MFA in its  
19 discretion; and

20 (D) To require that a grant or loan for the Project must impose a  
21 contractual obligation on the Qualifying Grantee that the affordable housing units  
22 in the Project be occupied by Persons of Low or Moderate income; and

23 (E) To provide for adequate security against the loss of public funds or  
24 property in the event that the Qualifying Grantee abandons or otherwise fails to  
25 complete the Project; and

26 (F) To require review and approval of the housing plan project budget by  
27 the City before any expenditure of grant funds or transfer of granted property; and

28 (G) To require that a condition of grant or loan approval be proof of  
29 compliance with all applicable State and local laws, rules, and Ordinances; and

30 (H) To provide definitions for “low-income and moderate-income” and  
31 setting out requirements for the verification of income levels; and

32 (I) To provide the City with a valid Affordable Housing Program; and

1 (J) To require that the City have an existing valid affordable housing plan  
2 or housing elements contained in a valid plan prior to authorizing a housing  
3 assistance grant; and

4 (K) To require the Department to promulgate and follow Administrative  
5 Requirements and Rules and Regulations to implement this Ordinance, including  
6 but not limited to further describing application requirements, procedures, and  
7 evaluations.

8 § 14-9-11 GENERAL DEFINITIONS.

9 (A) "Act" shall mean the Affordable Housing Act, NMSA 1978, Section 6-27-  
10 1 et. seq.

11 (B) "Administrative Requirements" means the City of Albuquerque Family  
12 and Community Services Department's Administrative Requirements for Social  
13 Services Contracts, promulgated and approved pursuant to the City of  
14 Albuquerque Purchasing Ordinance, as published now and as amended in the  
15 future.

16 (C) "Affordable" shall mean consistent with minimum rent and/or income  
17 limitations set forth in the MFA Act, and in guidelines established by the MFA.

18 (D) "Affordable Housing" means residential housing primarily for Persons  
19 or Households of Low or Moderate Income and whose monthly housing costs do  
20 not exceed 30% of the household's gross monthly income.

21 (E) "Affordable Housing Funds" shall mean any or all funds awarded or to  
22 be awarded, loaned or otherwise distributed under this Ordinance for payment of  
23 the costs of infrastructure for Affordable Housing under an Affordable Housing  
24 Plan.

25 (F) "Affordable Housing Plan" or "Plan" shall mean a plan pursuant to the  
26 Affordable Housing Program that contemplates one or more Affordable Housing  
27 Projects, which may be developed in one or more phases.

28 (G) "Affordable Housing Program" or "Program" shall mean the program  
29 the City establishes pursuant to this Ordinance or the Plan.

30 (H) "Affordable Housing Project" or "Project" shall mean any work or  
31 undertaking, whether new construction, acquisition of existing residential  
32 housing, remodeling, improvement, rehabilitation or conversion, which may be  
33 undertaken in one or more phases, as part of an Affordable Housing Plan, as



1 approved by the City and/or the MFA for the primary purposes as allowed by the  
2 Act.

3 (I) "Affordability Period" shall mean:

4 (i) For homebuyer and rental projects, the length of the affordability  
5 period depends on the amount of the investment in the property and the nature of  
6 the activity funded. The table below provides the affordability periods:

<u>Activity</u>	<u>Investment per Unit</u>	<u>Minimum Length of the Affordability Period</u>
Homeownership and rental housing acquisition and/or rehabilitation	Less Than \$15,000	5 Years
	\$15,000 - \$40,000	10 Years
	More than \$40,000	15 Years
	More than \$100,000	20 years
New construction of rental housing	Any \$	20 Years
Refinancing of rental housing	Any \$	15 Years
	More than \$100,000	20 years

7 (ii) For workforce housing funds all of the services required in the  
8 development agreement shall be continued for (90) years from the completion of  
9 the Project ("Affordable Period") with a renewable ninety (90) years after the first  
10 Affordability Period.

11 (J) "Applicant" shall mean, an individual; a governmental housing agency;  
12 a for-profit organization, including a corporation, limited liability company,  
13 partnership, joint venture, syndicate or association or a nonprofit organization  
14 meeting the appropriate criteria of the City.

15 (K) "Building" shall mean a structure capable of being renovated or  
16 converted into Affordable Housing or a structure that is to be demolished and is  
17 located on land donated for use in connection with an Affordable Housing Project.

18 (L) "City" shall mean the City of Albuquerque, New Mexico, a unit of local  
19 government under the Constitution and laws of the State of New Mexico.

20 (M) "Congregate Housing Facility" shall mean Residential Housing  
21 designed for occupancy by more than five Persons of Low or Moderate Income  
22 living independently of each other. The facility may contain group dining,  
23 recreational, health care or other communal living facilities. Each unit in a  
24 Congregate Housing Facility shall contain at least its own living, sleeping, and  
25 bathing facilities.

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1 (N) "Department" shall mean the Department of Family and Community  
2 Services, or its successor department, as determined by the Mayor.

3 (O) "Federal government" shall mean the United States of America and any  
4 agency or instrumentality corporate or otherwise of the United States of America.

5 (P) "Household" shall mean one or more persons occupying a housing  
6 unit.

7 (Q) "Housing Assistance Grant" means the donation, provision, or  
8 payment by The City of:

9 (i) Land upon which the Affordable Housing will be constructed; or

10 (ii) An existing building that will be renovated, converted, or  
11 demolished and reconstructed as Affordable Housing; or

12 (iii) The costs of acquisition, development, construction, financing,  
13 and operating or owning affordable housing; or

14 (iv) The costs of financing of infrastructure necessary to support  
15 Affordable Housing.

16 (R) "HUD" shall mean the United States Department of Housing and Urban  
17 Development.

18 (S) "Infrastructure" includes but is not limited to improvements such as  
19 sanitary sewage or water systems, drainage and flood control systems, roads and  
20 parking, trails and parks, landscaping, electrical and natural gas facilities, cable  
21 and telecommunications facilities, lighting systems, and traffic control systems.  
22 Infrastructure shall also include the costs and activities reasonably necessary to  
23 construct such improvements, including acquisition costs, demolition or  
24 rehabilitation of existing infrastructure, planning, engineering design,  
25 construction management, and inspection costs.

26 (T) "MFA" shall mean the New Mexico Mortgage Finance Authority.

27 (U) "MFA Rules" shall mean the New Mexico Mortgage Finance Authority  
28 Affordable Housing Act Rules promulgated pursuant to 6-27-8 NMSA 1978 of the  
29 Act.

30 (V) "MFA Act" shall mean the Mortgage Finance Authority Act, enacted as  
31 Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (NMSA  
32 1978, Sections 58-18-1 through 58-18-27).

33 (W) "Persons of Low to Moderate Income" shall mean persons and families  
34 within the City of Albuquerque who earn up to 50% of the Area Median Income.

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1 For purposes of this definition, the word “households” shall mean a group of  
2 persons consisting of, but not limited to, the head of household; his or her  
3 spouse, if any, and children, if any, who are allowable as personal exemptions for  
4 Federal Income Tax purposes.

5 (X) “Policies and Procedures” shall mean Policies and Procedures of the  
6 MFA, including but not limited to, Mortgage Loan Purchasing, Selling, Servicing  
7 and Reservation procedures, which the MFA may update and revise from time to  
8 time as the MFA deems appropriate.

9 (Y) “Qualifying Grantee” means:

10 (i) An individual who is qualified to receive assistance pursuant to the  
11 Act and is processed and approved by the City in accordance with the  
12 Administrative Requirements and the Rules and Regulations; and

13 (ii) A governmental housing agency, regional housing authority,  
14 corporation, limited liability company, partnership, joint venture, syndicate,  
15 association or nonprofit organization that is (a) organized under the State or local  
16 laws and can provide proof of such organization; and (b) if a nonprofit, has no  
17 part of its earnings inuring to the benefit of any member, founder, contributor, or  
18 individual; and (c) is approved by the City in accordance with the Administrative  
19 Requirements and the Rules and Regulations.

20 (Z) “Recertification” shall mean the recertification of Applicants and/or  
21 Qualifying Grantees participating in any Affordable Housing Programs or in any  
22 programs under the Act as determined necessary from time to time by the City  
23 and/or the MFA.

24 (AA) “Rehabilitation” shall mean the substantial renovation or  
25 reconstruction of an existing single-family residence or a “Multi-Family Housing  
26 Project”, which complies with requirements established by the City.  
27 Rehabilitation shall not include routine or ordinary repairs, improvements or  
28 maintenance, such as interior decorating, remodeling or exterior painting, except  
29 in conjunction with other substantial renovation or reconstruction.

30 (BB) “Residential Housing” shall mean any building, structure or portion  
31 thereof that is primarily occupied, or designed or intended primarily for  
32 occupancy , as a residence by one or more households and any real property that  
33 is offered for sale or lease for the construction or location thereon of such a  
34 building, structure or portion thereof. “Residential Housing” includes congregate

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1 housing, manufactured homes and housing intended to provide or providing  
2 transitional or temporary housing for homeless persons.

3 (CC) “Residential Use” shall mean that the structure or the portion of the  
4 structure to benefit from the Affordable Housing Funds or Housing Assistance  
5 Grant, is designed primarily for use as the principle residence of the occupant or  
6 occupants and shall exclude vacation or recreational homes.

7 (DD) “RFP” shall mean any request for proposal or request for qualifications  
8 made by the City.

9 (EE) “State” shall mean the State of New Mexico.

10 (FF) “Rules and Regulations” shall mean the City of Albuquerque Family and  
11 Community Services Department Social Services Contracts Procurement Rules  
12 and Regulations promulgated and approved pursuant to the City of Albuquerque  
13 Purchasing Ordinance, Chapter 5, Article 5 ROA 1994, as published now and as  
14 amended in the future.

15 § 14-9-12 AUTHORIZATION OF CITY CONTRIBUTIONS.

16 (A) The City may make Housing Assistance Grants, improve Infrastructure,  
17 or provide Affordable Housing Funds, by City Council resolution, for Affordable  
18 Housing Projects.

19 (B) This Ordinance is created and shall be administered in accordance with  
20 the Act and in accordance with the MFA Rules. All Affordable Housing  
21 contributions authorized by this Ordinance will be in compliance with the Act and  
22 Plan and any recipients of all such contributions will comply with the Ordinance,  
23 Administrative Requirements, and Rules and Regulations.

24 § 14-9-13 GENERAL REQUIREMENTS.

25 The following requirements shall apply to all Housing Assistance Grants,  
26 and/or Affordable Housing Funds awarded, loaned or otherwise distributed by the  
27 City to a Qualifying Grantee under the Ordinance.

28 (A) Procurement. The City, in its discretion shall procure services  
29 according to its Rules and Regulations or shall otherwise identify a Qualifying  
30 Grantee for the use of any Affordable Housing Funds or Housing Assistance  
31 Grants to be awarded, loaned, donated or otherwise distributed under the Act.

32 (B) Applicant Eligibility. The following Applicants are eligible under the Act  
33 to apply for Affordable Housing Fund or a Housing Assistance Grant to provide

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1 housing or related services to Persons of Low or Moderate Income in the  
2 community.

3 (i) All individuals who are qualified to receive assistance pursuant  
4 to this Ordinance, the Administrative Requirements and the Rules and  
5 Regulations;

6 (ii) All for-profit organizations, including any corporation, limited  
7 liability company, partnership, joint venture, syndicate, or association provided  
8 they

9 (a) Have a functioning accounting system that is operated in  
10 accordance with generally accepted accounting principles or has designated  
11 entity that will maintain such an accounting system consistent with generally  
12 accepted accounting principles; and

13 (b) Have among its purposes significant activities related to  
14 providing housing or services to Persons or Households of Low or Moderate  
15 Income; and

16 (c) Have no significant outstanding or unresolved monitoring  
17 finding from the City, or its most recent independent financial audit, or if it has  
18 any such findings, it has a certified letter from the City, the MFA, or auditor stating  
19 that the findings are in the process of being resolved.

20 (iii) All nonprofit organizations meeting the following requirements:

21 (a) A primary mission of the nonprofit organization must be to  
22 provide housing or housing-related services to Persons of Low or Moderate  
23 Income; and

24 (b) Have a functioning accounting system that is operated in  
25 accordance with generally accepted accounting principles or has designated  
26 entity that will maintain such an accounting system consistent with generally  
27 accepted accounting principles; and

28 (c) Have among its purposes significant activities related to  
29 providing housing or services to Persons or Households of Low or Moderate  
30 Income; and

31 (d) Have no significant outstanding or unresolved monitoring  
32 finding from the City, or its most recent independent financial audit, or if it has  
33 any such findings, it has a certified letter from the City, the MFA, or auditor stating  
34 that the findings are in the process of being resolved.

1 (C) Application. All applicants wishing to apply for a Housing Assistance  
2 Grant or an award of Affordable Housing Funds shall follow the City's application  
3 process, as more specifically set forth in Chapter 6 of the Rules and Regulations.

4 (D) Additional Requirements. The selected Qualifying Grantee shall enter  
5 into one or more contracts with the City, which contract(s) shall be consistent  
6 with and further the purposes of this Ordinance. At a minimum, such contracts  
7 shall comply with the terms set forth in Chapter 8 of the Rules and Regulations.

8 (E) The Affordable Housing Plan is the consolidated planning and needs  
9 assessment as it occurs every five years that serves as the comprehensive  
10 housing affordability strategy and community development plan in compliance  
11 with HUD regulations at 24 CFR Part 91, the Act, MFA Rules, and this Ordinance.  
12 For the purposes of this Ordinance and Department procedures, the Workforce  
13 Housing Plan and the Affordable Housing Plan are synonymous. All Housing  
14 Assistance Grants or awards of Affordable Housing Funds shall be in compliance  
15 with the Plan.

16 (F) The Program shall transfer or disburse funds to a Qualifying Grantee  
17 only after a budget is submitted to and approved by City Council.

18 (G) Affordable Housing Requirements. All Affordable Housing Funds or  
19 Housing Assistance Grants awarded under the Act shall be used by Qualifying  
20 Grantees for the benefit of Persons of Low or Moderate Income subject to the  
21 provisions of this Ordinance, and with particular regard to their housing related  
22 needs.

23 (i) Single Family Property. Qualifying Grantees shall agree that they  
24 shall maintain any single-family property which has been acquired, rehabilitated,  
25 converted, leased, repaired, constructed, or which property has otherwise  
26 benefited from Affordable Housing Fund, including but not limited to any loans  
27 which have been repaid with Affordable Housing Funds and which loans  
28 previously were secured by such properties, as Affordable Housing for so long as  
29 any or all of the Affordable Housing Funds which have been awarded, loaned, or  
30 otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the  
31 Affordability Period, whichever is longer.

32 (ii) Multi-Family Property.

33 (a) Single Apartment within a Multi-Family Property. Qualifying  
34 Grantees shall agree that, if any single apartments are to be rehabilitated,

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1 converted, leased, repaired, constructed, or otherwise are to benefit from  
2 Affordable Housing Funds; those apartments shall be leased to Persons of Low or  
3 Moderate Income at the time of any such award. Qualifying Grantees, who are the  
4 landlords and/or owners of such properties, shall further agree to contribute at  
5 least sixty percent (60%) of the cost of rehabilitation, conversion, lease, repair,  
6 and/or construction. Qualifying Grantees also shall agree that the Persons of Low  
7 or Moderate Income, who are tenants of those apartments, shall be allowed to  
8 remain tenants for so long as there are no incurred defaults by those tenants  
9 under their respective leases and provided that there is no just cause for the  
10 landlord to terminate any Lease agreement with those tenants.

11 (b) Multiple Apartments. Qualifying Grantees shall agree that, if  
12 multiple apartments or an entire multi-family property are to be acquired,  
13 rehabilitated, converted, leased, repaired, constructed, or otherwise are to benefit  
14 from Affordable Housing Funds, including but not limited to any loans which have  
15 been repaid with Affordable Housing Funds and which loans previously were  
16 secured by such properties, they shall maintain at least 50% of all resources  
17 benefiting families at or below 50% of AMI and at least 30% of all resources  
18 benefiting families at or below 30% AMI for so long as any or all of the Affordable  
19 Housing funds which have been awarded, loaned, or otherwise conveyed for the  
20 Qualifying Grantee are unpaid and outstanding or for the Affordability Period,  
21 whichever is longer.

22 (iii) Nonresidential Property. Qualifying Grantees shall agree that they  
23 shall maintain any non-residential property which has been acquired,  
24 rehabilitated, converted, leased, repaired, constructed, or which property has  
25 otherwise benefited from Affordable Housing Funds, including but not limited to  
26 any loans which have been repaid with Affordable Housing Funds and which  
27 loans previously were secured by such properties, as the facility which provides  
28 housing related-services to Persons of Low to Moderate Income for so long as  
29 any or all of the Affordable Housing Funds which have been awarded, loaned, or  
30 otherwise conveyed to the Qualifying Grantee are unpaid and outstanding of the  
31 Affordability Period, whichever is longer.

