

AGREEMENT
PART I

THIS AGREEMENT (this "Agreement"), in two parts, Part I and Part II, is made and entered into this ___ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the "City"), and **DENVER HEALTH AND HOSPITAL AUTHORITY**, a body corporate and political subdivision of the State of Colorado, authorized to do business in the State of Colorado (the "Contractor"), whose address is 777 Bannock Street, MC 2000, Denver, Colorado 80204.

10-175

WITNESSETH

WHEREAS, the City desires to provide funds to the Contractor for architectural and professional costs for the construction of a new Denver Health primary care clinic to serve the Montbello neighborhood which now lacks adequate capacity to serve this neighborhood's health needs; and

WHEREAS, the Contractor is ready, willing and able to provide such services.

NOW THEREFORE, in consideration of the premises, and the mutual covenants and obligations herein contained, and subject to the terms and conditions in Part II of this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED**: The Contractor agrees to carry out the program services described in **Exhibit A** entitled "Scope of Services," and **Exhibit B** entitled "Preliminary Project Budget Estimate," and the budget contained therein, in a lawful, satisfactory and proper manner, and in accordance with written policies and procedures as may be prescribed by the U.S. Department of Housing and Urban Development ("HUD") or the City. Exhibits A and B are attached hereto and incorporated herein by this reference as if fully set forth herein. Changes to the services described in Exhibit A may be approved in writing by the Director of the City's Office of Economic Development ("OED"), or his or her designee, provided the changes do not (i) extend the term of this Agreement, (ii) increase the amount payable hereunder as identified in Section 3 below, or (iii) constitute a major modification of this Agreement under applicable federal law. In the event of any conflict between the terms and conditions contained in this document and those contained in Exhibits A and B, which cannot be resolved so as to give effect to both or all provisions, then the

terms and conditions contained in this document shall be deemed to be controlling over those in Exhibits A and B.

2. **TIME OF PERFORMANCE**: This Agreement shall begin on 3-1-2010, and end on 12-31-2011, unless such time is extended by written agreement of the parties, executed in the same manner as this Agreement. The term of this Agreement and the provisions herein shall automatically be extended to cover any additional time period during which the Contractor remains in control of Community Development Block Grant (“CDBG”) funds or other CDBG assets, including program income.

3. **COMPENSATION**: The amount to be paid by the City to the Contractor shall not exceed Five Hundred Thousand Dollars (\$500,000). The obligation of the City for payments under this Agreement is limited to monies appropriated by the U.S. Congress and the City Council, and paid into the City Treasury as an applicable cost under the CDBG Agreements referred to below. Funds will be released to the Contractor in accordance with the budget and other requirements set forth in Exhibits A and B. The parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

4. **RECORDS AND REPORTS**: Contractor will provide OED with records and reports as further detailed in Exhibits A and B.

5. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

6. **LIABILITY AND COLORADO GOVERNMENTAL IMMUNITY ACT**: In relation to the Agreement, the parties are relying upon and have not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.* Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees, and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive the termination of this Agreement.

7. CONTRACTOR'S INSURANCE:

A. GENERAL CONDITIONS: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. PROOF OF INSURANCE: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. ADDITIONAL INSURED: For Commercial General Liability and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. WAIVER OF SUBROGATION: For all coverages, Contractor's insurer shall waive subrogation rights against the City.

E. SUBCONTRACTORS AND SUBCONSULTANTS: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. WORKERS' COMPENSATION/EMPLOYER'S LIABILITY INSURANCE: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. COMMERCIAL GENERAL LIABILITY: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. BUSINESS AUTOMOBILE LIABILITY: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. ADDITIONAL PROVISIONS:

(1) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs in excess of policy limits;
- (c) A severability of interests, separation of insureds or cross liability provision; and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

- (a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

8. **AUDIT REQUIREMENTS:** Non-profit organizations that expend \$500,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133 and applicable federal regulations.

9. **EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the City or the United States shall, until the expiration of five (5) years after the final payment under this Agreement, or such longer period as may be required due to an audit finding, have access to and the right to examine any books, documents, papers and records of the Contractor, involving transactions related to this Agreement.

