

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("**Agreement**") is made and entered into this _____ day of _____, 2010, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the "**City**") and DENVER INNER CITY PARISH, INC., a Colorado nonprofit corporation (the "**Contractor**").

WITNESSETH:

WHEREAS, the Contractor is a not for profit corporation organized and incorporated under the laws of the State of Colorado, on January 29, 1960; and

WHEREAS, by virtue of Section 2.4.4 of the Charter of the City and County of Denver, the Manager of the Denver Department of Parks and Recreation (the "**Manager**"), is authorized to conduct negotiations for cooperative agreements with public and private agencies for the development of park and recreational facilities, and programs and activities, among other purposes, and to delegate the Manager's authority and responsibility with respect thereto; and

WHEREAS, the City and the Contractor wish to enter into a cooperative agreement for Contractor to control and manage certain facilities at the College View Recreation Center, 2525 South Decatur Street, Denver, Colorado (the "**Recreation Center**"), owned by the City, in order that Contractor may provide public service activities and programs to the general public and for the College View community, under the terms and conditions described herein; and

WHEREAS, by virtue of its purposes and interests, the Contractor is both experienced and able to provide programming for the general public and for the surrounding community at the Recreation Center, as further described herein; and

WHEREAS, it is in the best interest of the Contractor, the City and the general public that a cooperative agreement be entered into between the Contractor and the City whereby the Contractor shall utilize the facilities at Recreation Center for the purpose of providing public service programming for the surrounding community.

NOW, THEREFORE, in consideration of the above premises and for the purpose of setting forth the relationship between the Contractor and the City, it is mutually agreed by the City and the Contractor as follows:

1. **ENGAGEMENT & PURPOSE.**

(a) The City hereby engages the Contractor, to maintain, administer, manage, operate, and control the Recreation Center and certain buildings, grounds, programs, operations, and properties located therein and used in connection therewith, for municipal purposes, and for the enjoyment and education of the general public, and the Contractor hereby accepts such engagement on the terms and conditions set forth herein. None of the rights herein granted to the Contractor are,

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nor shall they be construed as, a lease, easement, or other interest in land.

(b) Contractor agrees to the following:

(1) City shall pay up to \$13,000 annually for the direct cost of natural gas and electrical power, and domestic water consumption within the Recreation Center facilities, to include gas, electric, domestic water and wastewater services combined. Contractor shall be responsible for the cost of such combined utilities to the extent the combined aggregate cost exceeds \$13,000. City shall bill Contractor directly for any such utility costs over \$13,000 annually in January for the preceding year. Contractor shall be responsible for supplying, maintaining and servicing any telephone equipment it uses at the Recreation Center, and will be responsible for the cost of such telephone equipment and service. Contractor shall likewise be financially responsible for any cable or internet service to the Recreation Center but is not obligated to provide such service. Contractor shall be responsible for any false alarm fees incurred.

(2) Contractor shall perform all routine maintenance for the Recreation Center including exterior snow removal inside boundaries identified in *Exhibit A*. Routine maintenance shall not include landscaping or exterior painting. Contractor shall deposit all trash resulting from its operation of the Recreation Center in the City's dumpster located in the park. The City shall service the dumpster as necessary for proper sanitation and disposal.

(3) Contractor shall pay the full cost for repairing any damage that is caused to the Facilities by Contractor, its agents, or damages caused by program activities. Contractor shall also pay for all other repairs to Facilities to the extent they do not exceed a total of \$1,500.00 per incident or repair. Any single repair of any nature whose cost exceeds \$1,500.00 must be preapproved in writing by Manager. Any written approval shall state whether the City shall perform or contract any repair costing in excess of \$1,500.00, or, if agreed to in advance by the parties, it shall direct Contractor to perform or contract for the repairs, and then reimburse Contractor for the approved amount of the repair, unless Contractor is responsible for the full cost of the repair as set forth herein. In such event, Contractor shall reimburse the City for the cost of the repair if the City performs or contracts for the repair.

