

RESOLUTION NO. 1086

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE CITY OF CANBY (CITY) AND CLACKAMAS COUNTY DEPARTMENT OF HEALTH, HOUSING AND HUMAN RESOURCES COMMUNITY DEVELOPMENT DIVISION FOR THE PURPOSE OF DESIGN AND CONSTRUCTION OF SIDEWALK AND DRAINAGE IMPROVEMENTS ALONG NE 3rd AND NE 4TH AVENUES IN CANBY.

WHEREAS, the City has applied for, and received, Community Development Block Grant funding for the design and construction of sidewalk and drainage improvements along NE 3rd and NE 4th Avenues; and

WHEREAS, Clackamas County administers the Community Development Block Grant funds and the City of Canby will provide matching funds; and

WHEREAS, Clackamas County has proposed a form of IGA that is acceptable to the City; now therefore

IT IS HEREBY RESOLVED by the City of Canby Council as follows:

1. That the attached IGA, marked as Exhibit "A" and by this reference incorporated herein, by and between Clackamas County and the City of Canby is hereby adopted. The Mayor is authorized to sign the IGA on behalf of the City.

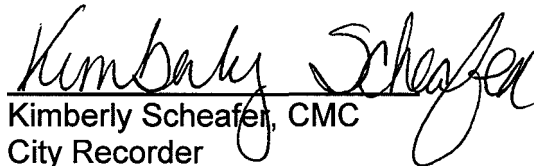
This resolution shall take effect on February 2, 2011.

ADOPTED this 2nd day of February 2011, by the Canby City Council.



Randy Carson
Mayor

ATTEST:



Kimberly Scheafer, CMC
City Recorder

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY DEPARTMENT OF
HEALTH, HOUSING AND HUMAN RESOURCES
COMMUNITY DEVELOPMENT DIVISION**

AND

THE CITY OF CANBY

I. Purpose

- A. This Agreement is entered into between Clackamas County, acting by and through its Community Development Division (COUNTY) and the City of Canby (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides for the design and construction of sidewalk and drainage improvements along 3rd and 4th Avenues in Canby. These improvements are herein referred to as the PROJECT.
- C. The COUNTY has determined that the PROJECT is eligible for Community Development Block Grant (CDBG) funds as a Low-Mod Area Benefit Activity. The service area for the PROJECT is defined on the map included in Attachment A.

II. Scope of Responsibilities

- A. Under this agreement the responsibilities of the CITY shall be as follows:
 - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
 - 2. The CITY shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
 - 3. The CITY shall provide engineering services for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:

- a. The CITY shall hire a registered professional engineer (herein after referred to as Engineer) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight including staking and surveying of the PROJECT.
- b. The CITY shall require the Engineer to indemnify, save harmless and defend the COUNTY, its officers, agents, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the negligent acts, errors or omissions of the Engineer or the Engineer's employees.
- c. The CITY shall require the Engineer to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- d. If the Engineer has the assistance of other persons in the performance of this contract, and the Engineer is a subject employer, the CITY shall require that the Engineer agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. The Engineer shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.
- e. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the Engineer's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

- f. The CITY shall require the Engineer to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- g. The CITY shall require the Engineer to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.
- h. The insurance, other than the professional liability insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.
- i. The CITY shall ensure that the Responsibilities of the Engineer include, but not be limited to, the following:
 - (i) During construction the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
 - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without CITY approval.

- (iii) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.
 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.
 5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT. (refer to Attachment A).
 6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT. (refer to Attachment B).
- B. Under this agreement the responsibilities of the COUNTY will be as follows:
 1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
 2. In such contracts the COUNTY will assume the rights and responsibilities of the owner of the project.
 3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.
 5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.

III. Budget & Financial

- A. The COUNTY will apply CDBG funds in the amount of **\$190,000** to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the

COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.

- B. The CITY agrees to contribute the greater of:
1. Twenty percent (20%) of the total cost of the PROJECT, or
 2. All costs for design and construction which exceed available CDBG funds budgeted for the PROJECT.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- D. The CITY shall be credited towards the matching requirements stated in Part III. B. an amount equal to 12% of the final construction cost for providing surveying, staking and engineering services as detailed in Part II. A. 3. a.
- E. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
1. In the event a construction contractor is entitled to payments for work completed after \$190,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the COUNTY within thirty (30) consecutive calendar days of a written request.
 2. Upon receipt of written notification from the COUNTY the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B. All checks shall be made payable to Clackamas County, include a Project Number and be mailed to the following address:

Attn: Toni Hessevick
Clackamas County - Finance Office
2051 Kaen Road
Oregon City, OR 97045
 3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.

4. Funds for the change order shall be split evenly between the COUNTY and the CITY subject to the limitations described above.

IV. Liaison Responsibility

Matilda Deas will act as liaison from the CITY for the PROJECT. Mark Sirois will act as liaison from the COUNTY.

V. Special Requirements

- A. **Law and Regulations.** The COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. **Public Contracting Requirements.** To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. **Relationship of Parties.** Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, and Oregon Constitution each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, upon completion of the improvements, the CITY will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.
- E. **Notice.** Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- G. **Access to Records.** The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. **Conflict of Interest.** No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. **Insurance.** The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, the CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. **Nondiscrimination.** The CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- L. **Handicapped Accessibility.** The CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by

handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled **Uniform Federal Accessibility Standards** published by HUD in April, 1988 as a joint effort with other Federal agencies.

