

Loan Agreement

THIS LOAN AGREEMENT, in two Parts, Part I and Part II, is made and entered into this _____ day of _____, 2011, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“Lender” or “City”), and the **HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER** whose address is 777 Grant Street, Denver, Colorado 80203 (“Borrower”).

11-516

WITNESSETH:

WHEREAS, the City desires to loan Skyline and CDBG funds to the Borrower for expenses related to development of public facilities, including a community center, at 1099 Osage Street; and

WHEREAS, the Borrower is ready, willing and able to comply with the conditions associated with its receipt of such funds, as set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties agree as follows:

1. **LOAN TO BORROWER**: The City agrees to lend Borrower the sum of Three Million (\$3,000,000.00) Dollars.

a. One Million Five Hundred Thousand (\$1,500,000.00) shall be provided from Skyline funds (the “Skyline Loan”), to be repaid, with no interest, no later than:

One Million due no later than October 31, 2020;

Five Hundred Thousand due no later than October 31, 2030.

Such principal shall be due and payable, at such place as may be designated by the City, as required in a promissory note in form satisfactory to City evidencing this loan (the “Promissory Note”).

b. One Million Five Hundred Thousand (\$1,500,000.00) shall be provided from CDBG funds (the “CDBG Loan”). With the CDBG Loan, the Grantee agrees to carry out through fully qualified and responsive subcontractors the architectural and construction services associated with construction of the community facility located at 1099 Osage Street, Denver, Colorado (the “Property”) in accordance with the scope of services and budget set forth in **Exhibit A**, and the financial administration requirements set forth in **Exhibit B**, each of which is attached hereto and incorporated herein by this reference. The services will be performed 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.

2. **TIME FOR PERFORMANCE:** This Agreement shall begin on October 1, 2010 and end on March 31, 2020.

3. **SECURITY FOR REPAYMENT of SKYLINE LOAN:** Repayment of the Skyline Loan will be secured by two deeds of trust in forms satisfactory to City (the “Deed of Trust”). One Million Dollars (\$1,000,000.00) will be secured by the property described as:

SW 20 feet of Lot 14 and all of Lots 15 and 16, and all lots 17 through 20, Stiles ADD, Block 148, City and County of Denver, State of Colorado

and also known as 2400 Stout Street/2401 California Street, Denver, Colorado 80215, subject to a first deed of trust not to exceed \$1,000,000.

Five Hundred Thousand Dollars (\$500,000.00) will be secured by two properties described as:

Lots 1 through 16, inclusive,
Block E Mouat’s Resubdivision of part of Swansea and
Block 67, First Addition to Swansea,
City and County of Denver, State of Colorado

and known as 4301 Elizabeth St., Denver, Colorado 80216, subject to a first deed of trust not to exceed \$420,000.

And

Lots 39 & 40 Block 10 HUNTS Addition
City and County of Denver, State of Colorado

and known as 1373 Lipan St., Denver, Colorado, 80204, subject to first deed of trust not to exceed \$87,000.

4. **SUBORDINATION AND RELEASE:** The Director of the Office of Economic Development or his/her successor or designee is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust so long as (i) such documents are in form satisfactory to the City Attorney; (ii) encumbrances on the above identified collateral properties prior to the City’s Deeds of Trust do not exceed \$1,000,000.00, \$420,000.00 and \$87,000.00, respectively; and

(iii) Borrower is not then in default of its obligations hereunder or pursuant to the Promissory Note or Deed of Trust. OED at its sole discretion may release the subject of the Deeds of Trust as long as no default exists under this Loan Agreement or any documents contemplated by this Loan Agreement and the City receives substitute collateral adequately and equally protecting the City's interest.

5. **PAYMENT AND USE OF FUNDS:** The amount to be paid by the City to the Grantee shall not exceed Three Million Dollars (\$3,000,000.00). The obligations of the City for payments of CDBG funds under this Agreement is limited to monies appropriated by the U.S. Congress, and the City Council and paid into the City Treasury for this purpose. The obligation shall be from month-to-month as monies are made available by the United State of America. The funds to be made available pursuant to this Loan Agreement shall be used in a manner consistent with **Exhibit A**, the Scope of Services, and **Exhibit B**, Financial Administration.