(4) Contractor shall operate the Recreation Center a minimum of 20 hours per week outside of the published Bell Schedule hours of Lincoln High School and College View Elementary School, including Denver Public School holidays, recesses and weekends.

(5) Contractor shall furnish all furniture and equipment for the use of its programs at the Recreation Center.

(6) Contractor shall provide all supplies and materials related to its programs, and for Contractor's equipment and building maintenance, cleaning, and other obligation and for such other supplies or materials needed for Contractor's operations at the Recreation Center.

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(7) Contractor shall provide the City quarterly reports with respect to fees collected, if any, and to other financial activity, conducted by Contractor in connection with programming, programs, and concessions conducted or allowed by Contractor at the Recreation Center.

(8) City shall maintain and pay for the monitoring of the Recreation Center's fire and intrusion alarm system and for maintenance and repair of such systems.

(9) Prior to effective date of this Agreement, Contractor and City shall jointly perform a walk-through/inspection and document the condition of the Facilities in a written instrument which shall be dated and signed by an authorized representative of each Party. Upon termination of this Agreement, Contractor shall be responsible for leaving the Facilities in the same or better condition as documented in the walk-through/inspection, minus normal wear and tear.

(10) In cooperation with the City's Parks and Recreation Department, Contractor shall establish one or more community advisory committees whose purposes shall be to create communication between the Recreation Center and community, and to identify any gaps in services, programming and potential programming as well as to help promote participation at the Recreation Center. Contractor shall schedule regular meetings of the community advisory committee(s), to occur at least quarterly. The committee shall be comprised of community members representing different users and College View neighborhood residents, business, Contractor staff and City's Parks and Recreation staff.

(11) With respect to its operations and programs at the Recreation Center, the Contractor shall not hire, retain, or knowingly engage or permit the services of any employee, volunteer, agent, or subcontractor with a felony criminal conviction or convictions or who has been charged with a felony crime involving physical violence, sexual acts, or illegal drugs, including any criminal attempts, solicitations, trafficking, or conspiracies relating to the same, and any crime or crimes, whether a felony or a misdemeanor, that involve children. A "conviction" shall mean a plea of guilty, a plea of *nolo contendere*, a finding of guilt, a default judgment, or a deferred judgment and sentence. The Contractor shall use every reasonable means available to confirm that its employees, volunteers, agents, or subcontractors have not been convicted or charged as set forth above and shall immediately and fully inform the City if the Contractor becomes aware of any such conviction or charge. If such a criminal conviction exists and the Contractor believes there are extenuating circumstances that should be considered, the Contractor may request, in writing, that the Manager waive the restrictions of this paragraph in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights. Any waiver shall be in the absolute discretion of the Manager. Failure to comply with this paragraph or, at the City's option, failure to promptly fire an employee, volunteer, agent, or subcontractor who has been so convicted or charged shall be cause for the City to immediately terminate this Agreement. The Contractor shall indemnify, hold harmless, and defend the City against any claims, actions, suits, damages, injuries, costs, penalties, judgments, awards, settlements, or other liability or expenses

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arising from or related to Contractor's failure to comply with this paragraph.

(12) City shall remove the Recreation Center signage on the building within 90 days of the date of this Agreement. Contractor shall be responsible for any costs of replacement signage for the Facilities, and any costs to remove the signage upon termination of the Agreement. Contractor shall comply with all applicable City ordinances and other laws and regulations pertaining to any signage installed at the Recreation Center.

(c) The Contractor shall use its best efforts to encourage reasonable public use and enjoyment of the Recreation Center, to increase its participation support base, to perform its obligations under this Agreement in order to achieve the public purpose of this Agreement in accordance with its terms and spirit.

(d) The public purpose of this Agreement is to provide for the continued operation and maintenance of the Recreation Center, and any related operations and activities, for the use and benefit of the people of the City and the general public through public/private cooperation between the City and the Contractor in conformance with Section 2.4.4 of the Charter of the City and County of Denver.