10. **COUNTERPARTS OF THE AGREEMENT:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement, and all of which taken together shall constitute one and the same instrument.

11. **ASSIGNMENT AND SUBCONTRACTING:** The City shall not be obligated or liable under this Agreement to any party other than the Contractor named herein. The Contractor understands and agrees that it shall not assign or subcontract with respect to any of its rights,

benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment or subcontracting; and, in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee or subcontractor, and the Contractor herein named shall in any and all events be and remain responsible to the City according to the terms of this Agreement.

12. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

13. **CONFLICT OF INTEREST:** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12. This Agreement is further subject to the federal conflict of interest requirements set forth in Part II.

14. **STATUS OF CONTRACTOR:** It is understood and agreed that the status of the Contractor shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the Charter of the City and it is not intended, nor shall it be construed, that the Contractor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

15. **CONDITIONS:**

A. This Agreement is subject to and incorporates herein the provisions attached hereto as Part II, General Conditions and all other attachments.

B. This Agreement is also subject to the Housing and Community Development Act of 1974, as amended, and regulations issued by HUD, 24 C.F.R. 570 et seq., and the CDBG Agreements entered into by and between the City and HUD. Additionally, this Agreement is subject to the City's Charter and all applicable City ordinances, as the same may be amended from time to time.

16. **LEGAL AUTHORITY:**

A. Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of Contractor do hereby warrant and guarantee that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into this Agreement. The City shall not be obligated to Contractor for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

17. **TERMINATION:** This Agreement may be terminated as provided in Part II.

18. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:**

A. The Contractor represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

B. The Contractor will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

C. The Contractor shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

D. The Contractor will immediately notify OED in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this Agreement, or if due to changed circumstances the Contractor or any of its principals have subsequently been excluded by a federal agency.

E. The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

19. **PUBLICATIONS/ANNOUNCEMENTS.** Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED or publicizing activities funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Office of Economic Development.”

20. **CONTRACT MONITORING.** The Contractor shall be subject to various monitoring and evaluation requirements to assure compliance with applicable federal requirements and that performance goals are being achieved. The Contractor’s performance may be reviewed monthly, or more often, by the appropriate operational unit at OED which has program management responsibility. All records required to perform such monitoring shall be made available to the authorized OED staff by the Contractor. All reports submitted by the Contractor shall be utilized as part of the evaluation of Contractor’s performance hereunder. All reviews shall be conducted in accordance with internal OED procedures. Procedures will be available to the Contractor prior to any review. The Contractor is further subject to a final program audit. The City Auditor reserves the right to select the audit firm. The Contractor shall provide all requested records to the auditing personnel. The Audit Guide will be the basis of the performance of the audit. The Contractor agrees to abide by the administrative procedures of OED regarding the resolution of audit exceptions.

21. **ENFORCEMENT.** If the Contractor materially fails to comply with the terms of this Agreement, or the terms any other agreement between the City and Contractor, the City may take one or more of the following actions:

A. Temporarily withhold cash payments pending correction of the deficiency by the Contractor or more severe enforcement action.

B. Disallow (that is deny use of funds) all or part of the cost of the activity or actions not in compliance.

C. Wholly or partially suspend or terminate the current award for the Contractor’s program.

D. Pursue any other remedies that may be legally available.

22. **NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

B. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with

an illegal alien, it will notify such subcontractor and the City within three (3) days. The Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

22. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating the Agreement or barring the Contractor from City facilities or from participating in City operations.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and the Contractor have executed, through their lawfully empowered representatives, this Agreement as of the date above first written.