6. **DISBURSEMENT OF FUNDS:** Acquisition funds will be disbursed at a scheduled closing, payable jointly to Borrower and the seller of the Property. Borrower must provide a certified real estate appraisal supporting the purchase price of the property. The Borrower shall submit to the City requisitions with documentation of incurred costs on City-approved forms. Where loan proceeds are disbursed for construction, (a) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (b) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers. Expenses incurred prior to January 1, 2011 are not be eligible for reimbursement

7. **SECTION 3 EMPLOYMENT OPPORTUNITIES:** The Borrower agrees to comply with Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

8. **FEDERAL LABOR STANDARDS:** Borrower must assure that its contractors and subcontractors comply with applicable federal labor standards, including payment of wages in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a to a-7 and Department of Labor Regulations. Borrower must obtain current Davis-Bacon wage rates from the City's Office of Economic Development, and include current wage rates in all bid specifications and construction

contracts. The City shall have no responsibility for any failure by Borrower or its contractors to pay current wage rates.

9. **PROCUREMENT STANDARDS:**

A. In procuring services, supplies, rental equipment or other property to be used under this Agreement, the Grantee must follow the procurement methods set out in 24 C.F.R. 85.36.

B. Grantee agrees to obtain a bid guarantee in the form of a bid bond or certified check equivalent to five percent (5%) of the bid price from all bidders on any construction contract whose total price is One Hundred Thousand Dollars (\$100,000) or more. Grantee also agrees to obtain performance and payment bonds in the amount of one hundred percent (100%) of the contract price from the successful bidder on any construction contract in excess of One Hundred Thousand Dollars (\$100,000).

10. **COVENANT OF NON-DISCRIMINATION:** Borrower agrees in the event of sale, lease or other transfer of the property at any time in the future to include the covenant of non-discrimination under Title VI of the Civil Rights Act of 1964 required in Part II of this Agreement.

11. **RECORDS AND REPORTS:** Borrower will provide the Office of Economic Development with the records and reports required by the Scopes of Services in Exhibit A.

12. **ENVIRONMENTAL AND HISTORIC CLEARANCE:** No loan proceeds may be obligated or spent until Borrower has received written environmental and historic clearance from Housing and Neighborhood Development. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project. The Borrower covenants that it shall not allow any hazardous substances to be above, in, on, or under the Property, and that it shall not generate, use, have, manage, or release or allow the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property. Borrower shall be solely responsible for and shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property.

13. **SIGNAGE:** If requested by Housing and Neighborhood Development, Borrower agrees to post a sign, in a form approved by Housing and Neighborhood Development indicating that the project is receiving CDBG assistance.

14. **SKYLINE RESTRICTIONS ON USE OF 1099 OSAGE:** Pursuant to the requirements of the Skyline funding, Borrower agrees that at least 51% of the residential units rehabilitated or developed at the 1099 Osage shall have rents not greater than the fair market rent for Section 8 housing in the Denver area as established by the U.S. Department of Housing and Urban Development, with adjustment for smaller and larger families, less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant. Rent increases must be approved by the Office of Economic Development prior to institution. These rent restrictions shall be applicable for a period of twenty (20) years, or until repayment of the city's loan, whichever occurs later. In the event Borrower violates the provisions of this paragraph, Borrower shall immediately pay to City the greater of (i) all sums due hereunder in accordance with the Article below entitled "DEFAULT AND ACCELERATION", and (ii) an amount equal to the current market value of the property acquired or improved with funding hereunder less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the Property.