2. **TERM.** This Agreement shall commence on execution of this Agreement and shall terminate December 31, 2011, unless otherwise terminated or extended as provided herein, except that upon such termination at that time or at the end of any subsequent term, Contractor shall have continued access to the Facilities for 30 days after termination in order to make any necessary repairs, to remove its equipment, and to fulfill its turnover responsibilities under paragraph 1(b)(9) of this Agreement. At the City's sole discretion, the Parties may extend this Agreement for up to four successive additional one-year terms. Each such renewal term option must be requested by the Contractor in writing delivered no later than 90 days prior to the end of that term and shall be exercised by the Manager of Parks and Recreation by written notice to the Contractor not less than twenty (20) days prior to the end of the then current term, such notice to be copied to the City Attorney and the City Clerk, without further amendment to this Agreement. The Contractor and the City may amend this Agreement at any time to extend its term for such additional years beyond the four additional one-year terms, or amend any other term of this Agreement, as may be agreed upon by the Parties, provided that any such extension or other amendment is approved and executed in the same manner as this Agreement.

3. **FACILITIES.**

(a) As used in this Agreement, the term "**Facilities**" shall mean the buildings, grounds, contents, structures, and improvements at the Recreation Center as they exist at the inception of this Agreement and are within the boundaries identified on Exhibit A.

(b) The geographical area of the Facilities may not be expanded, and structures,

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exhibits, operations, programs, and activities of the Recreation Center may not be constructed, presented, conducted, or extended beyond the current boundaries of the Facilities, except as expressly provided in this Agreement.

4. **STATUS AND AUTHORITY OF THE CONTRACTOR.**

(a) The Contractor and the City acknowledge and agree that the status of the Contractor shall be that of an independent contractor and of a private corporation retained by the City on a contractual basis solely for the purposes set forth in this Agreement.

(b) The scope of authority the Contractor may exercise shall be as expressly delegated, assigned, or allowed under, or necessarily implied in, this Agreement. The Contractor shall have no authority to avoid, modify or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

(c) The authority delegated under this Agreement shall not be construed to grant the Contractor the right or power to bind, or to impose any liability upon, the City through any contracts or agreements the Contractor may make, unless expressly provided herein or unless the prior, written approval of the Manager is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by the Contractor shall be in its own name and not in the name of the City. Likewise, the City shall have no authority to bind, or to impose liability upon, the Contractor through any contracts or agreements the City may make, unless the prior, written approval of the Contractor is obtained.

(d) The Contractor shall at all times during the term of this Agreement maintain its status as a tax-exempt nonprofit corporation in good standing under federal and state law and shall engage in no business or other activity that would jeopardize its tax-exempt status.

5. **REAL AND PERSONAL PROPERTY.**

(a) The Contractor hereby donates, gives, grants, conveys, and assigns to the City, for the use and benefit of the people of the City, all of its right, title, and interest in and to any fixtures or other permanent improvements to real property that it now owns or may hereafter acquire during the term of this Agreement that are located on or in the Facilities. The Contractor shall not permanently affix anything on or in the Facilities that does not thereby become the property of the City pursuant to this subparagraph.

(b) The Contractor shall have no authority to sell, lease, encumber, hypothecate, or otherwise create or assign a property or financial interest in any real property, fixtures, or other permanent improvements located on or in the Facilities.

(c) Any equipment, supplies, vehicles, or other personal property acquired by the

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Contractor by gift or with funds shall be held in legal ownership by the Contractor. Any City-owned equipment or vehicles currently assigned exclusively for use at the Facilities, shall be identified in a written inventory prepared and provided by the City, and shall be signed and dated by the Contractor, acknowledging receipt the receipt and condition of all such items, at or prior to execution of this Agreement. Any of such items may be replaced as allowed herein, subject to a proper accounting of the disposal and replacement being made to the Manager. The Contractor may cooperate with any City department willing and authorized to participate in the exchange, sharing, or loan of City-owned equipment or vehicles or in the joint purchase of equipment or vehicles, subject to all applicable Charter or ordinance requirements.