- M. **Nonsubstituting for Local Funding.** The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. **Evaluation.** The CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. **Audits and Inspections.** The CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. **Acquisition.** If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. **Change of Use.** The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- R. **Reversion of Assets.** Upon expiration or termination of this Agreement, CITY shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under DISTRICT'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 shall ensure said real property is either:
1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
 2. Not used to meet on the National Objectives for the term of this Agreement, in which event, the CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending five (5) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
 - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment D, resulting from material failure by the CITY to comply with any term of this Agreement, or;
 - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

THE CITY OF CANBY

CLACKAMAS COUNTY

Commissioner Lynn Peterson, Chair
Commissioner Jim Bernard
Commissioner Charlotte Lehan
Commissioner Ann Lininger
Commissioner Paul Savas
Signing on Behalf of the Board.



Randy Carson, Mayor

Cindy Becker, Director
Department of Health, Housing
& Human Services

2.2.11
Date

Date

ATTACHMENT A
COMMUNITY DEVELOPMENT BLOCK GRANT PERFORMANCE MEASURES REPORT

FOR THE PERIOD: JULY 1, _____ TO JUNE 30, _____

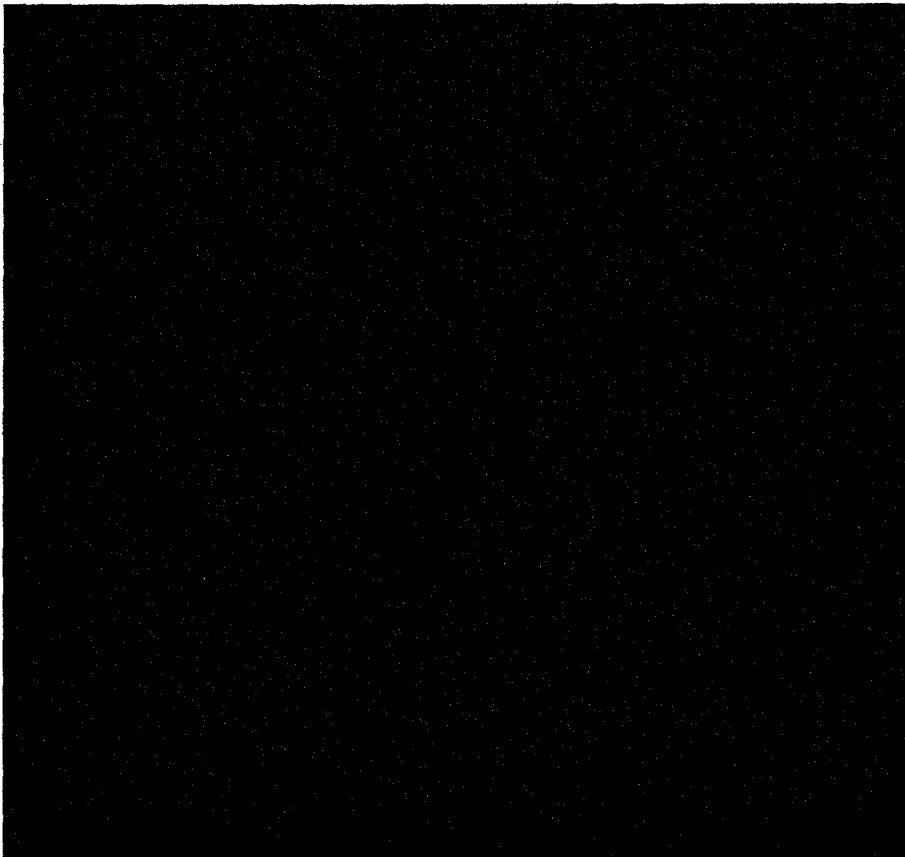
Project Name: 3rd and 4th Ave Street Improvements Project – Canby

The Service Area for this project is contained within Census Tract 229.02 Block Group 3. The City of Canby portion of this Block Group is 55.2% Low- and Moderate-Income.

Choose all that apply:

- # of persons _____ with new access to this Public Facility or Infrastructure Improvement
- # of persons _____ with improved access to Public Facility or Infrastructure Improvement
- # of persons _____ with access to this type of Public Facility or Infrastructure Improvement that is No Longer Substandard.

Total Number of persons assisted: _____



Other benefits to the service area:

Signature

Date

Organization

ATTACHMENT B

CDBG Project Matching Funds

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for your ESG projects:

2010-11 CDBG Funds	\$
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SOURCES OF LOCAL MATCH:	
Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Private (including recipient) Funding	
Fund Raising/Cash	\$ _____
Loans	\$ _____
Building Value or Lease	\$ _____
Donated Goods	\$ _____
New Staff Salaries	\$ _____
Volunteers (\$5/hr)	\$ _____
Volunteer Medical/Legal	\$ _____
Other _____	\$ _____

Prepared By:
 (Print name)

 Signature

 Date

ATTACHMENT C

Change of Use

Excerpt from 24 CFR Part 570

570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in **570.208 (formerly 570.901)** and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

ATTACHMENT D

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,
 - (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.
- (d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.