32 (iv) Housing Assistance Grant Affordability Requirements. Qualifying  
33 Grantees shall agree that they shall maintain any land or building received as a  
34 Housing Assistance Grant either as a single-family or multi-family Affordable

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1 Housing or as a facility which provides housing related-services to Persons of  
2 Low or Moderate Income for the duration of the Affordability Period. In  
3 calculating the Affordability Period for Housing Assistance Grants of either land  
4 or buildings, the fair market value of the land or buildings or the costs of  
5 infrastructure at the time of the donation by the state or the City shall apply.

6 (v) Affordability Period. The City, in its discretion, may increase the  
7 Affordability Period in any contract, note, mortgage, loan agreement, land use  
8 restriction agreement, restrictive covenant agreements, and/or any other  
9 agreement which the City may enter into with any Qualifying Grantee or  
10 beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant.

11 (H) Consent to Jurisdiction. Each Qualifying Grantee shall consent to the  
12 jurisdiction of the courts of the State of New Mexico over any proceeding to  
13 enforce compliance with the terms of the Act, the Rules and this Ordinance and  
14 any agreement between the Qualifying Grantee and the City.

15 (I) Recertification Procedures.

16 (i) The Qualifying Grantee must meet the requirements of the Act, the  
17 Rules and this Ordinance both at the time of any award and throughout the term  
18 of any grant and contract related thereto.

19 (ii) The City may establish procedures for recertifying Qualifying  
20 Grantees from time to time.

21 (iii) Qualifying Grantees that fail to satisfy the requirements for  
22 Recertification shall cease to be eligible and shall be denied further participation  
23 in Affordable Housing programs until the requirements of the City and the MFA  
24 are satisfied.

25 (iv) Compliance with the Law. Qualifying Grantee shall provide the City  
26 with any certifications or other proof that it may require in order for the City and  
27 the MFA to confirm that the Qualifying Grantee and the Qualifying Grantee's  
28 proposed Project are in compliance with all applicable federal, State and local  
29 laws, rules and Ordinances.

30 (J) Extension of Affordable Housing Programs. The City shall have the  
31 power to create variations or extensions of Affordable Housing Programs, or  
32 additional Programs that comply with the Act and the Rules.

33 § 14-9-14 REQUIREMENTS AND RULES.



1 The Department has promulgated Administrative Requirements and Rules and  
2 Regulations further describing how the Plan and Program will be administered,  
3 and how procurements will be conducted. Copies of the current Administrative  
4 Requirements and Rules and Regulations are adopted with this Ordinance, and  
5 may be amended from time to time by the Department. Amendments to the  
6 Administrative Requirements, Rules and Regulations, or this Ordinance shall be  
7 submitted to MFA for review prior to adoption.

8 § 14-9-15 DISCRIMINATION PROHIBITED.

9 The development, construction, occupancy and operation of an Affordable  
10 Housing Program or an Affordable Housing Project financed or assisted under the  
11 Act shall be undertaken in a manner consistent with principles of non-  
12 discrimination and equal opportunity, and the City shall require compliance by all  
13 Qualifying Grantees with all applicable federal and State laws and regulations  
14 relating to affirmative action, non –discrimination and equal opportunity.”

15 SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
16 clause, word or phrase of this ordinance is for any reason held to be invalid or  
17 unenforceable by any court of competent jurisdiction, such decision shall not  
18 affect the validity of the remaining provisions of this ordinance. The Council  
19 hereby declares that it would have passed this ordinance and each section,  
20 paragraph, sentence, clause, word or phrase thereof irrespective of any provision  
21 being declared unconstitutional or otherwise invalid.


22 SECTION 8. COMPILATION. This ordinance shall be incorporated in and made  
23 part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

24 SECTION 9. EFFECTIVE DATE. This ordinance shall take effect five days after  
25 publication by title and general summary.  
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1 PASSED AND ADOPTED THIS 2<sup>nd</sup> DAY OF February 2015  
2 BY A VOTE OF: 8 FOR 1 AGAINST.

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4 Against: Harris

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8 Rey Garduño, President  
9 City Council

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13 APPROVED THIS 6<sup>th</sup> DAY OF February, 2015

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17 Bill No. F/S(2) O-14-34

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21 Richard J. Berry, Mayor  
22 City of Albuquerque

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26 ATTEST:

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28 \_\_\_\_\_  
29 Trina M. Gurule, Acting City Clerk

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# **City of Albuquerque**

## **Social Services Contracts Procurement Rules and Regulations**

**Promulgated by**

**The Department of Family and Community Services**

# Social Services Procurement Rules and Regulations Index

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**Chapter I  
Authority**

**1.1 Authority**

- 1.1.1 The City of Albuquerque's Public Purchases Ordinance (the "Ordinance") exempts agreements for Social Services which are procured in accordance with written regulations promulgated by the Department of Family and Community Services, or a successor agency, and approved by the City Purchasing Officer. §5-5-20(A)(2)**
- 1.1.2 The City Purchasing Officer, by approval of these Regulations, delegates authority to all City departments to procure Social Services in accordance with these Regulations. The City Purchasing Officer shall be the final authority if questions arise regarding the applicability of these Regulations to a specific purchase, procurement or contract.**

**1.2 Applicability**

- 1.2.1 These Regulations are written to establish policies, procedures and guidelines related to the procurement, management and control of Social Services contracts as defined in the Ordinance.**
- 1.2.2 These Regulations are applicable to the purchase of Social Services by any City department.**
- 1.2.3 These Regulations shall promote the following purposes and policies of the Department and the City:**
  - (a) To simplify, clarify and accurately describe the procurement process for Social Services contracts.**
  - (b) To make as consistent as possible the procurement process for Social Services within the various divisions of the Department of Family and Community Services and within the City.**
  - (c) To ensure the fair and equitable treatment of all persons who deal with and provide Social Services.**
  - (d) To improve the quality, delivery and effectiveness of Social Services for residents of Albuquerque.**
- 1.2.4 These Regulations shall apply to all procurements of Social Services begun (i.e. for which a requisition, RFP or contract has been issued) after the effective date hereof. These Regulations supersede all prior Regulations as of the effective date hereof.**
- 1.2.5 These Regulations shall control with respect to all procurements described herein, except that where these Regulations are silent on matters covered by the City of Albuquerque Purchasing Rules and Regulations, the latter shall apply.**
- 1.2.6 These Regulations are not applicable to the procurement of goods, services or construction which do not meet the definition of Social Services below; and are not applicable to City housing rehabilitation projects administered by Albuquerque Housing Services, a division of the Department, which projects follow procedures established by §3-4-1 of the City of Albuquerque Code of Resolutions, as currently or hereafter amended.**

## **Chapter II Definitions**

**Administrative Requirements** means the current version of those requirements developed by the Department of Family and Community Services entitled in full **Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Programs ("Administrative Requirements")**.

**Agreement** means the contract document between the recipients of City Funds and the City which specifies the services to be provided and the terms and conditions which must be adhered to in order to receive funds from the City of Albuquerque.

**City Funds** means those funds appropriated through the City Council of Albuquerque to the Department of Family and Community Services

**City General Funds** means City Funds which are City general revenues not grant funds from other public organizations or outside entities.

**Contractor** means a non-profit organization or public agency that has entered into an Agreement with the City, through the Department of Family and Community Services, to provide Social Services.

**Department** means the Department of Family and Community Services, City of Albuquerque or its successor(s).

**Director** means the Director of the Department of Family and Community Services.

**Offeror** means a non-profit organization or public agency, which has submitted a proposal or offer in response to an RFP or RFQ.

**Plan** means a written document which generally describes community needs, specific actions to be undertaken to address the stated needs and the allocation of funds authorized within the Plan to fund the stated actions.

**RFP** means Request for Proposals.

**RFQ** means Request for Qualifications.

**Social Services** means the provision, primarily to low and moderate income residents of the City, of human services such as health care, substance abuse treatment and prevention, day care, emergency shelters, youth services, senior services, employment services and job training; the provision of housing intended primarily for low and moderate income residents of the City; and economic development activities designed to benefit primarily low and moderate income areas of the City or to increase employment among low and moderate income residents.

**Social Services contract** means a contract with a private, non-profit or public governmental agency for Social Services in return for the payment by the City of costs associated with the provision of Social Services, including, but not limited to, the costs for labor, supplies, operating expenses, equipment and the acquisition or improvement of real property as set out in the terms of the contract.

**Terms not defined herein** shall have the meaning prescribed to them under the Affordable Housing Opportunity Ordinance.

## **Chapter III General**

### **3.1 Funding**

In accordance with §5-5-20 R.O.A. 1994, the Department has drafted these Regulations which relate to the procurement of Social Services. Funds for Social Services contracts are generated from a variety of sources including, but not limited to, City General Funds and grant funds, i.e., federal, state and county appropriations, private foundations, and contributions.

### **3.2 Contract Requirements**

As applicable, recipients of Social Services contracts are required to adhere to these Regulations, the Administrative Requirements, any applicable grant requirements and the terms and conditions of the Agreement between the recipient and the City. In the event the terms and conditions of the Administrative Requirements are not applicable for a given funding source, the specific requirements to which a recipient must adhere will be detailed in the Agreement.

### **3.3 Form RFP and RFQ**

The Department has drafted a form RFP and a form RFQ. These forms have been approved by the City Purchasing Officer and the City Legal Department for use by the Department in the procurement of Social Services. Prior to March 2006, and every five years thereafter, or sooner if a substantive change is made to the form of these documents, they shall be submitted to Purchasing and Legal for review. Only approved forms shall be used for the procurement of Social Services.

### **3.4 Form Agreements**

The Department has drafted various form Agreements for Social Services which have been approved by the City Purchasing Officer and the City Legal Department for use by the Department in contracting for Social Services. Annually, prior to April 1, or more frequently if a substantive change is made to the form of these contracts, they shall be submitted to Purchasing and Legal for review. Only approved contract forms shall be used for the purchase of Social Services unless submitted for Purchasing and Legal review prior to execution. In addition, form contracts, which contain unusual scopes of services or methods of payment shall also be submitted for Legal approval.

### **3.5 Drafting Agreements**

The Department shall be responsible for drafting an appropriate scope of services and method of payment for each RFP or RFQ issued and for each Agreement for Social Services entered into. If an RFP, RFQ or contract involves unusual Social Services or raises major purchasing, legal or policy concerns, the Department shall contact Purchasing or Legal, as necessary, to assist with the preparation of the document.

### **3.6 Right to Refuse to Contract**

The Department reserves the right to refuse to proceed with the development or renewal of a Social Services contract at any time when it is in the best interest or convenience of the City not to do so.

**Chapter IV  
Exemptions from the Request for Proposals Process**

**4.1 Procurement of Social Services by Negotiation**

Purchases of Social Services of \$55,000 or less may be made by negotiation and execution of an Agreement signed by the Director or for another City department by its Director and the City Purchasing Officer, and processed through the Purchasing Division.

**4.2 Procurement of Social Services Pursuant to a Plan Approved by City Council**

**4.2.1** The Department develops a number of Plans in accordance with the requirements of various funding sources. These Plans are developed through a citizen participation process, may involve public hearings and are approved by the City Council. In addition, the review process described below in 4.3.2 has been applied prior to development of these Plans.

**4.2.2** If a Plan specifies that one or more contracts will be entered into pursuant to the Plan, and also specifies the goal, amount and term, and the name of the Contractor, which is a non-profit organization or public agency, an RFP shall not be required for the resulting contracts.

**4.2.3** The contracts entered into pursuant to this section 4.2 shall not be subject to City Council approval as required in §5-5-19 R.O.A. 1994, unless a City Councilor has requested a special report on the contract from the Mayor or has requested approval of said contract by the full Council.

**4.2.4** The renewal of a contract entered into pursuant to this section 4.2 shall be subject to Chapter VII of these regulations.

**4.3 Procurement of Social Services Pursuant to the City General Fund Appropriation Approved by City Council**

**4.3.1** The Department receives an annual allocation of City General Funds from the City Council. These funds, defined in the City budget process as the "Contract Services" line item, includes appropriations for Social Services contracts to be provided by specific non-profit organizations and public agencies. If the appropriating documentation specifies the goal, amount and term, and the name of the Contractor, which is a non-profit organization or public agency, an RFP shall not be required for such contracts; provided, however, that an RFP may be required for such contracts as a result of the assessment process described in this Section.

**4.3.2** As a result of R-03-224, Enactment 99-2003, the City Council and Department staff have reviewed Department goals and City General Fund programs associated with those goals in connection with City General Fund contracts. Funding levels, areas of project priorities, and specific desired outcomes have been adjusted and a schedule of RFPs for selected areas of program strategies has been developed for the period of FY2005 through FY2007. Where appropriate, such as in the case of a sole source contract, a competitive RFP process has not been required.

**4.3.3** The contracts entered into pursuant to this section 4.3 shall not be subject to City Council approval as required in §5-5-19 R.O.A. 1994, unless a City Councilor has requested a special report on the contract from the Mayor or has requested approval of said contract by the full Council.



- 4.3.4** The renewal of a contract entered into pursuant to this section 4.2 shall be subject to Chapter VII of these regulations.
- 4. 4** Procurement of Specialized Social Services through Request for Qualifications (RFQ)
- 4.4.1** The Department has determined that certain Social Services are best procured by prequalification of potential Offerors rather than selection at the time a project or funding is identified. In order to accommodate the need to seize opportunities as they arise, the Department has developed an RFQ process.
- 4.4.2** An RFQ process may be used for the prequalification of Offerors wishing to develop affordable housing in the City. Pre-qualified agencies, which may also include private, for-profit companies, shall be authorized to submit opportunities for development of non-City property to an appropriate City department as they arise or when offers are solicited by the department.
- 4.4.3** The Department may designate other Social Services for which an RFQ process may be used. The Director shall make a written determination that project quality and efficiency will best be served through use of the RFQ process in the procurement of the applicable types of Social Services and indicate the reasons for his determination. The Department shall consult with the City Purchasing Officer as appropriate.
- 4.4.4** The RFQ document shall establish the prequalification requirements which must be met in order for Offerors to submit an offer for development of affordable housing, or provide goods and services in other approved areas of Social Services.
- 4.4.5** In most cases, Offerors may respond to an RFQ at any time during the life of the program. The RFQ, unless otherwise stated in the document or by the notice to Offerors, shall not have a due date, or a closing date for the submittal of offers.
- 4.4.6** With respect to notice of an RFQ, addenda to an RFQ, modification or withdrawal of an RFQ, evaluation of offers received as a result of an RFQ, and protest of an RFQ, the process established below for RFP's shall apply in all substantive respects.
- 4.4.7** From time to time, following evaluation of various offers in response to an RFQ, the Ad Hoc Committee will provide the Director with written notice of Offerors which have been prequalified by the Committee. Written documentation of the reasons for selection shall be kept as a public record. Unsuccessful Offerors will be notified in writing of their non-selection and may appeal the decision to the Director in accordance with Section 5.7.3 below.
- 4.4.8** The Department reserves the right to reject any and all responses to an RFQ when it is in the best interest of the Department. Notice of rejection of all offers (cancellation of the RFQ) shall be provided to all Offerors that have submitted a response to the RFQ. The notice shall contain the reason for cancellation.