15. **CDBG RESTRICTIONS ON USE OF PROPERTY:**

a. Pursuant to the requirements of the CDBG funding, Borrower agrees to continue to use the Property as a non-profit community facility for a period of seven (7) years from the date of this Agreement. For value received, the Grantee shall pay to the City the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), or the amount actually disbursed by the City, whichever is less, if and only if the Property ceases to be used as a non-profit community facility during such seven-year period. The Borrower agrees to collaterally assign a promissory note and deed of trust, containing terms and conditions satisfactory to the City, evidencing and securing such obligation.

b. After seven (7) years from the date of this Agreement, presuming compliance by Grantee with its obligations hereunder, the collateral assignments of the promissory note and deed of trust will be cancelled and/or released by the City (at Borrower's expense). The Director of OED, or the Director's designee, may execute documents necessary to subordinate the lien of its collaterally assigned deed of trust, so long as: (i) Borrower is not then in default of its obligations hereunder; (ii) such documents are in a form satisfactory to the City Attorney's Office; and (iii) said Director concludes, in her sole discretion, that the City's interests remain adequately protected.

c. The Grantee shall at its own expense, maintain said premises and real property in good condition, and repair and rehabilitate any improvements which may be damaged or destroyed by fire, casualty or causes whatsoever. The City is not obligated to make any repairs or replacements to the rehabilitated premises.

d. Grantee agrees in the event of sale, lease or other transfer of the Property at any time to include the covenant of non-discrimination under Title VI of the Civil Rights Act of 1964 required in Part II of this Agreement.

16. **LEAD-BASED PAINT HAZARDS:** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to HUD Lead-Based Paint Regulations, 24 CFR Part 570.608. Any contracts or agreements made by the Borrower for the rehabilitation of residential structures with assistance under this Agreement shall be made subject to the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations, and the Borrower shall be responsible for the inspections and certifications required.

17. **DEFAULT AND ACCELERATION:** Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, or any other default or breach of this Loan Agreement or of the Promissory Note or Deed of Trust, shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower set out in this Agreement, which shall be immediately due and payable, including payments under the Promissory Note, and to foreclose upon the secured property. Borrower agrees to pay a late charge of five percent (5%) of any payment not received on or before the 15th day after the payment is due. Upon default, the unpaid principal balance shall accrue interest at the rate of fifteen percent (15%) per annum.

18. **EXPENSES:** The Borrower agrees to pay all direct costs, expenses, and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or of the Promissory Note or Deed of Trust related to it. The Borrower agrees to pay

reasonable costs associated with the loan closing, including the costs of a lender's title insurance policy in form satisfactory to City.

19. **INSECURITY**: The Borrower agrees that should the City deem this loan to be insecure, in accordance with this Agreement or with the Borrower's Promissory Note including, but not limited to the voluntary or involuntary dissolution or cessation of business by the Borrower, the filing of a petition in bankruptcy or an assignment for the benefit of creditors, the breach of any condition of the Block Grant Agreements set out below, or the breach of any loan agreement or security agreement to any other lenders on the project, then such insecurity shall be deemed a default under the Article entitled "DEFAULT AND ACCELERATION" and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with all payment obligations under this Agreement or the Promissory Note or Deed of Trust.

20. **DUE ON SALE**: If all or any part of the secured property or any interest therein is sold or transferred by the Borrower without the City's prior consent, excluding: (a) the creation of a lien or encumbrance subordinate to this loan, or (b) the creation of a purchase money security interest for household appliances, or (c) a transfer by devise, descent or operation of law upon the death of an individual, the City may, at its option, declare all sums to be immediately due and payable pursuant to the Article entitled "DEFAULT AND ACCELERATION." Additional penalties will be assessed under the Article entitled "DEFAULT AND ACCELERATION."

21. **EXAMINATION OF RECORDS**: The Borrower agrees that the Comptroller General of the United States, the U.S. Department of Housing and Urban Development, the City or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Borrower involving transactions related to this Agreement. The Borrower must also require its contractors and subcontractors to provide access to such records when requested.

22. **CONDITIONS**:

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

(B.) This Agreement, as it relates to the CDBG Loan, is also subject to the Housing and Community Development Act of 1974, as amended, regulations issued by the U.S. Department

of Housing and Urban Development, 24 C.F.R. 570 et seq., and the Community Development Block Grant Agreements entered into between the City and HUD. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

23. **ASSIGNMENT**: The City is not liable under this Agreement to any party other than the Borrower. The Borrower shall not assign any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent of the City.