ATTEST:

CITY AND COUNTY OF DENVER:

By: _____
STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio
Clerk of the City and County of Denver

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: _____
Deputy Director, Office of
Economic Development

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID R. FINE, Attorney for the
City and County of Denver

By: _____
Manager of Finance
Contract Control No. GE02157

By: Debat Napp
Assistant City Attorney

By: _____
Auditor

"CITY"

**DENVER HEALTH AND HOSPITAL
AUTHORITY**

Tax Identification No. 84-1343242

By: Stephanie Thomas for

Name: Patricia A. Gabino, M.D.
(please print)

Title: Chief Executive Officer

"CONTRACTOR"

- Parts I and II
- Exhibit A: Scope of Services
- Exhibit B: Preliminary Project Budget Estimate
- Exhibit C: Certificate of Insurance

EXHIBIT A

SCOPE OF SERVICES

OFFICE OF ECONOMIC DEVELOPMENT
DIVISION OF BUSINESS AND HOUSING SERVICES (BHS)

CDBG - architectural and professional costs -- Montbello Health Clinic

I. INTRODUCTION

The purpose of this contract agreement is to provide a CDBG grant for \$500,000.00 through the Office of Economic Development's Division of Business and Housing Services (BHS). These funds will be provided to the **Denver Health and Hospital Authority** to be utilized for architectural and professional costs related to the construction of the Denver Montbello Health Clinic.

Funding Source: **Amount:** **CFDA #** 14.218
 CDBG \$ 500,000.00
 HOME \$ _____
 HOPWA \$ _____

HUD Matrix Code: 03P-Health Facilities 570.201(c)
HUD Eligible Activity: LMA 570.208(a)(1)
Accomplishment Code: 11 Public Facilities
Proposed Number: _____

CDBG – Only
HUD National Objective: 570.208(a)(1) -Low/mod area benefit; the service area identified for activities is primarily low/mod income.

HOME – Only
HUD Eligible Cost: _____

Organization: Denver Health and Hospital Authority

EIN #: 84-1343242

Address: 777 Bannock St. Mail Code 2000

Contact Person: Eric Frans, Construction Project Manager

Phone: 303-436-7216

Email: Eric.Frans@ddha.org

Organization Type: Government Non-profit For-profit

Is the organization a Faith-based/Community Initiative? Yes No

Is the organization woman owned? Yes No

Contract Relationship:
 Subrecipient/Contractor Vendor Beneficiary Community Based Development Organization
 CHDO

Council District(s): 11 **Neighborhood(s):** Montbello **Census Tracts:** 83.12

Is the purpose of this activity to:
Help prevent homelessness? Yes No
Help the homeless Yes No

EXHIBIT A

Help those with HIV/AIDS Yes No
Primarily help persons with disabilities Yes No
Address public housing needs Yes No

Contract Period: March 1, 2010 – December 31, 2011

Will program income be generated by this activity? Yes No
Will activity be carried out by an entity/agency other than the City & County of Denver? Yes No

If yes, please list entity: Denver Health and Hospital Authority and subcontractors

II. ACTIVITY DESCRIPTION

1. Purpose

Purpose/Description of Activity: The activity consists of construction of a new health clinic located at 12600 Albrook Drive, Denver, CO, which will serve as the primary health care clinic site for the Montbello neighborhood and the greater northeast Denver area

Funds will be used to: pay for architectural and professional services related to the design and construction of the DHHA Montbello Health Clinic

2. Program Requirements and Responsibilities

Completion of the architectural design and associated professional services by December, 2011

3. Performance Objective & Outcome

The intent of this activity is to complete the construction of a health clinic, which is fully operational and serving the resident of northeast Denver.

Objective (select one)

- Enhance Suitable Living Environment
Create Decent Housing
Promote Economic Activity

Outcomes (select one)

- Availability/Accessibility
Affordability
Sustainability

4. Indicators

The following indicators will be used to measure the success of the contract/activity.

Table with 2 rows: Indicators – must be measurable; 4a. Common Indicators: Money Leveraged; 4. b Specific Indicators: Specific to this particular scope of work

EXHIBIT A

Completion of construction of Montbello Health Clinic by December 31, 2011 with Certificate of Occupancy

5. Implementation Plan and Timeline

The following table outlines the implementation plan and time lines for this contract.

Task	Projected Beginning & End Dates
See Attached Construction Schedule and Budget	

III. Budget

If program income is generated, how will income be used? *(Please refer to attached Option Sheet)*

 N/A

- Is a copy of the Program Budget form attached? Yes No
 Are non-personnel costs being funded Yes No
 If yes, attach a cost allocation plan Yes No

IV. Reporting

Data collection is required quarterly and must be completed demonstrating money leveraged and construction achievements including milestones reached, updated timelines, anticipated next steps.