#### **4.5 Procurement of Social Services for Emergencies or Urgent Needs**

**In the event of an unforeseen and dangerous situation requiring immediate action to preserve the peace, health, or safety of persons or property within the jurisdiction of the City or prevent significant loss, the Department may purchase Social Services in excess of \$55,000 by contract without a competitive solicitation or in accordance with an expedited competitive process, as approved by the Director. Such emergency purchases shall be reported to the City Council in quarterly purchasing reports. The Director shall make a determination, in writing, that an emergency situation exists identifying the reasons for his determination and establishing the appropriate process for obtaining a contract. Complete documentation, including, but not limited to, the Director's determination, and any proposals or pricing submitted by Offerors shall be maintained by the Department for public inspection.**

### **Chapter V Request for Proposals Process for Social Services**

#### **5.1 Conditions for Use**

**An RFP is required for the procurement of Social Services unless exempted or an alternate competitive process applies as set out in Chapter IV above. Only the Department may issue an RFP for Social Services, unless otherwise approved by the City Purchasing Officer.**

#### **5.2 Notice of Request for Proposals**

**5.2.1 Notice of a Request for Proposals will be provided by:**

- (a) Publication of an advertisement stating the general purpose of the RFP in a newspaper of general circulation a minimum of one time and at least ten days prior to the due date; and**
- (b) Posting of the advertisement of the RFP on the home page of the City's Website or other appropriate online location approved by the City Purchasing Officer. This requirement may be waived in the event the online location is unavailable due to technical reasons.**

**5.2.2 At its discretion, the Department may also mail notices of the RFP to selected non-profit organizations and public agencies. Failure to mail such notices or the omission of a non-profit organization or public agency from the mailed notice shall not constitute a failure to provide adequate notice of the availability of an RFP.**

**5.2.3 Additional notice may also be required by the procurement laws or regulations of the applicable funding sources.**

#### **5.3 Addenda**

**5.3.1 An addendum to an RFP shall be in written form and clearly identified as an addendum.**

**5.3.2 An addendum shall refer to the portion of the RFP it amends and clearly stipulate the changes to be made.**

**5.3.3 Addenda shall be sent to all non-profit organizations and public agencies known to have received an RFP.**

**5.3.4 Addenda shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their offers. If the time and date set for receipt of proposal will not permit such preparation, an addendum shall allow an extension of time for receipt of offers.**

**5.3.5 Addenda will be used for but not limited to the following types of modifications:**

- (a) to make any changes in the RFP, specifications, etc., such as changes in project description, project requirements, and opening dates;**
- (b) To correct any defects or ambiguities;**
- (c) To furnish to other Offerors information given to one Offeror if such information will assist the other Offerors in submitting offers or if lack of such information would prejudice the other Offerors.**

**5.4 Modifications or Withdrawal of Offers**

**5.4.1 An offer may be modified or withdrawn by the Offeror prior to the time set for submission of offers by delivering written notice to the location designated in the RFP as the place where offers are to be received. The Offeror must present proper identification before an offer can be modified or retrieved.**

**5.4.2 All documents relating to the modification or withdrawal of an offer shall be made part of the appropriate procurement file.**

**5.5 Submittal of Offers**

**Offers will be submitted to the Department in accordance with the method and at the time and place specified in the applicable RFP document.**

**5.6 Evaluation of Offers**

**Offers submitted in response to an RFP will be reviewed as follows:**

**5.6.1 The review/evaluation criteria for offers shall be stated in the RFP and may consist of, but is not limited to:**

- (a) organizational capacity to deliver the services;**
- (b) demonstrated understanding of the need for the requested services and the target population;**
- (c) method of service delivery and number of persons to be served;**
- (d) past performance (if applicable);**
- (e) consistency of budget with program goals and reasonable administrative expenses.**

**5.6.2 Department staff will review submitted offers to ensure technical compliance. Technical compliance may include, but is not limited to:**

- (a) submission of the offer within date and time, and location specified in the RFP;**
- (b) inclusion of all portions of the offer package as specified in the RFP;**
- (c) conformance with the general parameters of the service area to be addressed.**

**Failure to comply with submission of the technical requirements of the RFP may result in the exclusion of the offer from further review.**

**5.6.3 An Ad Hoc Committee will review the offers. The Ad Hoc Committee will consist of a minimum of three persons and may include members of affected citizens advisory groups or other affected citizens and Department staff. The Director will approve the composition of the Ad Hoc Committee and his/her written approval will be made part of the file.**

**5.6.4 During evaluation, offers submitted to the Department shall be kept confidential. The Department will use its best efforts to restrict distribution to those individuals involved in the review and analysis of the offers, but in any event, the City shall not be liable for disclosure of any information contained in the offers during the process. Upon approval of the Recommendation of Award in accordance with Section 5.7 below, the offers will be available for public inspection.**

**5.6.5 The Department reserves the right to reject any and all offers when it is in the best interest of the Department. Notice of rejection of all offers (cancellation of the RFP) shall be provided to all Offerors that have submitted an offer in response to the RFP. The notice shall contain the reason for the cancellation.**

## **5.7 Recommendation of Award**

**5.7.1 The Ad Hoc Committee will provide the Director with a recommendation of award listing the offers in the order in which they are recommended. Written documentation of the reasons for selection shall be kept as public record. The Review Committee may include additional recommendations regarding the project as allowed by the RFP and/or proposed by the successful Offeror.**

**5.7.2 If the Director concurs with the Ad Hoc Committee recommendation, the Director will so notify the Offeror in writing and instruct staff to begin contract negotiations. If the Director does not concur with the Ad Hoc Committee recommendations he may request reconsideration by the Committee.**

**5.7.3 Unsuccessful Offerors will be notified in writing of their non-selection and may appeal the decision of the Director as follows:**

- (a) A written appeal must be submitted to the Director within ten (10) days of notification of the recommendation of award.**
- (b) The Director will have 30 days to respond to the appeal.**
- (c) The decision of the Director is final.**

## **5.8 Protests**

**The specifications or any portion of an RFP or Recommendation of Award shall not be subject to protest at any time, except through the appeal process set out in Section 5.7.3 above.**

## **5.9 Contract Negotiations**

During contract negotiations, the Department shall have the right, if reserved in the RFP document, to request changes, additions or deletions to the proposals due to changes required in the project or services described in the RFP. In making such requests, a substantive change to the scope of services required in the RFP will not be made.

## **5.10 Term of Contract**

Social Services contracts resulting from an RFP process shall have an initial term of one year and may be renewed for up to an additional two years subject to the provisions of Article VII below.

## **Chapter 6**

### **Applications pursuant to an RFP or RFQ**

**6.1 All applications for funds or donations for an affordable housing project pursuant to an RFP or RFQ shall contain at a minimum the following:**

**6.1.1 An original Application, together with all required schedules, documents, or other information required by the City or the RFP**

**6.1.2 A proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and which describes the type and/or amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income**

**6.1.3 Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issues by the City for the Affordable Housing Funds or the Housing Assistance Grant;**

**6.1.4 A Proposed budget for the Affordable Housing Project or for a Housing Assistance Grant;**

**6.1.5 Current independent financial audit or financial review;**

**6.1.6 If the Applicant is a nonprofit organization, (i) Proof of 501 (C) (3) or 501 (c) (4) tax status; and (ii) Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;**

**6.1.7 If Applicant is a legal entity, including a nonprofit organization:**

**6.1.7.1 A current annual budget for the Applicant, including all sources and uses of funds not just those related to relevant programs and/or a current annual budget only for the program for which the Applicant is applying for a Housing Assistance Grant, or as otherwise may be required by the City in its discretion;**

**6.1.7.2 An approved mission statement that the Applicant has among its purposes significant activities related to providing housing or housing-related services to Persons or Households of Low or Moderate Income;**

**6.1.7.3 A list of members of the Applicant's current board of directors or other governing body, including designated homeless participation, where required by the City.**

**6.1.7.4 Evidence (or certification as may be allowed by the City) that the Applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles; or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principles;**

**6.1.7.5 Evidence that the Applicant has no significant outstanding or unresolved monitoring findings from the City, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the City, or its most recent independent financial audit, it has a certified letter from the City, or the auditor stating that the findings are in the process of being resolved;**

**6.1.7.6 An organizational chart, including job titles and qualifications for the Applicant's employees or as otherwise may be required by the City, in its discretion, job descriptions may be submitted as appropriate;**

**6.1.7.7 Documentation that the Applicant is duly organized under State or local law and certification that the Applicant is in good standing with any State authorities, including the Public Regulation City Council and the Secretary of State;**

**6.1.8 Information as may be required by the City in order for it to determine the financial and management stability of the Applicant;**

**6.1.8 Information as may be required by the City in order for it to determine the demonstrated commitment of the Applicant to the community;**

**6.1.9 A completed cost-benefit analysis of the Affordable Housing Project proposed by the Applicant. Any cost-benefit analysis must include documentation that clearly evidences that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project;**

**6.1.10 Information supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;**

**6.1.11 Proof of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or grant of Affordable Housing Funds under the Act;**

**6.1.12 Any certifications or other proof which the City may require in order for the City to confirm that the Applicant is in compliance with all applicable federal, State and local laws, rules and Ordinances;**

**6.1.13 A certification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information knowledge, and belief;**

**6.1.13 Certifications as may be required by the City and signed by chief executive officer, board president, or other authorized official of the Applicant, provided that the City as its discretion may waive any of the foregoing requirements not deemed applicable;**

**6.1.14 Applicant shall submit adequate information, as required by the City, of the Affordable Housing proposed by the Applicant. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to Persons of Low or Moderate Income, and that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project.**

**6.2 Additional requirements for the Multi-Family Housing Projects. Applicants who are submitting applications in connection with a Multi-Family Housing Program must also submit the following additional information:**

**6.2.1 A verified certificate that, among other things:**

**6.2.1.1 Identified every Multi-Family Housing Program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such Applicant has been or is a principal;**

**6.2.1.2 Except as shown on such certificate, states that:**

**6.2.1.2.1 No mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;**

**6.2.1.2.2 There has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;**

**6.2.1.2.3 Such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and**

**6.2.1.2.4 The Applicant has not defaulted on an obligation covered by a surety or performance bond.**

**If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances that such Applicant believes will explain the lack of certification. The City may then determine if such Applicant is or is not qualified.**

**6.2.2 The experience of the Applicant in developing, financing and managing Multi-Family Housing Projects; and**

**6.2.3 Whether the Applicant has been found by the United States Equal Employment Opportunity City Council or the New Mexico Human Rights City Council to be in noncompliance with any applicable civil rights laws.**

**6.2.4 The City's assessment of the ability of the Applicant or its designated servicer to act as originator and servicer of the Mortgage Loans for any Multi-Family Housing Programs or other programs to be financed; and**

**6.3 Evaluation of projects. In evaluating an award for funding or other donation, the City shall:**

**6.3.1 Determine whether the Application submitted by the Applicant is complete and responsive;**

**6.3.2 Determine whether the Applicant is a Qualifying Grantee;**

**6.3.3 Review and analyze whether the Applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to Persons of Low or Moderate Income;**

**6.3.4 Review and analyze whether the Applicant has demonstrated experience related to providing housing or services to Persons of Low or Moderate Income, as well as experience and/or capacity to administer the Affordable Housing Program or Project for which the Applicant has applied;**

**6.3.5 Determine whether the Applicant's proposal provides a plan for coordinating with other service providers in the community; whether the Applicant's plan addresses how Persons of Low or Moderate Income in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, State and local resources; and, whether the Applicant's plan addresses outreach efforts to reach the population to be served as identified by the City in any RFP or otherwise;**

**6.3.6 Determine whether the Applicant has support from Public Service Agencies, or such other support as may be required by the City for its proposed services in the community;**

**6.3.7 Ascertain the amount of any matching funds or in-kind services specific to the program that may be utilized by the Applicant in connection with the program;**

**6.3.8 Ascertain whether any local, private, or federal funds will be used by the Applicant in connection with the specific grant for which the Applicant is applying;**

**6.3.9 Ascertain whether the Applicant has and can demonstrate the capacity to manage the implementation of the Program for which the Applicant is applying;**

**6.3.10 If the Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements from the City, as applicable or if it has any such findings, it has a certified letter from the City, the MFA, or auditor stating that the findings are in the process of being resolved;**

**6.3.11 If Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant reasonably committed and expended the funds under the prior Program and/or met anticipated production levels as set forth in any contract with the City, as applicable, for those priority Program funds;**

**6.3.12 Evaluate the Applicant's proposal in part based upon the Applicant's current financial audit or review;**

**6.3.11 Evaluate the Applicant's proposed budget for the Project for which the Applicant is applying for the Affordable Housing Funds or the Housing Assistance grant which proposed budget must be approved by the City before the Applicant can be approved as a Qualifying Grantee and any expenditure of grant funds under the Act or granted property is transferred to the Applicant;**

**6.3.12 On receipt of the Application from a Builder, the City will analyze the Builder's ability to construct and sell sufficient residential Housing units to Persons of Low or Moderate Income within the time or times as may be required by the City;**

**6.3.13 Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.**

**6.4 Certification by the City to the MFA.**

**6.4.1 The City shall certify an application to the MFA in writing upon completion of its review of the Application and decision to make an award.**

**6.4.2 Review by the MFA.** The MFA upon its receipt of the certification from the City may, in its discretion, review the application and any of the materials submitted by the Applicant to the City. The MFA may also request any additional information from the Applicant which it may require in order to determine whether the Applicant is a Qualifying Grantee under the Act and the Application is complete. The MFA will then notify the City of its determination of whether or not the Application is complete and that the requirements of the Act and the Rules have been satisfied and the Applicant is a Qualifying Grantee. Unless the period is extended for good cause shown, the MFA will act on an Application within forty-five (45) days of its receipt of any Application, which the MFA deems to be complete, and, if not acted upon, the Application shall be deemed to be approved.

**6.4.3 Notification of Acceptance.** The City, upon completion of the review of the Application using the criteria as set forth in this Ordinance and/or any RFP issued by the City and upon its receipt of notification from the MFA that it agrees that the Application is complete and that the Act and Rules have been satisfied and the Applicant is a Qualifying Grantee, shall provide written notice to each Applicant of the approval or disapproval of the Application. The City and the MFA's determination of the Application shall be conclusive.

## **Chapter VII Approval of Contracts**

### **7.1 City Council Approval Required.**

Pursuant to Section 5-5-19 R.O.A. 1994, the City Council must approve all Social Services contracts entered into where:

- (a) the total amount of funds encumbered for that contract in a single fiscal year exceeds \$100,000;
- (b) the total amount of funds encumbered in a single fiscal year for Social Services contracts with that agency exceeds \$120,000;
- (c) any amendment to a Social Services contract which would increase the total amount of funds encumbered for that contract in a single fiscal year to more than \$100,000 or any amendment to a Social Services contract requiring Council approval pursuant to §§ 5-5-19(A)(4)(a) and (b) where the amendment or change to the contract increases the amount of the contract by 20% or more;
- (d) except that City Council approval shall not be required if the goal, amount and contractor of any such contract or amendment is included in the City of Albuquerque annual performance plan or has been previously approved by the Council in an appropriating resolution;
- (e) The exception contained in § 5-5-19(A)(4)(d) shall not apply if a Councillor has requested a special report on a particular contract from the Mayor, which report shall be due within 30 days of the request, and a Councillor has requested approval of said contract by the full Council.

### **7.2 Signature Authority.**

Pursuant to Administrative Instruction 1-1, the City's Chief Administrative Officer has delegated to the Director the authority to enter into Social Services contracts of any amount on behalf of the City. The Director shall execute such contracts following City Council approval if required.

## **Chapter VIII Contracts Terms**

**8.1 All contracts entered into for affordable housing projects shall contain terms and conditions to further the purpose of the Affordable Housing Opportunity Act.**



**8.1.1 Security Provisions; Collateral Requirements.** The City shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorney fees and costs which the City may incur in enforcing the provisions of this Ordinance, the Rules, the Act and/or any agreement entered into by the City and the Qualifying Grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City may require in order to allow for any funds which the Qualifying Grantee may receive under a Housing Assistance Grant or Affordable Housing Funds to be adequately secured and to allow the City to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with applicable law.

**8.1.2 Performance Schedule and Criteria.** The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria that the City, in its discretion, may establish.

**8.1.3 Examination of Books and Records.** The Qualifying Grantee shall submit to and the City shall cause to be made such examinations of the books and records of each Qualifying Grantee as the City and/or the MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with applicable law and any contracts between the Qualifying Grantee and the City. The City and/or the MFA may require each Qualifying Grantee to pay the costs of any such examination.

**8.1.4 Compliance.** All projects qualified to receive assistance pursuant to the Act, the Rules and this Ordinance shall also comply with all requirements, as amended from time to time. Qualifying Grantees shall provide any information requested by the City to confirm such compliance.

## **8.2 Infrastructure and Cost reimbursement Contracts.**

**8.2.1 Cost Reimbursements.** Payment to a Qualifying Grantee under the cost reimbursable contract provisions shall be made upon the City's receipt from the Qualifying Grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the City.

**8.2.2 Cost Reimbursement for Units of Service.** Payment under any unit cost contract provisions shall be made upon the City's receipt from the Qualifying Grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

**8.2.3 Rate at which Costs are incurred.** Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the Qualifying Grantee at an approximate level rate during the term of any agreement between the Qualifying Grantee and the City. If the City determines that the Qualifying Grantee is under spending or overspending, then the City may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

**8.2.4 Invoices.** Qualifying Grantees shall not submit invoices more than biweekly or less than quarterly unless written approval is obtained in advance from the City. Failure to submit invoices within twenty (20) days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.

**8.2.5 No Dual Application of Costs.** The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the City in advance, in writing.

**8.2.6 Prohibition of Substitution of Funds.** Any Affordable Housing Funds or other amounts received by a Qualifying Grantee may not be used by the Qualifying Grantee to replace other amounts made available or designated by the State or local government through appropriations for use for the purposes of the Ordinance.

**8.2.7 Cost Allocation.** The Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the City.

## **9.1 Non-profit Organizations and Public Agencies**

All non-profit organizations and public agencies are eligible to submit offers in response to an RFP or RFQ for Social Services or to contract with the Department for Social Services. A non-profit organization refers to any organization designated as a 501(c) by the Internal Revenue Service. A public agency refers to any agency or political subdivision of the State of New Mexico. Private, for profit companies are eligible to submit offers only as specifically provided in these Regulations.

## **9.2 Consortium**

A consortium of more than one entity may submit an RFP or RFQ for Social Services and/or enter into a contract for Social Services.

**9.2.1** In the event one or more members of the consortium ceases participation or is deemed ineligible, the remaining members of the consortium may request to continue providing all or a portion of the services required.

**9.2.2** The applicable department shall determine, based on the services required and other applicable factors, whether the contract may be continued with the remaining members of the consortium.

## **9.3 Ineligible Entities**

Certain non-profit organizations and public agencies are not eligible to respond to RFPs. These include:

**9.3.1** Non-profit organizations and public agencies that owe a debt to the City as a result of unresolved questioned costs or disallowed costs. These entities will not be eligible for funding until full payment has been made to the City.