24. **INSURANCE**:

Borrower or its contractor shall procure and maintain insurance in the following types and amounts:

A. Builders Risk Insurance in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as mortgagee.

B. Commercial General Liability Insurance with limits not less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate, with the City and County of Denver, its officers, officials and employees listed as additional insureds. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates and endorsements for each subcontractor.

C. Business automobile insurance, with limits not less than \$1,000,000.00.

D. Worker's Compensation Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

E. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the Property as improved and renovated, with the City named as mortgagee.

F. Certificates of Insurance evidencing the above shall be submitted when available to the City's Director of Risk Management, City and County Building, Room 353, 1437 Bannock Street, Denver, Colorado 80202 and to the Director of the Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202, prior to the disbursement of funds hereunder. Insurance companies providing the above referenced coverage must be acceptable to the Director of Risk Management.

25. **DEFENSE & INDEMNIFICATION**:

a. Borrower hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees 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 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 Grantee 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.

b. Borrower’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. Grantee’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.

c. Grantee 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 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.

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

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

f. Notwithstanding the foregoing, nothing contained in this Agreement is or shall be construed to be a waiver of the protections afforded by the Colorado Governmental Immunity Act at C.R.S. § 24-10-101, *et seq.*, as amended. Any indemnification hereunder shall be satisfied from legally available funds.

26. **WAIVER**: No waiver of any breach or default under this Agreement shall be held to be a waiver of any other or subsequent breach or default. All remedies afforded in this Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

27. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Borrower 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.

28. **BINDING EFFECT**: This Agreement shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

29. **COMMERCIAL TRANSACTION**: Borrower agrees and warrants that this Agreement and the obligations created herein constitute a commercial transaction and is not a consumer obligation or consumer related loan or obligation.

30. **AUDIT REQUIREMENTS**: Non-profit organizations that expend \$500,000 or more in a year of 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.

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

A. The Borrower 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 Borrower 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 Borrower 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 Borrower will immediately notify the City's Office of Economic Development 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 contract if due to changed

circumstances the Borrower 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.

32. **PASS-THROUGH OF CITY OBLIGATIONS PURSUANT TO THE APPLICANT VERIFICATION STATUTE**

A. This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as hereafter amended (together the "Applicant Verification Statute"). Compliance by the Borrower is expressly made a contractual condition of this Agreement.

B. The Borrower shall verify the lawful presence in the United States, of each natural person eighteen years of age or older (the "Applicant"), who applies for Federal, State or Local Public Benefits ("Benefits") conferred pursuant to this Agreement, as such Benefits are defined in the Applicant Verification Statute. The Borrower shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached hereto as **Exhibit C** and incorporated herein by this reference. The Borrower shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request.

33. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Borrower consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

IN WITNESS WHEREOF, the BORROWER has executed, through its lawfully empowered representatives, this Loan Agreement as of the date above first written.

HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER

Taxpayer (IRS) I.D. No.

By: *Ismael Guerrero*, for

Name: Ismael Guerrero
(please print)

Title: Executive Director

“BORROWER”

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¹ Signature page for Loan Agreement between City and County of Denver and Housing Authority for City and County of Denver for Skyline and CDBG funds in the amount of \$3,000,000.

**Exhibit A
SCOPE OF SERVICES**

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

**NEIGHBORHOOD FACILITIES AND IMPROVEMENTS - 17:
DENVER HOUSING AUTHORITY – 1099 Osage Apartments
CDBG Public Facility Services Grants**

I. INTRODUCTION

The purpose of this contract agreement is to provide a performance-based deferred loan for \$1,500,000 through the Office of Economic Development's Division of Business and Housing Services (BHS). These funds will be provided to the **Denver Housing Authority** to be utilized for expenses related to development of public facilities/community center at 1099 Osage Street.