6. **RESPONSIBILITY FOR MAINTENANCE.**

(a) The Contractor shall maintain the Facilities in good repair, including, without limitation, buildings, parking lots, driveways and walkways, landscape, snow removal, and all public and non-public areas within the Facilities that are located within the Recreation Facility boundaries identified on Exhibit A.

(b) Contractor shall notify City immediately of any graffiti on the Recreation Center, and City shall dispatch personnel to remove any graffiti.

(c) City shall provide Contractor with a list of equipment at the Recreation Center, along with a preventative maintenance schedule for all such equipment. Contractor shall be responsible for providing preventative maintenance timely, and shall have all such preventative maintenance performed by a licensed contractor, complying with all applicable City codes and ordinances, including the payment of prevailing wages. Contractor shall maintain contemporaneous written logs of preventative maintenance as performed and shall provide City with copies of such logs as proof that preventative maintenance has been completed, as requested by the City.

(d) Contractor shall have the carpets in the Recreation Center cleaned professionally at least twice a year, and shall provide the city with proof that the carpets have been cleaned as required, as requested by the City.

(e) The Contractor shall have exclusive control, responsibility, and discretion over the selection, development, and arrangement of all programs to be offered in the Facilities, except as otherwise provided in this Agreement.

(f) The Contractor, consistent with the proper maintenance of the Facilities and the safety of the public, shall conserve utilities and energy use at the Facilities. The Contractor shall submit to the Manager such reports of its energy conservation programs as the Manager may reasonably request.

7. **CONSTRUCTION OF PERMANENT IMPROVEMENTS.**

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(a) Subject to the requirements of this subparagraph, the Contractor shall have the authority to make, or contract for, the following improvements at the Facilities: i) the repair or replacement of any existing improvement to the extent that the work does not require structural engineering or architectural design work of a structural nature; and ii) the installation of any fixtures and nonstructural items purchasable through a catalog, including but not limited to fencing, railings, signs, bathroom fixtures, water fountains, and lighting. The plans and specifications for any improvements proposed under this subparagraph shall be submitted to the Manager for review and approval at least thirty (30) days prior to the initiation of the project, unless emergency conditions necessitate immediate repair or replacement. The Contractor shall be solely responsible for assuring that any project initiated under this subparagraph is properly contracted and performed and that the work performed and materials used are in conformance with any applicable laws (local, state, and federal) that govern the performance of such work. Contractor shall comply with the following conditions for the construction of any such improvements:

(i) All costs incident to the work be borne solely by the Contractor, unless otherwise agreed in writing, signed by an authorized representative of each Party.

(ii) In connection with such improvements, Contractor shall ensure right-of-entry at all reasonable hours to any City inspector or other authorized agent of the City to the work site to conduct tests and evaluations to determine that the work performed and materials used are of good quality and in conformance with the plans and specifications and in compliance with all laws (local, state, and federal) that govern the performance of such work. If it is determined that the work is not being so performed, the Manager of Public Works or the Manager of Parks and Recreation may order the cessation of all work until there is satisfactory evidence that the work conforms to all legal requirements. All inspections by the City shall be conducted at the City's cost.

(iii) The Contractor and its contractors and subcontractors, in the performance of the work, shall observe and comply with the provisions of the Denver Revised Municipal Code pertaining to the payment of prevailing wages, minority and women business enterprise participation, and non-discrimination and equal employment opportunity, as such provisions may be amended or recodified from time to time. In addition, the Contractor and its contractors and subcontractors shall observe and comply with the provisions of the City's Building Code, Fire Code, and other applicable health and safety requirements and shall obtain, and pay for, any licenses and permits required by law. To the extent applicable, the Contractor shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations. Contractor shall permit no change in use or activities upon the premises, or alterations, that would render the Facility to be out of conformance with the requirements of the federal Americans with Disabilities Act or with any other federal or state laws requiring access for the disabled to public accommodations.