**9.3.2** Non-profit organizations or public agencies that have had a contract terminated for cause for a period of two years beyond the date of contract termination. In the event a contract has been terminated for cause and the entity has additional contracts with the City, the additional contracts may be terminated for convenience and no proposals will be accepted from such entity.

**9.3.3** Non-profit organizations or public agencies debarred under these Regulations or those of any City, state or federal agency.

## **Chapter X Service Performance Standards**

### **10.1 Establishment of Service Performance Standards**

The Department shall establish service performance standards for all contracts for Social Services and the standards applicable to each contract shall be included in the contract for such services as goals.

### **10.2 Annual Monitoring of Contract Goals**

All contracts shall be monitored annually prior to contract renewal to determine if the service performance standards/goals established by the Department have been met. The Department shall keep for public inspection written documentation of whether goals have been met. Because the contracting process requires a determination of goal compliance

prior to the completion of the funding year, the Department reserves the right to make a determination of whether goals were met, based on a history of the prior year(s) goal performance, the Contractor's performance to date, and the Contractor's anticipated performance in achieving the goal in the current year.

**10.3 Failure to Meet Service Performance Standards**

If the contract review by Department staff determines that a Contractor has not met at least 90% of its goals as stated in its Social Services contract for two consecutive years prior to the contract review, and it has been determined that extenuating circumstances beyond the control of the Contractor did not preclude its ability to meet the goals, the contract shall not be renewed and future contracts for these Social Services shall be procured by RFP.

**10.4 Notice to City Purchasing Officer**

In the event a Social Services contract is suspended or terminated by the Department for any reason, notice of the termination or suspension shall be provided by the Department to the City Purchasing Officer.

**Chapter XI  
Debarment**

**11.1 Right to Conduct Debarment Proceedings**

The Department shall have the right to conduct a debarment proceeding, in accordance with the Purchasing Rules and Regulations, of any Offeror which has submitted an offer or contracted for Social Services with the Department. Approval to conduct such a proceeding shall be obtained from the City Purchasing Officer in each specific case.

**11.2 Effect of Debarment**

Any Contractor debarred by the Department shall be deemed debarred for the applicable period for all City procurements and shall not be eligible to submit an offer or enter into a contract with the City for such time.

**These Social Services Contracts Procurement Rules and Regulations are effective for all procurements of Social Services begun after the approval dates indicated below.**

**Approved by:**

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**Doug Chaplin, Director  
Department of Family and Community Services**

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**Ramona Martinez, Chief Procurement Officer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**TITLE           FAMILY AND COMMUNITY SERVICES**  
**CHAPTER       Social Services**  
**PART           Administrative Requirements**

1. **ISSUING AGENCY:** Department of Family and Community Services of the City of Albuquerque
2. **SCOPE:** Administrative Requirements for Social Services Contracts
3. **STATUTORY AUTHORITY:** ROA, 1994, §2-15-1, et. seq., §5-5-1 et. seq., in particular §5-5-19, 5-5-20
4. **DURATION:** Permanent.
5. **EFFECTIVE DATE:** August 31, 2010, unless a later date is specified at the end of a section.
6. **OBJECTIVE:** To standardize the administrative requirements for social services contracts between the City and governmental agencies and private entities, both for-profit and nonprofit.
7. **RESPONSIBILITY FOR ADMINISTRATION:** Department of Family and Community Services – The Department of Family and Community Services (“DFCS”) shall be responsible for administering these rules and regulations.
8. **DEFINITIONS:**
  - A. **“Authorized Board Official”** refers to a member of an organization's governing board who has been authorized by action of that board to bind the corporation.
  - B. **“Applicant”** refers to governmental agencies and both for-profit and nonprofit private entities that have requested or are in the process of receiving a contract with the City of Albuquerque to carry out programs, services or activities funded by DFCS social services contracts.
  - C. **“Cash Contributions”** refer to the Contractor's cash outlay, including the outlay of money contributed to the Contractor by non-City third parties.
  - D. **“City”** refers to the municipal government of the City of Albuquerque.
  - E. **“Close Relative”** refers to any spouse, ex-spouse, child, stepchild, mother, father, grandparent, grandchild, mother-in-law, father-in-law, sister, brother, sister-in-law, brother-in-law, daughter-in-law, son-in-law, first cousin, niece, nephew, aunt, uncle or the spouse or domestic partner of such person.
  - F. **“Community Development Strategy Area”** refers to those areas of the City of Albuquerque formally designated by the City as target areas for programs supported by federal Community Development Block Grant (CDBG) funds.
  - G. **“Contract Accounting Records”** refer to those records related to the receipt and expenditure of contract funds.
  - H. **“Contractor”** in these rules, unless otherwise specified, refers to governmental agencies and both for-profit and nonprofit private entities under contract with the City of Albuquerque to carry out programs, services or activities funded by DFCS social services contracts.
  - I. **“Cost-plus-a-percentage-of-cost”** refers to a procurement agreement to provide a percentage profit over and above the actual cost of the item or service.
  - J. **“Cost Sharing and Matching”** refers to the portion of project or program costs not borne by the City.
  - K. **“Department”** refers to the City of Albuquerque Department of Family and Community Services (DFCS).

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L. **"DFCS Social Services Contracts"** include, but are not limited to, Community Development Block Grant (CDBG), Home Investment Partnerships Program (HOME), Emergency Shelter Grant (ESG), Continuum of Care, Older Americans Act, Early Head Start, Housing and Neighborhood Economic Development Fund (HNEDF) or City General Fund projects.

M. **"Director"** refers to the Director of the Department of Family and Community Services (DFCS) or its successor in the organizational chart of the City, regardless of the name of such subdivision or department of the City.

N. **"Equipment"** refers to tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

O. **"Expendable Property"** refers to all tangible property other than real property and equipment.

P. **"Governing Board"** refers to the body legally empowered to determine policy for a nonprofit organization, including authority to bind the organization by any contract or engagement or to pledge its credit or render it liable pecuniary for any purpose or in any amount.

Q. **"HUD"** refers to the U.S. Department of Housing and Urban Development.

R. **"Immediate Family"** refers to the spouse, ex-spouse, child, stepchild, mother, father, grandparent, grandchild, mother-in-law, father-in-law, brother, sister or domestic partner of such person.

S. **"In-kind Contributions"** refer to the value of non-cash contributions provided by the Contractor and third parties. In-kind contributions may be in the form of charges for real property and non-expendable personal property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

T. **"Less-than-arms-length Lease"** is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to, those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his/her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

U. **"Nepotism"** is the employment of certain relatives and family members.

V. **"Not-For-Profit Entity ("NFP" or "NPO")"** refers to a not-for-profit corporation (sometimes called a "nonprofit organization") authorized to do business in New Mexico which has received an Internal Revenue Code 501 (c)(3) or (c)(4) designation. Corporations who have received a different 501(c), such as a (c)(6), may qualify on a case-by-case basis as an NFP in these Rules and Regulations; however, approval must be sought and obtained from the Department during the application process.

W. **"Project Costs"** are all allowable costs incurred by a Contractor and the value of in-kind contributions made by the Contractor or third parties in accomplishing the objectives of the contract during the project period.

X. **"Real Property"** refers to land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Y. **"Registered Sex Offender"** is a person meeting the definition as found at Chapter 29, Article 11A NMSA 1978, of the "Sex Offender Registration and Notification Act," who, under that statute is required to register as such with the State of New Mexico, regardless of whether the person has actually registered pursuant to the Act.

Z. **"Social Services"** refers to the provision, primarily to low and moderate income residents of the City, of human services such as health care, substance abuse treatment and prevention, day care, emergency shelters, youth services, senior services, employment services, and job training; the provision of housing intended primarily for low and moderate income residents of the City; and economic

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development activities designed primarily to benefit low to moderate income areas of the City or to increase employment among low and moderate income residents. A social services contract is a contract with a private, nonprofit or public governmental agency for social services in return for the payment by the City of costs associated with the provision of social services, including, but not limited to, the costs for labor, supplies, operating expenses, equipment, and the acquisition or improvement of real property.

ROA, 1994 §5-5-3.

**AA. "Suspension"** refers to an action by the City that temporarily suspends City payments under the contract, pending corrective action by the Contractor or pending a decision to terminate the contract by the City.

**BB. "Termination"** refers to the cancellation of a contract of City sponsorship in whole or in part, prior to the date of completion.

**CC. "Vulnerable Population"** refers to a category of persons who are more vulnerable than the average adult population. By way of example and not limitation: children under the age of 18, persons, whether adult or children, with significant physical or mental handicaps.

**DD. "Waiver"** refers to a formal written statement from the Department signed by the Director and when required, the City Attorney and by an agency of the state or federal government allowing the Contractor an exception to a rule in these requirements.

**9. INTRODUCTION:** The purpose of these rules is to provide uniform administrative rules for City of Albuquerque social services contracts awarded by the Department of Family and Community Services (DFCS). These rules must be applied in conjunction with the *Social Services Contracts Procurement Rules and Regulations - Department of Family and Community Services*. Unless specifically exempted, Contractors are expected to understand and comply with all applicable rules contained within these rules. Failure to comply may result in questioned costs, suspension or termination of contracts, or other sanctions. If there are questions regarding the applicability or interpretation of a rule, it is the responsibility of the Contractor to seek guidance from the City Department of Family and Community Services in writing. In the event of a conflict between the contract and the Administrative Requirements, the contract will take control. In the event of a conflict between a contract and City ordinances, the ordinances shall control.

**A. Mission:** The Department of Family and Community Services provides quality health and social services, housing, recreation and education to improve the quality of life for the entire Albuquerque Community. For the purposes of these rules, the social services contracts encompass a wide range of activities, utilizing local, state, and federal resources to create and maintain viable communities and a supportive living environment for Albuquerque residents. Such resources include, but are not limited to, City General Fund, federal Community Development Block Grant (CDBG) funds, HOME Investment Partnerships funds, Emergency Shelter Grant funds, Continuum of Care funds, Early Head Start funds, Older American Act funds, and other federal, state and private funding sources administered by the Department.

**B. Applicability**

(1) In general, unless otherwise specified, these rules apply to social services contracts awarded to either governmental agencies or nonprofit private entities. Some programs or procurement processes permit participation only by private nonprofits or government entities and exclude for-profit entities. These rules do not deal with program specific requirements or with procurement, but do specify threshold requirements applicable to either all Contractors or certain types of contracting entities and address the administration of the contracts. If a particular program permits a contract to be awarded to for-profit entities or otherwise permits the participation of a for-profit entity in conjunction with a nonprofit entity or a government agency, these rules would apply to such a for-profit Contractor.

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(2) In general, these rules apply, but are not limited to all social service contracts awarded by City of Albuquerque's Department of Family and Community Services, except as noted in the waiver provisions, or unless preempted by the requirements of a specific funding source. By way of example and not limitation, these rules apply to:

(a) Contracts awarded with funding appropriated from the City of Albuquerque General Fund for the purpose of providing social services; contracts awarded with funding provided through the Housing and Neighborhood Economic Development Fund; the City's Workforce Housing Trust Fund, and the Albuquerque Metropolitan Redevelopment Agency;

(b) Contracts awarded with funding provided by the State of New Mexico;

(c) Contracts awarded with funding provided by HUD through the Community Development Block Grant Program (CDBG) or the HOME Program including program income accruing from such funding that retains its identity as CDBG or HOME funds;

(d) Contracts awarded with funding provided by HUD through the Stewart B. McKinney Homeless Assistance Act of 1987. (By way of example and not limitation, homeless assistance programs include Emergency Shelter Grants, Shelter Plus Care and Supportive Housing Programs); and

(e) Contracts awarded with funding provided through the Older Americans Act.

(3) Additions and Waivers. At the discretion of the Department, contracts awarded with funding from other sources may be required to conform to these rules. The Director may authorize waivers when allowed by these rules on a case-by-case basis when such waivers are in the best interests of the City of Albuquerque and are not in conflict with applicable local, state, or federal laws and regulations.

**C. Allowable Activities:** Activities undertaken through the programs administered by the Department include, but are not limited to:

(1) Preservation and expansion of the stock of decent, safe, and sanitary housing affordable for the low and moderate income population;

(2) Economic development activities to increase the economic viability of low and moderate income neighborhoods and expand the opportunities for low and moderate income persons to obtain and retain meaningful employment;

(3) Development or improvement of public facilities in low and moderate income neighborhoods; and

(4) Provision of a range of public and human services needed to meet immediate and urgent individual and family needs of low and moderate income persons.

**D. Beneficiary Populations:**

(1) Lower Income Populations

(a) Except as provided below, direct services provided through programs supported by Department of Family and Community Services (DFCS) social services contracts must target residents of Albuquerque whose annual family incomes are at or below 80% of the median family income for the Albuquerque Metropolitan Statistical Area (MSA) as established by the U.S. Department of Housing and Urban Development. At the discretion of the Department, income tests lower than 80% of the median income may be established for specific programs supported through DFCS social services contracts. Income eligibility levels by family size will be published annually by the Department. Beneficiaries of HOME funded programs must have an annual income less than 80%, 60% or 50% of median family income for the Albuquerque MSA. Guidance will be provided by the Department on income targeting on a project-by-project basis.

(b) Verification of Income. Documentation required for verification of income shall be specified in the contract and may include compliance with 24 CFR Part 5, or at a minimum, requires W-2

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Forms, 1040 Forms, pay check stubs, or, in appropriate instances, signed client declarations. Client participation in other programs of public assistance including Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Supplemental Nutrition Assistance (formally Food Stamps), Low Income Energy Assistance, Title XX, General Assistance, Public Housing, Section 8 Rental Assistance, or similar income tested programs may be used as presumptive evidence of eligibility under City guidelines.

(c) Recipients of HOME assisted programs must have their income verified and documented in compliance with 24 CFR Part 5 regulations.

(d) Persons receiving assistance through programs funded under the Stewart B. McKinney Homeless Assistance Act of 1987 or through other programs intended to assist the homeless must meet the following criteria:

(i) An individual who lacks a fixed, regular, and adequate nighttime residence; or

(ii) Who has as a primary residence one that is (a) a publicly supervised or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate and transitional housing for the mentally ill); (b) an institution that provides a temporary residence for individuals intended to be institutionalized (excluding prison inmates); or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(e) Support may be made available to programs, services, and activities that do not require all participants to meet this income test, if it can be demonstrated that support of such activities offers the most efficient and expeditious means of serving the eligible population, and if at least 70% of those served meet the income test, and such arrangements have been provided for in the contract.

(f) Recipients of services designed to meet critical emergency needs such as rape crisis assistance, assistance to victims of domestic violence, assistance to abused and neglected children, the homeless, and the like, need not meet an income test. Substance abuse clients will self-report information pertaining to their income.

(2) Other Characteristics. Specific characteristics, such as persons with disabilities, senior citizens or other individual requirements applicable to specific funding sources, may apply.

(3) Community Development Strategy Areas. Certain public facilities improvement activities which contribute to the prevention or elimination of slums or blight must be targeted primarily to benefit designated Community Development Strategy Areas.

## **10. ELIGIBILITY SOCIAL SERVICES CONTRACTS**

### **A. Eligible Entities**

#### **(1) Basic Eligibility Requirements**

(a) Only Contractors who meet and maintain the minimum requirements below are eligible to hold social services contracts. The City may conduct a pre-contract site review to verify that all minimum requirements are in place and operational prior to execution of any social services contract.

(b) Only Contractors who are in compliance with federal, state and local tax reporting and payments, may contract with the City for social services contracts. Corporate organizations must also be in good standing with the New Mexico Public Regulations Commission.

(c) Pursuant to ROA, 1994, §5-5-3, only a private, nonprofit entity or public governmental agency may receive the benefit of the procurement exceptions available for social services contracts.

(d) Through the regular City procurement process, entities other than private, nonprofit entities or public governmental agencies, may be awarded contracts which render services similar to



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those encompassed in the definition of Social Services Contracts. In the event that such a situation arises, the administration of the contract will be governed by these rules and regulations.

(2) Threshold Requirements, unless otherwise specified in a particular sub-section, apply to all Contractors:

(a) Background Clearance. If the Social Services provided under such an agreement require the Contractor to work with or be in proximity to children, or other vulnerable populations, the Contractor will not employ any person or volunteer who is registered as a sex offender in any United States jurisdiction, or who has a criminal background unacceptable to the City.

(i) The Contractor shall ensure that all its employees and volunteers directly involved in performing services have been screened for a criminal record or registration as a sex offender as part of its hiring process, through the use of criminal background and reference checks, fingerprinting, and interviews. If an employee or volunteer is found to have such a record, the City Program Specialist assigned to the contract shall be immediately notified in writing with available details.

(ii) If required, the Contractor will obtain a criminal records report in a form satisfactory to the City.