The Denver Health and Hospital Authority will submit an Outcome Performance Measurement Report/Reporting Form to BHS **Quarterly** when the monthly financial draw request is submitted. The information reported must include progress on the indicators included in this Scope of Services. The report includes current and cumulative (year-to-date) indicator information. Information on the overall progress of the program and/or project should be reported in the narrative section of the report. If the project is not being performed in a timely manner then an explanation should be included in the narrative section of the report.

Is the Outcome Performance Measurement Report/or other required reporting form attached? Yes No

Income and Demographic Reporting Requirements

For programs that must fulfill the limited clientele activities, income data must be collected to verify that at least 51 percent of program participants are low- or moderate-income persons. The income limitations are set by HUD annually and BHS will provide the income limitations.

Select what method of income verification will be used to demonstrate income compliance:

- Self-Certification Verification with supporting income documentation Not Applicable

HOME funded contracts only:

If income will be verified, select the definition to be used to determine annual household income:

- Part 5 income (rental) Census Long Form (homeownership for-sale) IRS Form 1040 (rehab)

BHS has a form entitled "STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS" that may used to collect income and demographic information or an existing form incorporating the required data may be used. This information must be retained and be made available to BHS staff or designee upon request. The minimum data required for each program participant is as follows:

EXHIBIT A

1. Unique identifier – name and address
2. Identify whether the head of household is female or/or disabled
3. Total number of household members
4. Total income of the household
5. Number of household members served by the program
6. The **ethnicity** – Hispanic or Latino OR Not Hispanic or Latino of each household member served
7. The **race** of each household member served –
 - a. White
 - b. Black/African American
 - c. Asian
 - d. American Indian/Alaska Native
 - e. Native Hawaiian/Other Pacific Islander
 - f. American Indian/Alaska Native & White
 - g. Asian & White
 - h. Black/African American & White
 - i. American Indian/Alaska Native & Black / African American
 - j. Other Multi-race (Please explain)

NOTE: each household member served by the program is required to select **BOTH** an ethnicity and a race category!

8. Signature attesting to the accuracy of the information submitted.

Preliminary Project Budget Estimate

Exhibit B

Organization: **Denver Health & Hospitals**
 Date: **3/5/2010**
 Project: **New Montbello Clinic**
 Building Gross Square Footage = **17,765**

Estimate

Allocation of
CDBG Funds

1 These Budgets are based on documents dated and entitled as follows: **NA**

2 These Budgets are based on Project completion dates as follows:

Award of Construction Contract(s): **2010**
 Final Completion of the Project: **2011**

3 Construction Cost Escalation Assumptions - Total percent inflation added to base cost

NA

4a BUDGET FOR PHASE 1 CONSTRUCTION CONTRACT

Unit of Measure

\$ Per Square Foot

a. Core Shell Construction PHASE 1 Based On Current Contract

9,800 \$ 60 \$ 524,582

b Initial Site Work for PHASE 1 4 acres \$ 257,480 \$ 1,029,920

c \$ -

Sub Total \$ 1,554,502

of items 4.a plus 4.b plus 4.c above.

Construction Contract Budget \$ 1,554,502

5a Construction Contingency - percent of Item 4

5%

Construction Contingency \$ 54,022

6a STATEMENT OF PROBABLE CONSTRUCTION COST OR PROJECT CONSTRUCTION BUDGET (Total of Items 4 and 5)

Project Construction Budget \$ 1,608,524

4b BUDGET FOR PHASE 2 CONSTRUCTION CONTRACT

Unit of Measure

\$ Per Square Foot

a. Core Shell Construction PHASE 2 Estimate Based On \$/Square Foot

17,765 \$ 232 \$ 4,121,480

b Additional Site Work for PHASE 2 4 acres \$ 152,198 \$ 608,792

c Utilities 5% \$ 236,514

Sub Total \$ 4,966,786

Bidding Contingency

5%

\$ 248,339

of items 4.a plus 4.b plus 4.c above.