(iv) The Contractor and its contractors and subcontractors shall pay all

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applicable sales and use taxes levied by the State and the City on any tangible personal property built into or incorporated into the work. Upon request by the City, an itemized and certified statement, including the names and addresses of the suppliers, the amount of such taxes, and the dates of payment, shall be furnished to the City.

(v) The Contractor shall obtain a bond or other guarantee acceptable to the City Attorney, conditioned that the Contractor or its contractor shall promptly make payment of all amounts lawfully due to all contractors, subcontractors, and persons furnishing labor or materials or labor and materials used or performed in the prosecution of the work, and shall indemnify the City to the extent of all payments in connection with performing the work.

(vi) The Contractor shall observe and abide by all other requirements of this Agreement applicable to construction projects, including but not limited to the provisions related to audits, indemnification, liens, non-discrimination, and subcontracting.

8. **PUBLIC ACCESS TO AND USE OF FACILITIES; CITY ACCESS.**

(a) The recreational and program areas within the Facilities, exclusive of administrative and service areas, shall be open to the general public on the days and within reasonable hours designated by the Contractor, but at a minimum at least 20 hours per week. Such days and hours shall be subject to such reasonable rules and regulations as the Contractor may prescribe, and both the days and hours and the rules and regulations shall be subject to prior review and comment by the Manager.

(b) The public's right to use the Facilities shall be subject to any rules and regulations promulgated by the Manager governing utilization of City recreation centers. To promote and maintain the safety, health and welfare of program participants and that of the general public, and in order to maintain preserve and protect the physical safety and integrity of the Facilities, and subject to the prior review and comment of the Manager, the Contractor may impose additional, more restrictive rules and regulations appropriate to the operation of a recreation center (the "Rules & Regulations"). Within the guidelines and rules so adopted the Contractor may exclude any person whose presence in or about the Facilities constitutes or threatens an imminent violation of the Rules & Regulations.

(c) The Mayor, members of the City Council, the Manager, and other representatives of appropriate City departments shall, at all reasonable times, have access to the Facilities for the purposes of visitation and inspection.

9. **CONCESSIONS.** The Contractor may conduct or provide by agreements between the Contractor and concessionaires for the operation of concessions for selling food, drink, merchandise, rides, and such other related services, products, and events which the Contractor determines to be in

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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 B**, 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 Insureds: 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 hereby makes the material warranties listed below in subparagraphs (i) through (iii) on which the City relies in conditionally waiving the workers' compensation/employer's liability insurance. This rejection of coverage must remain effective throughout the Term of this Agreement. Should the rejection of coverage no longer be in effect, Contractor shall immediately notify the City. Further, upon the effective date of the rejection, Contractor shall provide the City with proof of workers'

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compensation/employer's liability insurance. Before commencing services under the Agreement, Contractor shall provide the City with documentation that rejection was effected in accordance with Section 8-41-202(1), C.R.S. Based on the following warranties and upon receipt of documentation of rejection in accordance with the law, the City conditionally waives the requirement that Contractor obtain workers' compensation/employer's liability insurance: (i) Contractor does not have any employees and will not employ any persons to perform services under this Agreement; (ii) should any persons other than Contractor's current officers become officers, such persons may not perform services under this Agreement; and (iii) in their capacity as corporate officers, Contractor's current officers effected rejection of coverages in accordance with Section 8-41-202(1), C.R.S. Subject to this conditional waiver, 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 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

(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) Property Insurance: City shall maintain property insurance for the Recreation Center, as determined by the Manager of Parks and Recreation and/or the Director of Risk Management annually. Coverage to include: special cause of loss form, replacement cost, agreed value. Contractor is responsible for payment of all policy deductibles in the event of any loss as a result of Contractor, its agents or licensees. Contractor is responsible for insuring its own personal property and contents at the Premises. Contractor shall be responsible for the City's deductible for any loss due to the actions or inactions of the Contractor or its participants. Any loss not attributable to Contractor or its participants shall be the responsibility of the City.