(iii) On a case-by-case basis, the Director may grant individual waivers for employees and volunteers of the Contractor, if such person does not perform work in the same location where the Services to the Vulnerable Population are rendered, and if the Contractor can ensure that the subject employee or volunteer does not come in proximity to members of the Vulnerable Population in the course of performing the subject's duties to the Contractor. Any waiver granted by the Director shall be documented in writing in the Contractor's file by:

(1) A request from the Contractor detailing the reason why the waiver should be made for the subject employee or volunteer;

(2) The precautions to be taken by the Contractor to prevent the subject person from coming into contact with the Vulnerable Population;

(3) Conditions and precautions imposed by the Director as a basis of granting the waiver; and

(4) The Director's permission.

(b) Conflict of interest policies must at minimum:

(i) Apply to the procurement and disposition of all real property, equipment, supplies, and services by the Contractor and to the Contractor's provision of assistance to individuals, businesses, and other private entities.

(ii) Provide that no person who exercises any functions or responsibilities with respect to organization or agency activities, or who are in a position to participate in a decision-making process, may obtain a personal or financial interest or benefit from an organization or agency activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(iii) Waivers to the above policies may be allowed with the prior written approval of the Department on a case-by-case basis only after the following has been provided: (i) a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made, and (ii) an opinion by the City's attorney that the interest for which the waiver is sought would not violate state or local laws.

(c) ADA Compliance. Contractors must agree to meet all the requirements of the Americans with Disabilities Act of 1990 (ADA), and all applicable rules and regulations which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor must agree to be responsible for knowing all applicable requirements of the ADA and to defend, indemnify and

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hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought as a result of any actions or omissions of the Contractor or its agents in violation of the ADA.

(d) Confidentiality and Disclosure of Information. Contractors providing certain services, including but not limited to, substance abuse, domestic violence and health services, shall inform their clientele of federal, state and local laws regarding confidentiality and disclosure of information.

(e) Only as to nonprofit entities contracting with the City ("nonprofit"):

(i) Financial Policies and Procedures. The nonprofit shall have and use a written set of financial, accounting and procurement policies and procedures adopted by its governing board which meet the minimum standards established by the City for contract accounting as detailed below.

(ii) Active Board. The nonprofit shall document that its governing board is constituted in compliance with approved bylaws and nationally (e.g. Robert's Rules of Order) and locally (New Mexico Statutes and Court Rules Annotated) accepted standards and that it actively fulfills its responsibilities for policy direction, including regularly scheduled meetings for which minutes are kept. The organization must verify board compliance with the "Open Meetings" Act.

(iii) Nepotism. The nonprofit shall not employ "immediate family" or any "close relative" of any board member, officer or managing employee and shall not employ any two people who are immediate family or close relatives of each other. "Immediate family" and "close relative" are defined as any spouse, ex-spouse, child, stepchild, mother, father, grandparent, grandchild, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, niece, nephew, uncle, aunt or the spouse or domestic partner of any such board member, officer or managing employee. Furthermore, this prohibition does prohibit the "immediate family" and "close relative" of any board member, officer or managing employee from being an unpaid volunteer of the nonprofit absent written permission from the Department Director managing the contract, which written permission shall be given on a case-by-case basis, with the reason fully articulated, and such grant of permission must be renewed annually. No waiver of this prohibition shall be presumed, and a waiver for any one person or situation must be requested annually.

**B. Requirements for Proposals:** The Department will specify the general requirements for contract proposals, including all applicable forms, in its annual Request for Proposals and Application Package. Proposals must contain, at minimum, a description of the work program to be undertaken and a detailed project budget.

**C. Insurance Requirements:** All Contractors under DFCS social services contracts will be required to procure and maintain through the life of their contract, a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than the minimum required by the New Mexico Tort Claims Act, as it is amended from time to time, for bodily injury, including death, and property damage in any one occurrence. If any part of the contract is sublet, the Contractor must include the subcontractor in its coverage or require that the subcontractor obtain all necessary coverage. Policies must be written by companies authorized to write such insurance in the State of New Mexico. The City must be named an additional insured and the policies must (1) identify the Risk Manager, City of Albuquerque as the certificate holder, and (2) provide that 30 days written notice will be given to the City before a policy is canceled, materially changed, or not renewed. The Contractor must also comply with the provisions of the Workers Compensation Act and the New Mexico Occupational Disease Disablement Law.

(1) Proof of insurance is not a requirement for submission of a proposal, but applicants should be aware that no work may begin under a contract funded through the City until the required insurance has been obtained and proper original certificates or policies are filed with the City.

(2) Professional Liability Insurance. All Contractors receiving funds through the Department of Family and Community Services, shall ensure that all staff for whom professional liability is required by their licensing agent, including but not limited to, professionals providing health and behavioral health

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services, maintain professional liability insurance in amounts not less than required by the New Mexico Tort Claims Act, as it is amended from time to time, for single limit of liability per occurrence and for the general aggregate.

**D. Other Attachments:** In addition to the above requirements, applicants for social services contracts must attach or have on file with the City current copies of (i) their certificate of incorporation; (ii) the organization's articles of incorporation approved by the New Mexico Public Regulation Commission (PRC); (iii) a copy of the organization's bylaws; (iv) any licenses applicable to the organization's proposed activities; (v) a listing of current governing board members; (vi) a current organizational chart; (vii) the organization's personnel policies; (viii) the organization's accounting and procurement procedures; (ix) Certificate of Good Standing and Comparison issued within thirty (30) days from the PRC; (x) a copy of the organization's travel reimbursement policies, if travel funds are requested; (xi) a copy of the organization's most recent independent audit; and, for nonprofits, a copy of the Internal Revenue Service (IRS) status letter indicating tax exempt status and documentation showing that the status has not been revoked by the IRS.

**E. Required Assurances**

(1) Compliance with Civil Rights Laws and Executive Orders. Contractors are required to comply and act in accordance with all federal laws and Executive Orders related to the enforcement of Civil Rights. In addition, recipients will be required to comply with all New Mexico State Statutes and City of Albuquerque Ordinances regarding enforcement of Civil Rights.

(2) Use of Funds for Sectarian Religious Purposes. Contractors are required to assure that no funds awarded through the program will be used for sectarian religious purposes, specifically that: a) there will be no religious test for admission for services; b) there will be no requirement for attendance at religious services; c) there will be no inquiry as to a client's religious preference or affiliation; d) there will be no proselytizing; and e) services provided will be secular and non-sectarian.

(3) Assurance of Drug Free Facilities. Applicants for funding must submit an assurance that they will administer a policy designed to ensure that the assisted program is free from the illegal use, possession or distribution of drugs or alcohol by its staff and beneficiaries.

(4) Documentation of Board Review and Approval of Proposal. Applications for DFCS social services contracts must be signed by a natural person authorized to bind the organization. For private, nonprofit organizations, the application must be signed by an authorized board official who is not an employee of the entity. Copies of the minutes of the board meeting at which the proposal was reviewed and approved by the board must be maintained on file at the organization.

(5) Certification of Receipt of Administrative Requirements. Applicants for funding must submit a certification signed by an authorized board official and the organization director of receipt and adherence to the Department *Administrative Requirements for Social Services Contracts*.

**11. BUDGETARY GUIDELINES FOR SOCIAL SERVICES CONTRACTS**

**A. Allowable Costs:** The following principles apply to certain cost items when required by the contract. Failure to mention a specific item of cost is not intended to imply that it is unallowable: rather, determining an allowable cost in each case should be based on applicable federal regulations and the treatment or principles provided for similar or related items of cost.

(1) Bonding Costs. Costs of bonding required by terms of the contract are allowable as are costs of bonding required by the organization in the general conduct of its operation. Bonding costs must be in accordance with sound business practice and the rates and premiums must be reasonable under the circumstances.

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(2) **Communication Costs.** Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, internet, pager or cell phone services and the like that are related to the project are allowable.

(3) **Compensation for Personnel Services.** This cost item includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the contract. It includes, but is not limited to, salaries, wages, fringe benefits, payroll taxes, insurances and pension plan costs.

(a) Except as otherwise provided, the costs of such compensation are allowable to the extent that:

(i) Total compensation to individual employees is reasonable for the service rendered and conforms to the established policy of the organization consistently applied to City and non-City activities; and

(ii) Expenses to awarded contracts are determined and supported as required by this section.

(b) **Reasonableness:**

(i) If the organization is predominantly engaged in activities other than those sponsored by the City, compensation for employees on City-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(ii) If the organization is predominantly engaged in City-sponsored activities, compensation shall be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

(c) **Fringe Benefits:**

(i) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as vacation leave are allowable provided such costs are absorbed proportionately by all organization activities.

(ii) Fringe benefits in the form of employer contributions or expenses for Social Security, employee insurance, workmen's compensation insurance, pension plan costs are allowable provided all other benefits are granted in accordance with established, written organization policies. Such benefits must be charged to City contracts in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such contracts. Benefits charged to City contracts that are furnished by a provider plan (such as health care, retirement, etc.) must be based on a valid and binding contract between the Contractor and the benefit provider.

(d) **Support of Salaries and Wages:**

(i) Charges to City contracts for salaries and wages must be based on documented payrolls approved by a responsible official(s) of the organization. Charges of salaries and wages to City contracts must be supported by personnel activity reports as specified in this Part of these rules and regulations.

(ii) **Personnel Activity Reports.** Reports reflecting the distribution of activity of each employee must be maintained for all staff members whose compensation is charged in whole or in part directly to City contracts. Reports maintained by nonprofit organizations must meet the following standards:

(1) The reports must reflect an *after the fact* determination of the actual activity of each employee.

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(2) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(3) The reports must be signed by the individual employee, and by a responsible supervisory official having first hand knowledge of the activities performed by the employee, stating that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports. Approval is not required for the report of the Executive Director or comparable official who reports directly to the organization's Board of Directors.

(4) The reports must be prepared no less than monthly and must coincide with one or more pay periods.

(iii) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described above, must also be supported by records indicating the total number of hours worked each day.

(iv) For each employee for whom salaries and wages are charged to a City contract, the Organization must maintain a personnel file which includes, at minimum:

(1) A job description for the position currently held by the employee which specifies the duties of the position, the minimum qualifications for the position, the salary range for the position, and other terms and conditions for employment;

(2) An application form, resume, or other documentation that the employee meets the minimum qualifications for the position as established in the job description and, as applicable, a criminal background check upon hire;

(3) Personnel action records which document the hiring or assignment of the employee in his/her current position and officially establish his/her rate of compensation, including benefits, and the basis for this determination. Compensation must be within the salary range established for the position and salary and benefits must conform to approved organization personnel policies. Documentation must be provided which indicates that any changes in salary or benefits occurring during the term of a City contract have been made in accord with policies and procedures approved by the Board of Directors.

(4) A statement signed by the employee that he/she has received or had an opportunity to review a copy of the organization's personnel policies and understands his/her rights and obligations there under;

(5) A statement signed by the employee that he/she has received a copy of the organization's drug-free workplace policy;

(6) An INS (I-9) form, in accordance with federal regulations; and

(7) A current IRS W-4 form.

(8) All Contractors receiving funds through the Department of Family and Community Services, Division of Behavioral Health, shall provide verification of substance abuse or mental health licensure in compliance with the State of New Mexico regulations.

(v) Charges to a City contract for salaries or wages, independent of appropriate charges for payroll taxes and fringe benefits, are not allowable. All requests for salaries under a contract with the City must also include requests for payroll taxes and fringe benefits required by law and by organization personnel policies in proportion to the amount requested for salaries.

(4) Education Costs. Costs of a program of education for employees are allowable only with the prior written approval of the Department.

(5) Equipment and Other Capital Expenditures

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(a) Capital expenditures for tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit is allowable only with the prior written approval of the Department.

(b) Ownership of equipment purchased with City funding will remain with the City. However, the equipment must also be included on the Contractor's inventory list with appropriate indicia of the City's interest.

(c) Contractors are responsible for the cost of replacing or repairing equipment purchased with City funds which is stolen, lost, damaged, or destroyed. The cost of insurance for replacement coverage covering the risk of loss or damage to equipment is allowable.

(d) Capital expenditures for land or buildings are allowable only with the prior written approval of the Department.

(e) Capital expenditures in excess of \$5,000 for improvements to land, buildings, or equipment are allowable only with the prior written approval of the Department.

(6) Insurance and Indemnification

(a) Costs of insurance required or approved under the terms of the contract are allowable.

(b) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable provided: that the types and extent of coverage is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

(7) Maintenance and Repair Costs. Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition are allowable.

(8) Materials and Supplies. The costs of materials and supplies necessary to carry out a contract are allowable. Such costs must be charged at their actual prices after deducting any discounts, rebates, or allowances received by the organization. Materials and supplies charged as a direct cost should include only the materials actually used for the performance of the contract, with due credit given for any excess materials or supplies retained or returned to vendors.

(9) Meetings and Conferences. Costs associated with the conduct of meetings and conferences related to the purposes of the contract are allowable. Reasonable expenditures for food or beverages are allowable only for community education events. If food or beverage expenses exceed \$100.00, prior written approval must be obtained from the City.

(10) Memberships, Subscriptions, and Professional Activity Costs

(a) Costs of the organization's membership in civic, business, technical, and professional organizations related to the purposes of the contract are allowable.

(b) Costs of subscriptions to civic, business, professional, and technical periodicals related to the purposes of the contract are allowable.

(c) Costs of attendance at meetings and conferences sponsored by others which are related to the purposes of the contract are allowable, including costs of meals, transportation, and other items incidental to such attendance, to the extent to which these costs conform to written policies consistently applied.

(11) Organization Costs. Costs such as incorporation fees, brokers fees, fees to attorneys, and the like incurred in connection with the establishment or reorganization of an organization are allowable only with the prior written approval of the Department.

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(12) Overtime, Extra-pay Shift, and Multi-shift Premiums. Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior written approval of the Department except when necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.

(13) Participant Support Costs. Participant support costs for items such as wages, payroll taxes, benefits, stipends, subsistence allowances, travel allowances and the cost of food, clothing, and other goods and services purchased directly on behalf of clients are allowable only with the prior written approval of the Department.

(14) Plant Operations Costs. Necessary expenses incurred for facility security, janitorial services, elevator services, upkeep of grounds, and the like are allowable to the extent that they are not otherwise included in rental or other charges for space. Costs charged to the City must be consistent with the share of the space occupied by the City-funded program.

(15) Professional Service Costs

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization are allowable subject to the provision below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government.

(b) In determining the allowable costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(i) The nature and scope of services rendered in relation to the service required.

(ii) The necessity of contracting for the service, considering the organization's capability in the particular area.

(iii) The past pattern of such costs, particularly in the years prior to City awards.

(iv) The impact of City awards on the organization's business.

(v) Whether the service can be performed more economically by direct employment rather than contracting.

(vi) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-City awards.

(vii) The adequacy of the contractual agreement for the services (e.g. description of the service, estimate of the time required, rate of compensation, and termination provisions).

(viii) Costs incurred through "open-ended" contracts are not allowable.

(16) Public Information Service Costs. Public information costs include the cost associated with pamphlets, news releases, and other information services. These costs are allowable when incurred to inform or instruct individuals, groups or the general public about the City-funded project; to interest individuals or groups in participating in the City-funded service program; or to disseminate the results of sponsored activities.

(17) Publication and Printing Costs. Publication and printing costs directly related to the City contract are allowable.

(18) Recruiting Costs

(a) The following costs incurred for the recruitment of personnel required to carry out activities under a City contract are allowable: cost of "help wanted" advertising, operating costs of an employment office, costs of operating a testing program, and fees paid to an employment agency not in excess of standard commercial rates for such services.

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(b) Travel expenses of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incidental to recruitment of new employees are allowable only with the prior written approval of the Department.

(19) Rental Costs

(a) Subject to the limitations described below, rental costs for real property or equipment are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

(b) Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization and only with the prior written approval of the Department.

(c) Rent costs under sale and lease back, rental/purchase, or lease with option-to-purchase agreements are allowable only with prior written approval of the Department.

(20) Taxes. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for (i) taxes from which exemptions are available to the organization directly; and (ii) special assessments on land which represent capital improvements.

(21) Training Costs. Costs of preparation and maintenance of a program of instruction for employees are allowable only with the prior written approval of the Department.

(22) Transportation Costs. Transportation costs including freight, express, cartage, and postage charges related either to goods purchased, in process, or delivered are allowable to the extent that such goods are required by the program and the costs can readily be identified with the items involved.

(23) Travel Costs

(a) Expenses for transportation, lodging, subsistence, and related items incurred by employees and/or board members who are in travel status on official business are allowable when they are directly attributable to specific work under the contract and payment is made in conformity with federal travel requirements.

(b) The difference in cost between first-class air accommodations and coach fare is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary travel requirements.

(c) Local travel mileage: reimbursement for local mileage shall not exceed the federal requirement.

(24) Utilities Costs. The costs of utilities, including electrical services, heating and cooling, sewer, water, and other charges are allowable to the extent that they are not otherwise included in rental or other charges for space. Charges to a City contract for utilities must be based on the actual cost of service, with the City share of total utility costs consistent with the percentage of space occupied by the City-funded program.

**B. Unallowable Costs:** The following is a list of common types of expenditures which are not properly chargeable to City contracts. Failure to include an item in this listing does not imply that cost is allowable.