Construction Contract Budget \$ 5,215,125

5b Construction Contingency - percent of Item 4

5%

Construction Contingency \$ 260,756

6b STATEMENT OF PROBABLE CONSTRUCTION COST OR PROJECT CONSTRUCTION BUDGET (Total of Items 4 and 5)

Project Construction Budget \$ 5,475,881

7 Moveable Equipment, Furniture and Furnishing.

PHASE 2

8%

\$ 555,868

and/or, Lump Sum Budget of

- a. Imaging Equipment including new and reused LS
- b. Special Medical Instrumentation including new and reused LS
- c. Information Systems (Included In FFE) LS
- d. Other Furniture and Furnishings not included in item 7 LS
- e. Graphic Signage including all exterior and interior 55
- f. Bidding Contingency - percent of items 7-7.e 5%

FF&E Subtotal \$ 555,868

7 Moveable Equipment, Furniture and Furnishing.

PHASE 2

8%

\$ 438,070

and/or, Lump Sum Budget of

- a. Imaging Equipment including new and reused LS
- b. Special Medical Instrumentation including new and reused LS
- c. Information Systems (Included In FFE) LS
- d. Other Furniture and Furnishings not included in item 7 LS
- e. Graphic Signage including all exterior and interior 120 \$ 6,600
- f. Bidding Contingency - percent of items 7-7.e 5% \$ 22,234

FF&E Subtotal \$ 466,904

8 PROJECT CONSTRUCTION AND EQUIPMENT BUDGET (Total of Items 6 and 7)

\$ 5,942,785

9a Consultants, Construction Management, Design and Architectural and Engineering Fees - PHASE 1

- b. Construction Management Fees 2.5%
- c. Arch. and Eng. - percentage of Item 8 7.2% 263,568
- d. Equipment Consultant Fees 1.0% -
- e. Testing Lab 1.5% -
- f. Geo Tec LS \$ 3,000
- g. Environmental Phase 1/2 LS \$ -
- h. Allowance for add. services - percentage of Item 8 1% \$ -

\$ 266,568

9b Consultants, Construction Management, Design and Architectural and Engineering Fees - PHASE 2

b. Construction Management Fees	2.5%			
c. Arch. and Eng. - percentage of Item 8	7.2%		464,800	\$464,800.00
e. Testing Lab	1.5%		89,142	\$35,200.00
f. Geo Tec	LS		\$ 4,500	
Allowances for Add Services			\$ 19,000	

Professional Fees Subtotal \$ 577,442

10 Administrative Costs

a. LEED	LS		\$ 125,000	
b. Appraisal	LS		\$ -	
c. Construction Permit plan check	LS		\$ 15,000	
d. Administrative Staff	LS		\$ 105,000	
e. Waste Water Review	LS		\$ 2,500	
f. PHASE 1 Administrative Costs	LS		\$ 57,040	
PHASE 1 Inspection Fees			\$ 12,000	
g. Permit Review	LS		\$ 10,000	
h. Construction Permit	3%		\$ 156,454	

Administrative Cost Subtotal \$ 482,994

11 TOTAL DESIGN, CONSTRUCTION AND EQUIPMENT, ADMINISTRATIVE BUDGET (Total of Items 8,9, and 10) \$ 9,434,181

12 Land Acquisition (4 Acres)

Acres Per Acre Cost

TOTAL DESIGN, CONSTRUCTION, EQUIPMENT, ADMINISTRATIVE + LAND = \$ 9,434,181

13 Owner PHASE 2 Project Contingency based on 10% of Total 11 and 12 Owner Contingency \$ 693,436

14 TOTAL PROJECT BUDGET WITHOUT FINANCING COSTS (Total of Items 11, 12, and 13) \$ 10,127,617

15 Financing Costs for Both Temporary and Permanent Project Financing. Financing Costs

16 TOTAL PROJECT BUDGET WITH FINANCING COSTS (Total of Items 14 and 15) Project Budget With Financing Costs \$ 10,127,617