(j) Builders' Risk or Installation Floater: For any building renovations, Contractor or Subcontractor shall maintain limits equal to the completed value of the project. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. Contractor is responsible for payment of all policy deductibles. The City and County of Denver, Contractor, and sub-contractors shall be named insureds under the policy. Policy shall remain in force until acceptance of the project by the City.

(k) Additional Provisions:

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(1) For Commercial General Liability, the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision;
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
- (v) No exclusion for sexual abuse or molestation.

(2) For claims-made coverage:

- (i) 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.

13. **DEFENSE AND INDEMNIFICATION:**

(a) Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

(b) Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating

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such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(c) Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(d) This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

14. **COLORADO GOVERNMENTAL IMMUNITY ACT.** The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

15. **CLAIMS.** In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against the Contractor related in any way to this Agreement or the operation of the Facilities, the Contractor shall give written notice thereof to the City, within five (5) working days after being notified, of such claim, demand, suit, or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by the Contractor. Such written notice shall be submitted to the Manager, as provided in paragraph 33, and the City Attorney, City and County Building, Room 353, Denver, Colorado 80202.

16. **TAXES, DEBTS, LIENS & LICENSES.**

(a) The Contractor shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), and shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and take out and keep current all licenses (local, state, or federal) required for the performance of this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

(b) The Contractor shall not permit any mechanic's or materialman's lien or any other lien to be imposed and remain for more than ninety (90) days upon the property of the City, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association, company, corporation, or other entity to or for the Contractor, either pursuant to C.R.S. § 38-26-107, as amended, or by other authority.

(c) The Contractor shall promptly pay, when due, all bills, debts, and obligations incurred in connection with its management or administration of the Facilities and shall not permit the same to become delinquent.

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(d) The Contractor shall suffer no lien, mortgage, judgment, execution, or adjudication of bankruptcy that would, in any way, impair the rights of the City under this Agreement or its rights to the Facilities.

(e) The Contractor may, diligently and in good faith, resist or contest the application or imposition of any such tax, fee, lien, debt, or obligation, in which case the same shall not be considered due, owing or imposed for the purposes of this Agreement until final adjudication of validity. The Contractor may likewise, diligently and in good faith, appeal any judgment, execution, or adjudication of bankruptcy, in which case the same shall not be regarded as impairing the City's rights until final adjudication.

17. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

18. **NON-DISCRIMINATION.** The Contractor agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with membership on the board of trustees of the Contractor, access to any of the Facilities, and participation in any public program at the Facilities. 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 contracts, subcontracts, or agreements it may enter.

19. **COMPLIANCE WITH APPLICABLE LAWS.** By its signature below, the Contractor assures and certifies that it will comply with all applicable Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the services referenced in this Agreement and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. **Moreover, and not by way of limitation, the Contractor shall comply with any and all applicable federal, state, and local laws, statutes, ordinances, rules, regulations, policies or procedures concerning sectarian activities performed under this Agreement, if any.** It is the Contractor's responsibility to become knowledgeable about all Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies applicable to the services to be performed under this Agreement.

20. **ASSIGNMENT AND ENCUMBRANCE OF INTERESTS.** The Contractor shall

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not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the written consent of the City, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of the Contractor under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by the Contractor with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

21. **AMENDMENTS.** This Agreement may be modified, changed, or amended only by the mutual written agreement of the Parties or their successors or assigns, approved and executed in the same manner as this Agreement.

22. **SUBCONTRACTING.** Any work or service that is allowed to be subcontracted under this Agreement shall be subject by its terms to each and every provision of this Agreement. Compliance therewith is the responsibility of the Contractor. The Contractor shall, upon request, provide to the Manager a copy of any written contract or agreement for work or services covered by this Agreement.