(1) Bad Debts. Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

(2) Contingency Provisions. Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty, are unallowable.



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(3) Contributions. Contributions and donations by the organization to others are unallowable.

(4) Entertainment Costs. Costs of amusement, diversion, social activities, ceremonials, condolences and costs relating thereto, such as meals, lodging rentals, transportation, and gratuities are unallowable.

(5) Fines and Penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with federal, state, and local laws and regulations are not allowable.

(6) Honorariums. Expenses for awards intended to confer distinction upon, or symbolize respect, esteem or admiration for the recipient, are not allowable.

(7) Interest, Fund Raising, and Investment Management Costs

(a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable, except to the extent that such activities are undertaken to reduce the cost, or to avoid material impairment of the organization's authority to perform the contract.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(8) Lobbying

(a) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any federal, state, or local election, referendum, initiative, or similar procedure through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(iii) Any attempt to influence: (i) the introduction of federal, state, or local legislation; or (ii) the enactment or modification of any pending federal, state, or local legislation through communication with any member or employee of the Congress, state legislature, or City Council, or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Any attempt to influence: (i) the introduction of federal, state, or local legislation; or (ii) the enactment or modification of any pending federal, state, or local legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(v) Legislative liaison activities, including attendance at legislative sessions or committee hearing, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(b) The following activities are excepted from the coverage of the above in (8)(a):

(i) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing, testimony, statements or letters to the Congress, state legislature or City Council or subdivision, member, or cognizant staff member thereof, in response to a documented request made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form and further provided that the costs under this section for travel, lodging, or meals are unallowable unless

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incurred to offer testimony at a regularly scheduled Congressional or State Legislative hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing;

(ii) to influence state or local legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the contract;

(iii) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(9) Losses on other Awards. Any excess of costs over income on any award is unallowable as a cost to any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

(10) Payments to Government Employees. Payments by private, nonprofit organizations, either direct or indirect, made from contract funds to, or on behalf of, full-time federal, state, or City employees are not allowable.

(11) Year-end Stockpiling of Supplies, Material, and Equipment. Purchases of these items should be done early in or regularly throughout the term of the contract in order to provide services to clients. Large purchases of supplies, material, and equipment within the last 60 days of the contract are viewed as an attempt to contain remaining balances on the contract and are therefore not allowed.

### **C. Indirect Costs**

(1) Indirect costs charged to City contracts are allowable if and only if:

(a) The maximum amount the Contractor charges as administrative overhead on grants to a private, nonprofit organization is based on an approved indirect cost rating issued by an agency of the federal government.

(b) The maximum amount the Contractor charges as administrative overhead on grants to other public institutions (state entities, publicly funded educational entities, etc.) is 8%.

(c) The Contractor does not also charge the pooled costs included in the agreement directly to the City.

(d) Such costs are not, in the judgment of the City, excessive in relationship to the overall costs of the funded project.

(e) Indirect costs are charged proportionately to all funding sources contributing to the assisted project.

**D. Allocated Direct Costs:** For Contractors that receive multiple contracts, either from the City, or other sources, a cost allocation plan must be followed. This plan must detail the proration of common organization expenses and accurately reflect the Department's contract(s) pro-rated share of expenses.

## **12. AWARD PROCEDURES AND CONTRACT EXPENDITURES**

### **A. Contract Awards**

(1) Review and Recommendations. Proposals will be reviewed according to procedures established by the Department and detailed in the Social Services Contracts Procurement Rules and Regulations.

(2) Notification of Provisional Award. Following approval of a recommendation by the Mayor and, if required by City Council, the Department will notify the successful applicant of its intention to award a DFCS Social Services Contract.

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(a) If the amount of the recommended award is the same as the amount requested in the proposal, the budgeted costs are allowable and acceptable to the Department, and no changes are required in the proposed work program, as soon as feasible after notification of the award, the parties will proceed to contract execution.

(b) If changes are required in the budget or work program, the Department will enter into negotiations for changes with the applicant organization.

(3) Contract Execution

(a) Once an agreement is complete and acceptable both to the City and the Contractor, copies of the contract must be signed by an authorized representative of the organization (if a nonprofit, this person cannot be an employee). These signed contracts and an original certificate(s) providing proof of insurance shall be returned to the Department.

(b) Assuming that the contract is complete and passes all legal review and that sufficient funds have been appropriated by Council and/or made available to the City from the state or federal government, the City will return a signed copy of the final approved contract to the Contractor and authorize work to begin on the contract on a specified date.

(4) Contract Expenditure Review. The City shall, from time to time during the contract period, review the actual organization expenditures charged to the contract. At the discretion of the City, unutilized funds may be de-obligated from the contract for reallocation.

(5) Requests for Waivers to Conflict of Interest Requirements. Prior to final approval of a contract, on such forms as the City may require, a Contractor requesting waivers to conflict of interest requirements shall submit to the Department disclosure statements signed by persons covered by conflict of interest provisions. Waivers to these requirements are contingent upon approval by the Director, the City Attorney, and when required, by an agency of the state or federal government. No work may be initiated under a contract until waivers have been granted. Failure to disclose conflicts of interest may result in suspension or termination of a contract. Additional requests for waivers to the conflict of interest requirements must be submitted at any time during the life of the contract that conditions creating a conflict of interest may occur.

### **13. ACCOUNTING FOR DFCS SOCIAL SERVICES CONTRACT FUNDS**

#### **A. Basic Requirements for Proper Accounting of Funds**

(1) Accounting System. The Contractor's accounting system should, at minimum, meet the following standards.

(a) The system must be designed so that no one person has access to all financial operations, procedures, and records.

(b) The system should clearly identify DFCS Social Services contract revenues and expenditures from those of other funding sources in posting to the books of account. The City may require the Contractor to maintain a separate banking account for DFCS Social Services contract funds, if required by state or federal regulations or deemed to be in the best interests of the City.

(c) The system must allow individual cost elements in their chart of accounts to be reconciled to the cost categories in the approved DFCS Social Services contract budget.

(d) The system must identify and segregate unallowable costs.

(e) There must be a filing system that is easily accessible which separates contract transactions in a consistent manner.

(f) The system must fully document all contract expenditures with invoices, statements, time sheets, and other source documentation signed by an authorized official.

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(g) The system must assure that contract transactions are recorded and posted in the accounting books and records at least every thirty days.

(h) The system must provide for the separation of the accounting function from procurement (purchasing) and receiving.

(i) The system must also provide for appropriate internal control procedures in respect to payroll, procurement (purchasing), property management, and cash management, including provision for dual signatures for checks of \$1,000 or more drawn on an organization account and assurance that no person be authorized to sign checks for which he/she is also the payee except that the Executive Director may be the second signature on his/her payroll check if based upon the Board approved salary.

(2) Adequate Personnel. Whether employed directly by the organization or through contract, the organization must currently employ or commit to hire personnel responsible for accounting functions with appropriate training and experience to adequately administer a contract of the size and complexity of the one proposed.

**B. Accounting for Program Income:** Program income accounting may be required for nonprofits depending on the contract type and funding source. Program income represents the gross income earned by the Contractor from City-supported activities or the gross income reduced by certain expenditures if so provided by the contract. Such income includes, but is not limited to, income from fees for services performed, from the use of rental of real property or equipment acquired with City funds, from the sale of commodities or items fabricated under a grant agreement, and any income earned from payments of principal and interest on loans made with contract funds.

(1) Program income does not include interest earned on advances of City funds. Interest earned on advances of City funds shall be immediately remitted to the City.

(2) Proceeds from the sale of real and personal property provided by the City or purchased in whole or in part with City funds shall be handled in accordance with regulations outlined below related to property management.

(3) Unless the contract provides otherwise, Contractors shall have no obligation to the City with respect to royalties received as a result of copyrights or patents produced under a contract agreement.

(4) All other program income earned during the project period, at the discretion of the City, may be:

(a) Used to further eligible program objectives. Program Income used to provide contracted services shall be expended prior to requesting Department contract funds.

(b) Used to finance the non-City share of the project when approved by the City; or

(c) Deducted from the total project costs in determining the net costs on which the City share of costs will be based; or

(d) Remitted to the City. For contracts included in the Consolidated Plan that are funded by HUD, all program income will be remitted to the City at regular intervals throughout the contract period, but not less than monthly.

(5) Reporting of Program Income. The Contractor's accounting system must clearly identify program income from DFCS Social Services contracts, and the City may require the Contractor to provide regular reports on program income received, amounts expended, and any balance unexpended during the reporting period. Such reports will be on such forms as the City may designate.

(6) Uses of Unexpended Program Income: Unexpended program income, from any source, shall retain its identity as DFCS Social Services funding after the ending date of the contract period. Unless otherwise specified in the contract agreement, the City shall observe the following rules in the disposition of unexpended program income:

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(a) The City may permit the Contractor to retain the funds for use on a subsequent contract involving new program funds in accord with the principles contained in the preceding section of Accounting for Program Income.

(b) If no subsequent contract is awarded by the City involving new funding, the City may permit the Contractor to retain the funds for use on another project, provided that the activities are consistent with the laws and regulations governing the contract program which was the original source of the unexpended program income. In such cases, the funds will be subject to all the requirements and approvals specified in these rules, including execution of a contract agreement for the expenditure of previously unexpended program income.

(c) If no subsequent contract is awarded by the City, and no alternative use is approved, the City may direct the Contractor to remit to the City the full amount of unexpended program income.

**C. Cost Sharing and Matching:** From time to time, the City may require cash and/or in-kind contributions from the Contractor as a condition of a contract award. The following sets forth the criteria and procedures for the allowable cash and in-kind contributions made by the Contractor or third parties in satisfying any cost sharing and matching requirements of the City.

(1) General Guidelines for Cost Sharing and Matching.

(a) Cost sharing or matching may consist of:

(i) Charges incurred by the Contractor as project costs not accounted for as cash or in-kind contributions (e.g. depreciation and use costs).

(ii) Project costs financed with cash contributed or donated to the recipient by other public agencies, private organizations, and individuals.

(iii) Project costs represented by services and real and personal property, or use thereof, donated by other public agencies, private organizations, and individuals.

(b) All contributions, both cash and in-kind, may be accepted as part of the Contractor's cost sharing and matching when such contributions meet all of the following tests:

(i) Are verifiable from the Contractor's records;

(ii) Are not included as contributions for any other City-assisted program;

(iii) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(iv) Are types of charges that would be allowable under the applicable cost principles;

(v) Are not paid by the City under another assistance agreement unless the agreement is authorized by the City to be used for cost sharing or matching;

(vi) Are provided for in the approved budget when required by the City; and

(vii) Conform to other provisions of these regulations.

(2) Valuation of In-kind contributions. Values for recipient in-kind contributions will be established in accordance with the applicable cost principles.

(3) Matching for Federal Funds. When a City award is made through a re-grant of federal funds, the City may require:

(a) That the cost sharing or matching contributions are not paid by the federal government under another assistance agreement unless the agreement specifically authorizes the use of such assistance for cost sharing or matching.

(b) That in-kind cost sharing or matching contributions not represent the value of real or personal property purchased with federal funds unless authorized by federal regulations.

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**D. Acquisition, Management and Disposition of Property Acquired with City Funds:**

(1) Real Property. From time to time, DFCS Social Services contract funds may be used by a public or private, nonprofit organization for the acquisition of real property. The following regulations shall apply to the acquisition, management, and disposition of such property by a Contractor.

(a) Basic acquisition policies. In the acquisition of real property the following criteria apply:

(i) The real property shall be acquired using the City's procedures for acquisition and shall be titled in the name of the City unless otherwise specifically authorized by a contract approved by the City Council.

The cost for the acquisition of real property must not exceed the Fair Market Value for such property established through a written statement independently and impartially prepared by a certified appraiser setting forth an opinion of the defined value of the property, adequately described, and as of a specific date, supported by the presentation and analysis of relevant market information.

(ii) The amount of real property acquired should not exceed the amount required for the purposes of the City-supported program except if acquisition of only a portion of a property would leave the owner with an uneconomic remnant.

(iii) Purchase of the property must be based on open negotiation between the Contractor and the owner or the owner's representatives, including a written offer allowing the owner reasonable opportunity to consider the offer and suggest modification in the proposed terms and conditions of the purchase. No threats of condemnation or of other coercive actions or other inducements for agreement on the price resulting from, or related to the City's involvement, may be made as part of negotiations.

(iv) No purchase of real property may be made without the prior written approval of the Department, specific as to site, description, and price.

(b) Anti-Displacement Provisions. No persons shall be required to move permanently or temporarily from his or her dwelling or business as a result of the purchase of real property or rehabilitation of real property using DFCS Social Services contract funds unless approval has been granted in writing by the City prior to relocation. All applicable procedures required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), shall be adhered to in the event of potential permanent or temporary relocation of persons and businesses and the Contractor shall coordinate all relocation activities with the City to ensure compliance with URA. Relocation assistance must be provided at the Contractor's expense to any persons or businesses involuntarily displaced, according to regulations established by the URA.

(c) Title and Disposition.

(i) If legal title to real property is placed in the Contractor, the Contractor shall hold the property for the benefit of the City, as more fully detailed in the agreement, and subject to the condition that the Contractor shall use the real property for the authorized purpose of the project as long as it is needed or as specified in the contract agreement, which shall be normally not less than fifteen (15) years. Title to the real property shall not be transferred to any other entity without written authorization by the City. As an assurance of compliance with this requirement, the City shall file an original copy of the agreement or other document authorizing the purchase with the County Clerk as part of the record of title along with any other covenants, restrictions and mortgages applicable to the project.

(ii) The Contractor shall obtain approval by the City for the use of the real property in other projects when the Contractor and City jointly determine that the property is no longer needed for the purpose of the original project. Such alternative uses must be consistent with the laws and regulations governing the program and project for which the property was initially purchased.

(iii) When the real property is no longer needed as provided above, the Contractor shall request disposition instructions from the City. Unless otherwise specifically provided for in contract

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agreements, the City shall observe the City's then existing policies regarding the disposition of surplus real property with appropriate consideration for situations in which the City funds were not the sole or primary source of funds for acquiring and improving the property, which shall be detailed in the initial agreement.

(2) Substantial Improvements to Real Property. From time to time, DFCS Social Services funds may be used by a public or private, nonprofit organization for capital expenditures for improvements to real property owned by the organization. The following regulations apply to the treatment of such improvements with a total cost to the City of \$2,000 or more within any one fiscal year:

(a) Basic Procurement Policies. In making substantial improvements to real property the following criteria apply:

(i) Procurement of supplies, equipment, construction and other services must conform to the procurement standards outlined in the Procurement Standards for this section, which include but are not limited to 13(E).

(ii) No substantial improvements to real property may be made without prior written approval of the Department, specific as to site, description, and cost.

(b) Anti-Displacement Provisions. No person shall be required to move from his or her dwelling or business as a result of substantial improvements to real property using DFCS Social Services contract funds unless relocation assistance is provided at the Contractor's expense, according to guidelines established by the City.

(c) Title and Disposition.

(i) If legal title to real property is placed in the Contractor, the Contractor shall hold the property for the benefit of the City, as more fully detailed in the agreement, and subject to the condition that the Contractor shall use the real property for the authorized purpose of the project as long as it is needed or as specified in the contract agreement, which shall be normally not less than fifteen (15) years. Title to the real property shall not be transferred to any other entity without written authorization by the City. As an assurance of compliance with this requirement, the City shall file an original copy of the agreement or other document authorizing the purchase with the County Clerk as part of the record of title along with any other covenants, restrictions and mortgages applicable to the project.

(ii) The Contractor shall obtain approval by the City for the use of the real property in other projects when the Contractor and City jointly determine that the property is no longer needed for the purpose of the original project. Such alternative uses must be consistent with the laws and regulations governing the program and project for which the property was initially purchased.

(iii) When the real property is no longer needed as provided above, the Contractor shall request disposition instructions from the City. Unless otherwise specifically provided for in contract agreements, the City shall observe the City's then existing policies regarding the disposition of surplus real property with appropriate consideration for situations in which the City funds were not the sole or primary source of funds for acquiring and improving the property, which shall be detailed in the initial agreement.

(3) Equipment.

(a) Basic Acquisition Principles. In the acquisition of equipment, the following principles shall apply:

(i) Basic procurement principles generally applicable to the procurement of supplies, equipment, construction, and other services outlined in the Procurement Standards for this section, which include but are not limited to 13(E), shall apply to the acquisition of equipment.

(ii) No equipment may be acquired without the prior written approval of the Department.

(b) Title and Disposition. Title to equipment remains vested in the City. Contractors shall, however, maintain such property on its inventory list, reflecting the property's status as on loan from the

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City for the purpose of the specific project or program. Upon completion of the contract, or when the property is no longer needed, the Contractor shall report the property to the City for further utilization. The City may, at its discretion:

(i) Continue to utilize the property with this or another Contractor in connection with the project or program for which it was acquired.

(ii) Utilize the property with this or another Contractor in connection with another City project.

(iii) Dispose of the property through the City's surplus process.