Funding Source:	Amount:	CFDA # <u>14.218</u>
<input checked="" type="checkbox"/> CDBG	\$ <u>1,500,000</u>	
<input type="checkbox"/> HOME	\$ _____	
<input type="checkbox"/> HOPWA	\$ _____	

HUD Matrix Code:	<u>03 Public Facilities and Improvements (General)</u>
HUD Eligible Activity:	<u>570.201(c) Neighborhood Facilities</u>
Accomplishment Code:	<u>11 Public Facilities</u>
Proposed Number:	<u>400 people will be served annually by this facility</u>

CDBG – Only
HUD National Objective: LMA: 24 CFR 570.208.(a)(1) Low/mod limited area benefit: the service area identified for activities is primarily low/mod income

HOME – Only
HUD Eligible Cost: _____

Organization: The Housing Authority of the City and County of Denver (dba: Denver Housing Authority OR DHA)

EIN #: 84-6002414

DUNS # 039141353

Address: 777 Grant Street, 6th Floor

Contact Person: Christopher Parr or Kimball Crangle

Phone: 720.913.3151 720.932.3123

Email: cparr@denverhousing.org kcrange@denverhousing.org

Organization Type: Non-profit For-profit Municipal

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

Is the organization woman owned? Yes No

Contract Relationship:
 Subrecipient Vendor Beneficiary Community Based Development Organization CHDO

Council District(s): 9 **Neighborhood(s):** Lincoln Park **Census Tracts:** 19.01
(only required for Low Mod Area)

Is the purpose of this activity to:

- | | | |
|--|---|--|
| Help prevent homelessness? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Help the homeless | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Help those with HIV/AIDS | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Primarily help persons with disabilities | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Address public housing needs | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Contract Period: 10/01/2010 -- 3/31/2020

- 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 Housing Authority

II. ACTIVITY DESCRIPTION

1. Purpose

Purpose/Description of Activity: create public facility/community resource center for seniors
 Funds will be used to expenses related to installation of infrastructure on property

2. Program Requirements and Responsibilities SEE ATTACHMENT A-1

3. Performance Objective & Outcome

The intent of this activity is to create a community resource center for the Lincoln Park neighborhood.

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.

Indicators – must be measurable	
4a. Common Indicators:	
<i>Money Leveraged:</i>	<i>yes, LIHTC and ARRA funding were awarded this project</i>
<i>Number of proposed outcomes (from above)</i>	<i>One</i>
<i>Income Levels of people/family(if applicable to outcome)</i>	<i>30% AMI</i>
<i>Race and Ethnicity (if applicable to outcome)</i>	<i>not applicable benefits senior and disabled populations</i>
4. b Specific Indicators: <i>Specific to this particular scope of work</i>	
<i>Number of neighborhoods assisted:</i>	<i>55</i>

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5. Implementation Plan and Timeline 10/1/2010 – 3/31/2012

See attached timeline A-2 -- Denver Housing Authority's general development timeline

Task	Projected Beginning & End Dates
Site preparation	10/01/2010 - January 21, 2011
Vertical construction of buildings and community center	February 1, 2011 – December 31, 2011
Interior work related to buildings	May 1, 2011 - December 31, 2011
Lease-up and occupancy	November 1, 2011 - March 31, 2012

III. Budget

Please refer to the Cost Allocation Plan and budget narrative for a detailed estimated description and allocation of funds.

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

Are non-personnel costs being funded? Yes No

IV. Financials

Total Loan Amount: \$1.5 million

Uses: 1.5 million → infrastructure

Loan Terms:

\$1.5 million → performance-based deferred loan, forgiven at the end of the contract period as long as the property remains a public housing rental project.

Security

Not applicable

Reporting

Data collection is required and must be completed demonstrating income eligibility and achievements met towards meeting the indicators contained in the Scope of Services. All disbursement of funds is contingent based on the ability to collect the required information.

Contractor will email the following report(s) to BHS and CPM (Contracts & Performance Management):

Outcome Performance Measurement Report

Frequency: quarterly

Monthly by the 15th day Quarterly: 10 days after the end of the quarter Other: _____

Business Support Office HUD Performance Indicators Report

Frequency:

Monthly by the 15th day Quarterly: 10 days after the end of the quarter Other: _____

Homeowner/Homebuyer Completion Report

Frequency:

Monthly by the 15th day Quarterly: 10 days after the end of the quarter Other: _____

CHDO Report

Frequency:

Monthly by the 15th day Quarterly: 10 days after the end of the quarter Other: _____

BHS will provide the format of the performance report to the Contractor. 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.