PROJECT RECAPITULATION

4 CONSTRUCTION CONTRACTS				
Building Gross Square Feet(BGSF) =	17,765		\$ 7,084,405	
5 LAND			\$ -	
		Hard Costs	\$ 7,084,405	
6 STATEMENT OF PROBABLE CONSTRUCTION COSTS		COST PER GSF (Item 6/BGSF)	\$ 399	
7 MOVEABLE EQUIPMENT			\$ 1,022,772	
8 PROJECT CONSTRUCTION AND EQUIPMENT			\$ 8,107,177	
		EQUIPMENT AS PERCENT OF CONSTRUCTION COSTS	14%	
9 CONSULTANTS, CM, ARCHITECT/ENGINEER ITEMS			\$ 844,010	
10 ADMINISTRATION			\$ 482,994	
11 TOTAL DESIGN, CONSTRUCTION AND EQUIPMENT BUDGET			\$ 9,434,181	
12 ALLOWANCES FOR NON-DEIGN, CONST., & EQUIPMENT ITEMS			\$ -	
13 OWNER PHASE 2 PROJECT CONTINGENCY =			\$ 693,436	
14 TOTAL PROJECT BUDGET WITHOUT FINANCING COSTS			\$ 10,127,617	
15 FINANCING COSTS Assume 5% Bond			\$ -	

16 TOTAL PROJECT BUDGET WITH FINANCING COSTS 2009 \$ 10,127,617 **\$500,000.00**

**New Montello Clinic
3/2/2010**

2010 Estimate

Estimated Construction Costs	\$ 7,084,405	
Land Purchase price	\$ -	funded by Denver Health
Equipment Cost	\$ 1,022,772	
Architect , Consultants, Other Professional Fees	\$ 844,010	
Administrative Costs	\$ 482,994	
Project Contingency	\$ 693,436	
Total 2010 Estimate	\$ 10,127,617	

Funding Sources:

Colorado Health Foundation	\$ 2,000,000	*	2,000,000
ARRA First Round Funding	\$ 2,500,000		
City CDBG	\$ 500,000		500,000.00
	\$ 5,000,000		<u>2,500,000.00</u>
Remaining Shortfall assuming CHF approval	\$ 5,127,617		7,627,616.66
City	\$ 2,563,808		3,813,808.33
Denver Health	\$ 2,563,808		3,813,808.33

Exhibit "C"

Insurance



EXHIBIT C

CERTIFICATE OF LIABILITY INSURANCE

OP ID RL

DATE (MM/DD/YYYY)

09/08/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Kahl Insurance Services, LLC
INSURED: Denver Health & Hospital Auth.
INSURER A: Lexington Insurance Company
INSURER B: Lexington Insurance Company
INSURER C: Safety National Casualty Corp.

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes sections for General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City and County of Denver is listed as additional insured on general liability with waiver of subrogation as it pertains to their interests to contracts relating to construction of the Denver Health Montbello Clinic.

CERTIFICATE HOLDER CANCELLATION

City and County of Denver
DNHD
201 W. Colfax Ave., Dept.204
Denver CO 80202
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE: Steven E. Kahl

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

The following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Agreement:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “OED” means the City’s Office of Economic Development or a person authorized to act on its behalf.

D. “HUD” means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Section 570.607), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor’s obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD’s regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements.

This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the Contractor or of the City who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 C.F.R. 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

Sec. 113. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121. Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 114. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

Sec. 115. Patents. Any discovery or invention arising out of or developed in the

course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Theft or embezzlement from OED funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;

C. Willfully obstructs or impedes an investigation or inquiry under HUD;

D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by OED funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;

E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE II DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (1) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (2) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (3) Not be allocable to or included as a cost of any other Federally financed program; (4) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (5) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from OED.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City

employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at <http://www.hud.gov/offices/olr/library.cfm>.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than \$100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.).

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers’ representatives of the Contractor’s commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September

24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and

penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. No funds under this Agreement may be obligated or spent for acquisition or construction until Contractor has received written environmental clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. If this Agreement provides assistance in excess of \$100,000, then the Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the

Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may

immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

**ARTICLE VI
MISCELLANEOUS**

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development. Either of the parties may designate in writing substitute addresses or persons to receive notices.