(c) Property management standards for equipment. The Contractor's property management standards for equipment shall include the following procedural requirements:

(i) Property records shall be maintained accurately and shall include:

(1) A description of the property.

(2) Manufacturer's serial number, model number, City stock number, or other identification number.

(3) Source of the property, including contract number.

(4) Whether title vests in the Contractor or City.

(5) Acquisition date and cost.

(6) Percentage of City participation in the cost of the project or program for which the property was acquired.

(7) Location, use, and condition of the property and the date this information was reported.

(8) Unit acquisition cost.

(9) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a Contractor compensates the City for its share.

(ii) Property owned by the City must be marked to indicate City ownership.

(iii) A physical inventory of property shall be taken and the results reconciled with the property records annually. Any differences between quantities determined by physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Contractor shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

#### (4) Expendable Property.

(a) Basic Acquisition Principles. In the acquisition of expendable property, the following principles shall apply:

(i) Basic procurement principles generally applicable to the procurement of supplies, equipment, construction, and other services outlined in the Procurement Standards for this chapter, which include but are not limited to 13(E), shall apply to the acquisition of expendable property.

(ii) Expendable property may be acquired without the prior written approval of the Department up to the amount allowed in the approved budget.

(b) Title and Disposition.

(i) Title to expendable property shall vest in the Contractor upon acquisition.



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(ii) If there is a residual inventory of such property exceeding \$5,000 in total aggregate fair market value upon termination or completion of the contract and the property is not needed for any other City-sponsored program, the Contractor may retain the property for use on non-City sponsored activities, or sell it, but must in either case compensate the City for its share.

**E. Procurement Standards:** These standards for use by Contractors in establishing procedures for the procurement of supplies, equipment, construction and other services with City funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable federal, state and local law and regulations.

(1) Standards of Conduct.

(a) Contractors must adhere to conflict of interest provisions established in other sections of these rules in respect to all procurements.

(b) In addition, the Contractor must establish a clear policy that its officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors or potential subcontractors and provide for disciplinary actions to be applied for violation of these standards.

(2) Procurement Standards.

(a) Bid Standards

(i) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(ii) Consultants employed by the Contractor to prepare or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals shall be excluded from competing for such procurements.

(iii) Awards shall be made to the bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the Contractor, price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfill in order for his bid/offer to be evaluated by the Contractor. Solicitations should specify that any and all bids/offers may be rejected when it is in the Contractor's interest to do so.

(b) All Contractors must establish *written* procurement procedures that provide for, at a minimum, the following procedural requirements.

(i) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.

(ii) Solicitations for goods and services shall be based on a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not contain restrictions which unduly restrict competition. "Brand name or equal" descriptions should be used as a means to define the performance or other requirements of a procurement.

(iii) Positive efforts shall be made by the Contractor to utilize small business and minority-owned business sources of supplies and services.

(iv) The type of procuring instruments used will be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interests of the program. However, "cost-plus-a-percentage-of-cost" method is prohibited.

(v) Subcontracts shall be made only with responsible subcontractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement.

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(vi) All proposed sole source subcontracts or where only one bid or proposal is received in which the aggregate expenditure is expected to exceed \$2,000 shall be subject to prior approval at the discretion of the Department.

(vii) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices, or similar indicators.

(viii) Procurement records and files for purchases in excess of \$2,000 shall include the following:

(1) Basis for Contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(ix) A system for contract administration shall be maintained to ensure subcontractor conformance with terms, conditions, and specifications of the subcontract and to ensure adequate and timely follow-up of all purchases. All contracts must be time-limited and include a specified beginning and ending date.

(c) The Contractor shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all subcontracts:

(i) Subcontracts shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which subcontractors violate or breach subcontract terms and provide for such remedial actions as may be appropriate. All contracts must be time-limited and include a specified beginning and ending date.

(ii) All subcontracts shall contain provisions for termination by the Contractor including the manner by which termination will be effected and the basis for settlement. In addition, such subcontracts shall describe conditions under which the subcontract may be terminated for default as well as conditions where the subcontract may be terminated because of circumstances beyond the control of the subcontractor.

(iii) In all subcontracts for construction or facility improvement awarded for more than \$100,000, Contractors shall observe bonding requirements established by the City. The City will provide technical assistance, if requested, in establishing these requirements.

(iv) All subcontracts awarded by Contractors having a value of more than \$2,000 shall contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity" as amended by Executive Order 11375 and supplemented in Department of Labor regulations (41 CFR, Part 60). The City will provide technical assistance, if requested, in the drafting of this provision.

(v) All subcontracts in excess of \$2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act as supplemented in HUD regulations. This law and regulations provide that each subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works to give up any part of the compensation to which he or she is otherwise entitled. The Contractor shall report all suspected or reported violations to the Department.

(vi) When required by federal legislation, all construction subcontracts of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations. The City will provide, if requested, technical assistance to the Contractor on specific requirements of this section.

(vii) Where applicable, all subcontracts awarded in excess of \$2,000 for construction contracts and in excess of \$2,500 for other subcontracts that involve the employment of mechanics or

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laborers shall include a provision for compliance with sections 1-3 and 107 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations. The City will provide, if requested, technical assistance to Contractors on specific requirements of this section.

(viii) All subcontracts awarded by the Contractor shall include a provision to the effect that the City and, where applicable, any state or federal sponsoring agency and the Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the subcontractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

(ix) All subcontracts in excess of \$100,000 shall contain a provision that requires the subcontractor to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 and the Federal Water Pollution Control Act as amended. Violations shall be reported to the City and the Regional Office of the Environmental Protection Agency. The City will provide technical assistance to the Contractor, if requested, in preparation of this provision.

(x) All subcontracts shall contain a provision that requires the subcontractor to comply with the Americans with Disabilities Act of 1990.

(d) For additional requirements related to capital projects undertaken with City assistance, Contractors must consult the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque Department of Human Services Community Development Program for Public Facilities and Improvements and Multi-Family Housing Renovation Projects*.

#### **F. Contract Expenditures**

(1) General Limitations on Expenditures. No expenditures incurred prior to the beginning date of the contract may be paid with contract funds. Expenditures incurred during the grant period may be paid from contract funds after the ending date. All such expenditures, however, must be liquidated within 30 days after the end of the project period. No expenditures incurred after the ending date of the contract may be paid from contract funds.

(2) Audit Expenditures. Of the total cost of applicable organization-wide independent audits, the amount budgeted to the City contract shall not exceed the proportion that the City contract is of the total organization budget. Amounts budgeted must be obligated prior to the end of the program year, but are exempt from the 30 day liquidation requirement above.

(3) Certification Letter. Prior to the expenditure of funds, Contractors must have on file with the Department a Signature Certification Form that provides the name and address of the organization to whom checks should be made payable and the name(s) and title(s) of any person authorized to sign the Financial Status Report and Request for Reimbursement Form.

(4) Payment Procedures.

(a) Cost Reimbursement (where applicable based on the agreement).

(i) General: Payments from the City for a program that includes cost reimbursement are made on the basis of reimbursements for costs incurred for line item expenses included in the approved organization budget. These rules do not allow for the disbursement of funds prior to an obligation for specific expenses.

(ii) Reimbursement of costs for salaries and wages: Reimbursement for costs charged to the City for salaries and wages, including applicable payroll taxes and fringe benefits, shall be made only for positions included in an approved line item budget. The amount of such reimbursement shall normally be limited to an amount not to exceed the total amount budgeted for the position divided by the number of pay periods included in the term of the contract, as established in organization personnel policies, multiplied by the number of pay periods for which reimbursement is being requested.

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(iii) Financial Status Report and Request for Reimbursement. All requests for payments through the program must be submitted on the Financial Status and Request for Reimbursement Form. Unless specified in the contract, requests for payment may be submitted at any time during the contract period, though no less than quarterly or more than bi-weekly intervals. At the discretion of the City, Contractors may be required to submit appropriate back-up documentation with the Financial Status Report and Request for Reimbursement.

(iv) Cash received from the City must normally be expended within three (3) working days of the date that it is received.

(v) As noted above, with the exception of a request for payment of audit expenses, all requests for reimbursement must be received by the City within thirty (30) days of the end date of the contract. Requests received beyond thirty days may be considered excluded from contract obligation resulting in non-payment.

(vi) Payment of requests for reimbursement by the City does not constitute a judgment by the City as to whether or not the cost is allowable and such payments are subject to later review or audit.

(vii) Payment of requests for reimbursement may be temporarily suspended, pending corrective action by the Contractor or pending a decision to terminate a contract, in accordance with procedures outlined in the Suspension and Termination Procedures.

(b) Fee for Service (where applicable based on the agreement).

(i) General: Payments from the City for a program that includes fees for services are based on a negotiated fee for specific services included in the agreement.

(ii) Request for Payment. Payments shall be made to the Contractor no more than bi-weekly but no less than quarterly, and subsequent to receipt of a request for payment in compliance with the budgetary and fiscal guidelines of the City and on the condition that the Contractor has accomplished the Services to the satisfaction of the City.

(iii) All requests for payment submitted by the Contractor must be supported by documentation of Services provided in the Contractor's files.

(iv) All requests for payments must be received by the City within thirty (30) days of the end date of the contract. Requests received beyond thirty days may be considered excluded from contract obligation resulting in non-payment.

(v) Payment of requests for payment may be temporarily suspended, pending corrective action by the Contractor or pending a decision to terminate a contract, in accordance with procedures outlined in the Suspension and Termination Procedures.

## **G. Budget Amendments**

(1) Requests for Budget Amendments.

(a) No reimbursements will be made for expenditures not contained in an approved contract budget, nor will reimbursements be made in excess of the amounts budgeted for each line item in an approved contract budget.

(b) Prior to expending contract funds for items not included on the approved budget, or in amounts exceeding those for approved line items, except as provided for below, the Contractor must receive prior written permission from the Department. Requests for budget revisions must be submitted on a standard Request for Budget Revision Form. Expenditures according to the revised budget may not be made prior to the receipt by the Contractor of the approved Request for Budget Revision Form from the Department.

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(c) Increases or decreases in the total amount of the contract will require that a supplemental contract agreement be executed between the City and the Contractor.

(2) Allowable Flexibility. Contractors may, without prior approval from the Department, submit a reimbursement request which exceeds the approved budget of a line item up to \$500 or five (5) percent of the line item amount, whichever is greater, to the extent the total approved budget is not exceeded. Line item changes in excess of the amount specified above will require a Request for Budget Revision form be submitted to and approved by the Department.

#### **H. Retention of Contract Records**

(1) General Requirements. Contractors are required to retain all accounting records and related original and supporting documents that substantiate costs charged to contract activities, identifiable by contract number. It is the responsibility of the Contractor to assure the safekeeping of all contract records and to be able to promptly produce them upon the request of authorized City, state, or federal representatives.

(2) Time Limitation on Record Retention. Unless the law requires a different time limitation, records must be retained for at least five (5) years after the end date of the contract or, if applicable, after the final audit of the contract has been completed. In all cases, an overriding requirement exists to retain records until resolution of any audit question relating to individual contracts even if the period exceeds the normal five year period.

(3) If the Contractor should be unable to maintain custody or control of the records for any reason, the original records shall be delivered to the City for safe keeping.

#### **I. Fiscal Reports and Monitoring Requirements**

##### **(1) General Requirements.**

(a) Monitoring Requirements. As often as may be required at the discretion of the City, fiscal office staff of the Department will conduct scheduled on-site monitoring visits to Contractors receiving contract funding. Contractors will be required to make available appropriate financial records. In the case of computer maintained records, availability means a printed copy of such records. Financial records related to the project include those as are necessary for the Department staff to:

(i) Verify financial transactions and determine whether funds were used in accordance with applicable laws, regulations, and procedures;

(ii) Ascertain whether appropriate policies, plans, and procedures are being followed;

(iii) Provide management with systematic appraisals of financial and administrative controls; and

(iv) Determine the reliability of financial records.

(b) As soon as is practicable following the conclusion of an on-site monitoring visit, a written report of findings and recommendations for corrective actions, if any, will be provided by the Department to the director and governing board of the organization. Organization written response, when required, to a Department monitoring report shall be signed by an authorized board official who is not an employee and approved by the governing board of the organization.

(2) Additional Requirements. Contracts are subject, at any time, to inspection and audit by authorized representatives of the Department, the City, and cognizant federal and state agencies.

(3) Acceptance of Final Request for Reimbursement. The final Request for Reimbursement shall be considered final fiscal report of the contract period. Final reports of expenditures submitted by Contractors are accepted by the Department subject to audit and shall not affect:

(a) The City's right to disallow costs and recover funds on the basis of a later audit or other review;

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(b) The Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

(4) Collection of Amounts Due

(a) Any funds paid to a Contractor in excess of the amount to which the grantee is finally determined to be entitled under the terms of the contract constitute a debt to the City. If not paid within a reasonable period after demand, the City may reduce the debt by:

- (i) Making an administrative offset against other requests for reimbursements.
- (ii) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the City will charge interest on an overdue debt. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

(c) Except when specifically authorized by the Director in writing, the Department shall not contract with an organization in debt to the City as a consequence of the findings of an audit or other review.

**J. Audit Requirements**

(1) General Requirements.

(a) Contractors who expend \$500,000 or more of federal funds during the year shall have an audit conducted in accordance with the Federal Government's Office of Management and Budget (OMB) Circular A-133 as amended. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards.

(b) Contractors who receive \$25,000 or more in funding from the City, and who do not fall under A-133, shall have an a financial statement audit conducted by an independent auditor in accordance with generally accepted auditing standards.

(c) The audit shall be made by an independent certified public accountant in accordance with generally accepted government auditing standards covering financial and compliance audits, selected by a competitive bidding process in conformity with standards established by the City. Language in the scope of work section in the RFP issued by the organization in soliciting bids for the audit must include the following:

(i) For Contractors with expenditures of \$500,000 or more, an examination shall be made in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accounts and will conform to the following authoritative sources:

- (1) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (1981 revision).
- (2) Single Audit Amendments of 1996.
- (3) OMB "Compliance Supplement for Single Audits of State and Local Governments."
- (4) Office of Management and Budget Circular A-110--Uniform Administrative Requirements.
- (5) Office of Management and Budget Circular A-122--Cost Principals.
- (6) Office of Management and Budget Circular A-133.
- (7) Accounting Principles Board Opinions.
- (8) Financial Accounting Standards Board Opinions.

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(9) Other pertinent manuals, regulations, and statutes.

(ii) For those Contractors with federal expenditures less than \$500,000 an examination shall be made as noted above except the Single Audit Amendments of 1996 and the OMB Circular A-133 do not apply.

(iii) That a complete and comprehensive examination should encompass the following areas:

(1) An analysis of generally accepted accounting principles as applied to legal and external reporting requirement.

(2) An in-depth analysis of the financial accounting system and evaluation of internal controls.

(3) Comprehensive compliance audit as provided for in OMB Circular A-133, and the Single Audit Act.

(4) A full examination of the year-end financial statements and issuance of a formal opinion as to their fairness and comprehensiveness within accounting and legal requirements.

(iv) If OMB Circular A-133 applies, a classification will be done of the significant internal accounting and administrative controls used in administering federal and City financial assistance programs in the following categories:

(1) General

(a) Political Activity--Prohibits the use of federal or City assistance funds for partisan political activity.

(b) Civil Rights--Prohibits excluding any person from federal or City assisted programs or activities because of race, color, national origin, or handicap.

(c) Financial Reports--Requires periodic submission of financial reports.

(d) Cash Management--Requires recipients to have procedures to reduce the time between receipt and use of federal or City funds.

(e) Davis Bacon Act--Requires that wage rate paid laborers on federally financed construction projects at least equal local established rates.

(f) Relocation Assistance and Real Property Acquisition--Requires certain procedures when federal assistance funds are used to acquire property or when relocations are involved.

(2) Specific Program Requirements

(a) Types of Services Provided--Expenditures were for allowable services.

(b) Eligibility of Recipients--Recipients were eligible for benefits or services received.

(c) Level of Effort Required--Required procedures were performed and certain efforts made.

(d) Reporting Requirement--Financial reports and claims for reimbursement contain required information and are supported by the books and records.

(e) Case File Maintenance--Case files contain required documentation.

(d) The organization must provide the City with a copy of a letter engaging an audit firm selected through the bidding procedure for the organization's fiscal year most recently ended. The Department may determine not to enter into a new contract with an organization which fails to provide a letter of engagement.

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(e) The audit shall cover the entire operations of an organization receiving City financial assistance during the year.

(f) The Contractor shall apportion the cost of such audit between its funding sources as appropriate, but in no case shall the Department be liable for audit costs in excess of the amount approved in the contract documents.

(g) The report and the management letter made on the audit, shall, within thirty (30) days of receipt by the organization, be transmitted to the Department and made available by it for public inspection.

(h) If the audit finds any material noncompliance with applicable laws and regulations by, or material weakness in the internal controls of the Contractor, the Contractor must submit to the Department a plan for corrective action to eliminate the material noncompliance or weakness or a statement describing the reasons that corrective action is unnecessary. The Department reserves the right to amend, suspend, or terminate any current contract with the organization based on the findings of the audit.