23. **NO THIRD-PARTY BENEFICIARIES.** 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 party or third person on such Agreement. It is the express intention of the City and the Contractor that any person other than the Parties hereto receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

24. **NON-WAIVER.** A failure by either Party to take any action with respect to any default or violation by the other Party of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the first Party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

25. **ALCOHOL & DRUGS POLICY; SMOKING POLICY.**

(a) The Contractor, its officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations. The Contractor, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Further, the Contractor shall, through its personnel rules and regulations, or otherwise, maintain a policy

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14 Oct 2010

against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations. The Contractor agrees not to use any funds received from the City under this Agreement for the purchase, acquisition, or receipt of consumable alcohol.

(b) The Contractor agrees to adopt and enforce a “no smoking” policy in all areas of the Facilities except for limited, designated areas available for employee smoking. The Contractor’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Manager and generally applicable to specified facilities under the auspices of Parks and Recreation.

26. **FORCE MAJEURE.** If any Party to this Agreement is rendered unable, wholly or in part, by an event of force majeure or any other cause not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, such Party, upon giving notice and reasonably full particulars to the other Party, be relieved of such obligation or condition during the continuance of such inability. The term “force majeure” shall include acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, and any laws, orders, rules, regulations, acts, or restraints of any government or governmental body or authority, civil or military. Written notice of any claim of inability to perform or comply due to force majeure must be promptly given as provided in paragraph 33 below.

27. **TERMINATION.** The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing shall be construed as giving the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

(a) Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enters into a formal agreement in which they admit guilt, enters a plea of guilty or otherwise admits culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

(b) Upon termination of the Agreement by the City, with or without cause, the Contractor shall not have any claim against the City by reason of, or arising out of, incidental or relating to termination.

(c) If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor’s possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in

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14 Oct 2010

any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

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

- (a) The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Contractor is liable for any violations as provided in the Certification Statute.
- (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 either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), 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 subconsultant or 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 either the E-Verify Program or the Department Program.
 - (4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

Blair
14 Oct 2010

- (5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three days. The Contractor will also then terminate such subconsultant or subcontractor if within three days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the subconsultant or subcontractor provides information to establish that the subconsultant or 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.

29. **NOTICES.** All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered as provided in this paragraph (unless the means of delivery is otherwise expressly specified in this Agreement). Notices shall be deemed delivered upon receipt, if delivered personally or by facsimile transmission (receipt verified by telephone), or upon the third day following posting by certified mail, return receipt requested, to the following addresses:

If to the Contractor:

Denver Inner City Parish, Inc.
Attn: Todd Clough, Executive Director
1212 Mariposa St
Denver, CO 80204-3261

If to the City or the Manager:

Manager of Parks and Recreation
City and County of Denver
201 W. Colfax Ave. Dept. 602
Denver, Colorado 80202

The address for any Party set forth above may be changed at any time by written notice in the manner provided herein to the other Party.

30. **INUREMENT:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and to their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

*Blair
14 Oct 2011*

31. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

32. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

33. **CONFLICT OF INTEREST:**

(d) No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

(e) The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

34. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

35. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.

36. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will

Brewer
14 Oct 2010

continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

37. **CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

38. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments will be, binding upon the Parties and their successors and assigns.

39. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

40. **LEGAL AUTHORITY.**

(a) The Contractor warrants that it possesses the legal authority, pursuant to any proper and official motion, resolution or action passed or taken, to enter into this Agreement.

(b) The person(s) signing and executing this Agreement on behalf of the Contractor does hereby warrant and guarantee that the signatory(ies) below has been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to the obligation and performance of all the terms, covenants, and conditions herein set forth.

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14 Oct 2010

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF DENVER

ATTEST:

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

By: _____
JOHN W. HICKENLOOPER,
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:
DAVID R. FINE, Attorney
For the City and County of Denver

By: _____
Manager of Parks and Recreation

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Manager of Finance
Contract Control No: _____

By: _____
DENNIS GALLAGHER, Auditor of the City and County of Denver

"CITY"

DENVER INNER CITY PARISH, INC.