(i) If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to the Contractor's management officials above the level of involvement. These officials, in turn, shall promptly inform the City of the illegal acts or irregularities.

(j) All fraud, abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts, that auditors become aware of should be covered in a separate report submitted to the organization audited and to the City.

(k) The organization shall inform the Department of the time and date of the exit meeting between the auditor and management of the organization and the Department may, at its discretion, be represented at this meeting.

(2) Audit Resolution. The City shall ascertain that the organization has resolved all audit findings. Resolution shall be made within six (6) months of the receipt of the report by the City with corrective action undertaken as rapidly as possible.

(3) Audit work papers and reports. Work papers and reports shall be retained for a minimum of five years from the date of the audit report, unless the auditor is notified in writing by the City or the cognizant federal agency to extend the retention period. Audit work papers shall be made available upon request to the City, the cognizant federal agency or its designee, or the General Accounting Office at the completion of the audit.

#### **14. WORK PLANS, AMENDMENTS, AND PROGRAM PERFORMANCE REPORTS**

**A. Work Plan:** Based on the project section of their proposal narrative, Contractors shall prepare a summary of their work program. This work plan must specify the major tasks or activities to be performed under the contract, the measurable objectives for each task, and the time frame within which the tasks will be accomplished.

**B. Request for Amendment to the Work Plan:** Contractors seeking to make changes in the tasks or activities to be carried out under the contract; in the measurable objectives of major tasks or activities; in the time frame within which those tasks are to be carried out; or in the qualifications of key staff members with responsibility for the tasks or activities must submit a request for Amendment to the Work Plan, including a narrative justification for the changes requested. Changes in the approved work plan should not be made without the prior approval of the Department and no change will be approved during the final quarter of the contract year. Changes in the Work Plan deemed by the Department to constitute material changes in the original scope of services may require incorporation into a supplemental agreement to the approved contract.



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### **C. Project Performance Reports**

#### **(1) Basic Requirements for Performance Monitoring of Direct Client Services.**

(a) General. The Contractor is responsible for managing the day-to-day operations of contract activities to assure compliance with City requirements and that performance goals are being met.

(b) To enable the Department to efficiently monitor compliance, the Contractor's client records system should, at minimum:

(i) Be designed to maintain a record of each individual client receiving services through the project during the contract period, including the gender, race/ethnicity, age, and family income of the client whenever feasible;

(ii) Where applicable, provide information in the clients' files indicating their eligibility for services under City income guidelines, and other guidelines appropriate to the funding source, the basis for determining eligibility, and the last date upon which such determination was made.

(iii) Fully document all services received by an individual client through the project using appropriate source documentation;

(iv) For programs providing congregate services for which individual records are not practical, maintain a record of the total number of persons receiving services based on an actual count or estimates based on reliable methods approved by the City;

(v) Clearly reconcile the record of services provided to the tasks and activities included in the Work Plan;

(vi) Maintain a filing system that is easily accessible and separates contract activities in a consistent manner.

(2) Record Keeping of Substance Abuse Patients/Clients. Record keeping must comply with the requirements of the current version of "Albuquerque Minimum Standards for Substance Abuse Treatment and Prevention Services."

#### **(3) Basic Requirements for Capital Projects and other Indirect Services.**

(a) General. Contractors are responsible for the day-to-day management of capital projects undertaken with City funds, including acquisition and substantial rehabilitation of real property.

(b) For non-direct service projects (projects that facilitate the provision of social services, but do not directly provide such services, in addition to capital improvement such indirect services may include, but are not limited to the training of service providers or otherwise creating infrastructure to provide social services), the Contractor's performance records system should, at minimum:

(i) Be designed to maintain a record of tasks or activities accomplished to date;

(ii) Fully document tasks or activities accomplished through the project using appropriate source documentation;

(iii) Clearly reconcile the record of tasks or activities accomplished to the provisions of the Work Plan;

(iv) Maintain a filing system that is easily accessible and separates contract activities in a consistent manner.

#### **(4) Report on Project Activities.**

(a) As required in the contract but no less than quarterly, Contractors shall submit a summary report on progress toward meeting the measurable objectives included in the Work Plan on forms specified by the Department.

(b) Performance reports must, at a minimum, provide:

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(i) A comparison of actual accomplishments to objectives established for the period.

(ii) A narrative explanation of outreach activities used to increase services to the community conditions affecting contract performance; problems, delays, or adverse conditions which have impaired the ability of the project to meet objectives if they were not met; why no activity is being reported; and any additional pertinent information related to contract performance.

(5) Report on Client Characteristics. In conjunction with the report on Project Activities, where applicable, the Contractor shall also submit a report on the unduplicated number of clients served through their project and on the characteristics of those clients in respect to gender, race/ethnicity, age, and family income; disability; and other data deemed necessary by the City to assess performance. Such reports must be submitted on forms specified by the Department.

(6) Board Approval. Project Progress Reports submitted by nonprofit agencies must be approved by the organization Board of Directors and signed by an authorized member of that Board who is not an employee. Reports submitted by a public agency must be reviewed and signed by an authorized official of that organization above the level of involvement.

**D. Project Records:** Except as otherwise authorized by the Department, all program records related to activities charged to the contract must be retained for five (5) years after the end date of the contract. In all cases, an overriding requirement exists to retain records until resolution of any audit questions related to individual contracts even if the period exceeds the normal three years. *It is the responsibility of the Contractor to assure the safekeeping of all project records and to be able to promptly produce them upon the request of authorized city, state, or federal representatives.*

**E. Project Monitoring Requirements**

(1) General Requirements.

(a) As often as may be required at the discretion of the City, program office staff of the Department will conduct scheduled on-site monitoring visits with organization staff and/or program participants receiving contract funding. Contractors will be required to make available such records related to the program as are necessary for the Department staff to:

(i) Verify project outcomes and determine if services were provided in accordance with applicable laws, regulations, and procedures;

(ii) If applicable, determine whether clients assisted met income and other guidelines established for City-supported direct services;

(iii) Ascertain whether approved plans and procedures are being followed, including the attainment of program goals; the number and qualification of staff assigned to service delivery;

(iv) Provide management with systematic appraisals of program and administrative controls; and

(v) Determine the reliability of program records.

(b) In the course of the monitoring, certain items not directly related to the City contract may require additional research. If, at the discretion of Department staff, an item or items may be judged to have an impact the organization's ability to maintain fiscal integrity or provide services, the organization must provide documents related to these items.

(c) As soon as is practicable following the conclusion of an on-site monitoring visit, a written report of findings and recommendations for corrective actions, if any, will be provided by the Department to the director and governing board of the organization. An organization written response, when required, to a Department monitoring report shall be signed by an authorized board official and approved by the governing board of the organization.

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(2) Economic Development/Job Creation and Retention. In addition to the preceding General Requirements for the Project Monitoring Requirements, recipients of CDBG Economic Development funds:

(a) Must ensure that 51% of all jobs created will be held by low and moderate income persons, regardless of the amount of CDBG Economic Development funds awarded.

(b) Will be reviewed mid-year by the Department to determine that all low and moderate job creation and retention requirements are met.

(c) Must obtain written Departmental approval for each CDBG Economic Development funded project prior to award of CDBG Economic Development funds.

(3) Additional Requirements. Contracts are subject, at any time, to inspection and audit by authorized representatives of the Department, the City, and cognizant federal and state agencies.

(4) Acceptance of Final Reports. Final reports of program progress submitted by Contractors are accepted by the Department subject to audit or later review.

## 15. SUSPENSION AND TERMINATION PROCEDURES

**A. General Considerations:** From time to time conditions may arise which indicate that funding for a contract should be discontinued on a temporary or permanent basis as a consequence of:

(1) Audits of previous contracts with the organization revealing illegal activities, irregularities, exceptions, or material weaknesses in internal controls.

(2) Material failure to comply with the requirements of the scope of work set forth in the contract, including failure to provide specified services, substantial failure to meet measurable objectives, provision of assistance to ineligible beneficiaries, or lack of adequate personnel.

(3) Material failure to maintain adequate financial controls of contract funds in accordance with applicable laws, regulations, policies, plans, and procedures.

(4) Material failure to comply with applicable assurances regarding Civil Rights laws and Executive Orders or with assurances regarding the limitations on the use of funds for sectarian religious purposes.

(5) Failure to submit required financial and program reports in a timely manner or to comply with applicable regulations regarding Departmental fiscal or program monitoring.

(6) For Economic Development funds, failure to comply with the jobs creation/retention goal and benefit to persons of low and moderate income, including possible repayment to the City in the amount of \$20,000 per job not created or retained.

(7) A determination by the Department that continued funding is not in the best interests of the City of Albuquerque.

**B. Procedures:** When conditions are identified which may be serious enough to cause the Department to consider suspension or termination of a contract, the Contractor shall be advised in writing by the Director of the reasons for possible suspension or termination and request that the Contractor submit, within five (5) working days, a response describing the steps that have or will be taken to correct the identified deficiency. If, however, the Department determines that conditions are such that any delay would seriously jeopardize the interests of the City of Albuquerque, a suspension may be made immediately effective.

**C. Termination for Cause:** If a satisfactory written response to the notification described in the procedures above is not received within five (5) working days, the Director may issue a written notice to the Contractor of the termination of the contract at least five (5) calendar days before the effective date of

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the termination. Following the termination of the contract, the City will reimburse the Contractor for allowable expenses obligated prior to termination in accordance with contract provisions regarding termination for cause.

**D. Termination for Convenience of the City of Albuquerque:** If the Department determines that continuation of a contract is no longer in the best interests of the City, it may terminate the contract without cause by giving at least forty-five (45) days notice, in writing, to the Contractor. In such cases, the Contractor may be reimbursed for expenses incurred, including any actual out-of-pocket expenses incurred during the contract period which are directly attributable to the uncompleted portion of the services covered by the agreement.

## **16. INTERPRETATION OF A RULE**

**A.** If a Contractor desires a formal interpretation of a rule including whether or not the rule is applicable to a specific situation, the Contractor may request, in writing, a formal interpretation. The assigned Program Specialist will respond in writing with the Department's interpretation.

**B.** Unless the rules provide for a waiver process, no waivers shall be issued.

## **17. STANDARD FORMS FOR CITY CONTRACTS**

**A.** Unless otherwise specified by the Department, applications must use and include the forms found at the Department's website: <http://www.cabq.gov/family/Admin-Requirements.html>.

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# APPENDIX

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# Resources for Administrative Requirements

## Authority

## Citation

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### American Institute of Certified Public Accountants

<http://www.aicpa.org>

Accounting Principles Board Opinions  
Financial Accounting Standards Board Opinions

### City of Albuquerque Code of Ordinances

[http://www.amlegal.com/albuquerque\\_nm/](http://www.amlegal.com/albuquerque_nm/)

Housing and Neighborhood Economic Development Fund  
Public Purchases

4-22-1, ROA 1994  
5-5-1 et seq., ROA  
1994

### Executive Orders

<http://www.archives.gov/federal-register/executive-orders/disposition.html>

Amending Executive Order No. 11246, Relating to Equal Employment  
Opportunity  
Equal Employment Opportunity

EO 11375

EO 11246

### Federal Regulations

<http://www.gpoaccess.gov/ecfr/>

Anti-Discrimination in Employment  
Confidentiality of Alcohol and Drug Abuse Patient Records  
Continuum of Care Fund  
Department of Labor Regulations  
Emergency Shelter Grant  
HOME Investment Partnerships Fund  
HUD Income Requirements

24 CFR 1.1  
42 CFR 2.1  
24 CFR 582  
41 CFR 60  
24 CFR 576  
24 CFR 92  
24 CFR 5

### Federal Statutes and Laws

<http://www.gpoaccess.gov/uscode/index.html>

Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. §12101  
Clean Air Act of 1970 42 U.S.C. §7401  
Community Development Block Grant Program 42 U.S.C. §1437f  
Contract Work Hours and Safety Standards Act 41 U.S.C. §351  
Copeland "Anti-Kick Back" Act 18 USC §874 and  
40 U.S.C. §276c  
Davis-Bacon Act 40 U.S.C. §3141  
Early Head Start Fund 42 U.S.C. §9801  
Equal Employment Opportunity Act 42 U.S.C. §2000e  
Federal Water Pollution Control Act 33 U.S.C. §1251  
Low Income Energy Assistance 42 U.S.C. §8621  
Older Americans Act 42 U.S.C. §3001  
Section 8 Rental Assistance 42 U.S.C §1437f  
Single Audit Act 31 U.S.C. §7501  
Stewart B. McKinney Homeless Assistance Act of 1987 42 U.S.C. §11301  
Supplemental Nutrition Assistance Program 7 U.S.C. §2011  
Supplemental Security Income (SSI) 42 U.S.C §1381  
Temporary Assistance for Needy Families (TANF) 42 U.S.C. §608

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Title XX - Block Grants to States for Social Services 42 U.S.C. §1397  
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 42 U.S.C. §4601

**Government Accountability Office**

<http://www.gao.gov/govaud/ybk01.htm>

Standards for Audit of Governmental Organizations, Programs, Activities,  
and Functions

Yellow Book

**U.S. General Services Administration**

Per Diem Overview (Travel Costs)

[www.gsa.gov/perdiem](http://www.gsa.gov/perdiem)

**New Mexico Statutes and Laws**

<http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0>

New Mexico Court Rules

NMRA 1-001

Occupational Disease Disablement Law

NMSA 1978, §52-3-1

Open Meetings Act Adopted by the City of Albuquerque

NMSA 1978, §10-15-1

Workers Compensation Act

NMSA 1978, §52-1-1

**Office of Management and Budget**

<http://www.whitehouse.gov/omb>

Circular A-110--Uniform Administrative Requirements

Circular A-122--Cost Principals

Circular A-133--Compliance Supplement for Single Audits of State and

Local Governments

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**Other Resources**

**Albuquerque Metropolitan Redevelopment Agency**

<http://www.cabq.gov/planning/amra/>

**City of Albuquerque**

<http://www.cabq.gov>

**City of Albuquerque Department of Family and Community Services**

<http://www.cabq.gov/family/>

DFCS rules and regulations can be found here.

**Housing and Urban Development**

<http://www.hud.gov>

**New Mexico Children Youth and Families Department**

<http://www.cyfd.org/>

**Roberts Rules of Order**

<http://www.robertsrules.com>

# Health City Sun

## AFFIDAVIT OF PUBLICATION

CIUDAD de ALBUQUERQUE  
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PATROCINADO POR:  
Isaac Benton  
ORDENANZA  
PARA ENMENDAR LA LEY  
DE OPORTUNIDADES  
DE VIVIENDA PARA LAS  
FUERZAS DE TRABAJO, CON  
EL FIN DE REVISAR "LAS  
PRIORIDADES Y LOS USOS  
DE LOS FONDOS" PARA QUE  
SEAN MÁS ADAPTABLES A  
LAS FLUCTUACIONES DE LAS  
CAMBIANTES CONDICIONES  
DEL DESARROLLO Y DE  
LA VIVIENDA; Y PARA  
ABORDAR LOS REQUISITOS  
DE LA LEY DEL ESTADO  
DE NUEVO MÉXICO PARA  
LA VIVIENDA ASEQUIBLE.  
ASÍ LO RESUELVE EL  
CONCEJO, ÓRGANO  
GOBERNANTE DE LA CIUDAD  
DE ALBUQUERQUE:  
HCS Pub. February 13, 2015

State of New Mexico )  
  ) ss  
County of Bernalillo )

David Rivord, being duly sworn declares and says he is the **Publisher** of the Health City Sun, a weekly newspaper published and having a general paid circulation in the State of New Mexico; that the said Health City Sun was entered in the post office at Albuquerque as second class mail matter on September 5, 1930, and has met all requirements of a legal newspaper under the laws of the State of New Mexico.

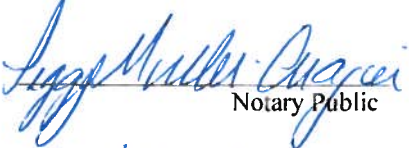
Affiant further states that this newspaper is duly qualified to publish Legal Notices or advertisements within the meaning of Section 14-11-4 of the New Mexico Statutes annotated (1978).

Affiant further states that the publication, a copy of which is hereto attached, was published in said paper in the regular and entire issue of each number of the paper, during the period and time of publication, and that the notice was published in the newspaper proper and not in a supplement thereof for 1 week, the first publication being in the issue of the 13th day of February, 2015, and the last publication being in the issue of the 13th day of February, 2015.

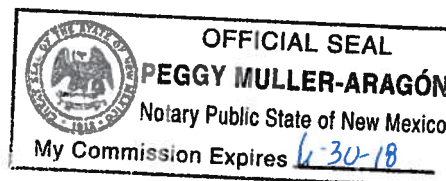
Affiant further states that the costs of publishing said legal notice have been paid, or have been assessed as court costs in the case numbered.

  
David Rivord, Publisher

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 13th day of February, 2015.

  
Notary Public

My Commission Expires 6-30-18



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