By: _____
"CONTRACTOR"

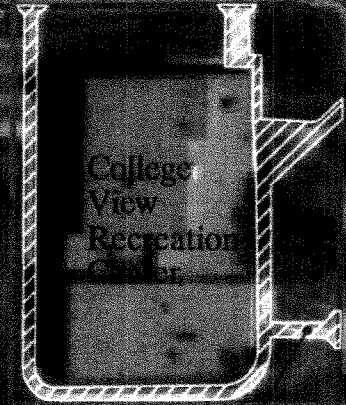
Exhibit A – Depiction of Property
Exhibit B - Certificate of Insurance

*Blaw
19 Oct 2010*

EXHIBIT A

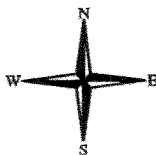
DEPICTION OF PROPERTY AND RESPONSIBLE BOUNDARIES

College View Recreation Center in Harvard Gulch West Park



S. FEDERAL BLVD

S. DECATUR ST



DENVER
THE MILE HIGH CITY

EXHIBIT "A"
Cohen, 4 Oct 2010

Date: October 13, 2010
By: Gregory S. Neitzke PLS

EXHIBIT B
CERTIFICATE OF INSURANCE

EXHIBIT "B"

COOPERATIVE AGREEMENT ACORD INSURANCE CERTIFICATE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/20/2010

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. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Abbe Group 7157 S Alton Way Centennial CO 80112-2112 INSURED Denver Inner City Parish 1212 Mariposa Street Denver CO 80204	CONTACT NAME: Brent Tirm PHONE (303) 799-8112 FAX (303) 799-4624 ADDRESS: PRODUCER: CUSTOMER ID #: 00051521 INSURER(S) AFFORDING COVERAGE NAME # INSURER A: Philadelphia Insurance Co INSURER B: Pinnacol 41190 INSURER C: INSURER D: INSURER E: INSURER F:
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COVERAGES **CERTIFICATE NUMBER:** CL10102014693 **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, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. LINE	TYPE OF INSURANCE	AGG. LIMIT	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY						
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (EX-GRANDDAD) \$ 1,000,000
A	CLASS-MADE X OCCUR		PHPE567486	5/1/2010	5/1/2011	\$ 300,000
						MED EXP (ADV. 05% DEDUCT) \$ 10,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 3,000,000
						PRODUCTS - COMPROP AGG \$ 3,000,000
						\$
AUTOMOBILE LIABILITY						
	ANY AUTO					COMBINED SINGLE LIMIT (EX AGGREG.) \$ 1,000,000
A	ALL OWNED AUTOS		PHPE567486	5/1/2010	5/1/2011	BODILY INJURY (Per person) \$
	SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	HIRD AUTOS					PROPERTY DAMAGE (Per accident) \$
	NON-OWNED AUTOS					\$
						\$
UMBRELLA LIAB. X OCCUR						
	EXCESS LIAB. CLASS-MADE					EACH OCCURRENCE \$ 1,000,000
A	DEDUCTIBLE \$		PHSD503509	5/1/2010	5/1/2011	AGGREGATE \$ 2,000,000
						\$
						\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
B	ANY PROPRIETARY PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in IHO) IF YES, SPECIFY CODE	Y/N	2184972	1/1/2010	3/1/2011	E1. EACH ACCIDENT \$ 100,000
		N/A				E1. DISEASE - EA EMPLOYEE \$ 100,000
						E1. DISEASE - POLICY LIMIT \$ 500,000
A	Directors and Officers		PHSD420390	5/1/2010	5/1/2011	DAO Limit \$1,000,000
						EPL Limit \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City and County of Denver, its elected and appointed officials, employees and volunteers are named as additional insured with regards to the Commercial General Liability and the Business Liability policy.

CERTIFICATE HOLDER City and County of Denver 2525 S Decatur St Denver, CO 80219-5901	CANCELLATION 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
--	--

Other
 20 Oct 2010