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:

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.

ATTACHMENT A-1

V. PROGRAM REQUIREMENTS AND RESPONSIBILITIES

1. Architectural/Engineering Services

- A. Design Services. Community Development Block Grant funds will not be used for architectural/engineering services on this project. If required based on the scope of work to be completed, DHAt will have a licensed architect for this project responsible for design, construction documents, bidding and general administration of construction.
- B. Construction Financing. A maximum of \$1,500,000 in CDBG funds is available for construction. In the event that the construction cost estimates or the construction bids exceed the project budget, DHA must submit evidence that is satisfactory to OED within 30 days that either all additional financing has been secured or a viable plan is in place to secure additional financing to complete construction of the project.
- C. Federal Labor Standard Requirements. This project is subject to the requirements of the Davis Bacon Act, the Copeland "Anti-Kickback" Act, the "Contract Work Hours and Safety Standards Act" and Executive Order 12246, as amended by Executive Order 11375. HUD-4010 Federal Labor Standards Provisions will apply.
- D. Section 3 Employment Opportunities. Denver Housing Authority agrees to comply with Section 3 Requirements of the Housing and Urban Development Act of 1968 and implementing regulations there under, as more fully described in Part II of the contractor documents.

Denver Housing Authority will monitor all Davis Bacon Wage Rates and Section 3 employment information and will provide at the City and County of Denver's request information for HUD's Semi-Annual Labor Standards Enforcement Report form (HUD-4710) and Section 3 Annual Summary Report form (HUD-60002)

2. PROHIBITIONS AGAINST THE USE OF FEDERALLY DEBARRED AND SUSPENDED PARTIES

Financial assistance shall not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status.

Before any funds can be drawn down from this agreement, the Contractor will submit written evidence that they have searched the Internet at <https://www.epls.gov/> and have determined that all of the contractors, sub-contractors and service providers who will benefit from this agreement, are not currently debarred, suspended or otherwise ineligible. If the contractor does not have Internet access, they may submit the list of contractors they intend to use to OED and request that a search be completed. In any event, the Contractor shall remain responsible for compliance with this prohibition.

Exhibit A
SCOPE OF SERVICES

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

Neighborhood Facilities and Improvements - 17:
DENVER HOUSING AUTHORITY – 1099 Osage Apartments
SKYLINE Public Facility Grant

I. INTRODUCTION

The purpose of this contract agreement is to provide a performance-based deferred loan for \$1,500,000 through the Office of Economic Development's Division of Business and Housing Services (BHS). These funds will be provided to the **Denver Housing Authority** to be utilized for expenses related to development of public facilities/community center at 1099 Osage Street.

Funding Source: Amount: CFDA # N/A
 SKYLINE \$ 1,500,000
 HOME \$ _____
 HOPWA \$ _____

HUD Matrix Code: 03 Public Facilities and Improvements (General)
HUD Eligible Activity: Installation of infrastructure and community center facility
Accomplishment Code: 11 Public Facilities
Proposed Number: 400 people will be served annually by this facility

CDBG – Only
HUD National Objective: LMA: Low/mod limited area benefit: the service area identified for activities is primarily low/mod income)

HOME – Only
HUD Eligible Cost: _____

Organization: Denver Housing Authority (dba: DHA)

EIN #: 84-6002414

DUNS # 039141353

Address: 777 Grant Street

Contact Person: Christopher Parr or Kimball Crangle

Phone: 720.913.3151 720.932.3123

Email: cparr@denverhousing.org kcrang@denverhousing.org

Organization Type: Non-profit For-profit Municipal

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

Is the organization woman owned? Yes No

Contract Relationship:
 Subrecipient Vendor Beneficiary Community Based Development Organization CHDO

Council District(s): 9 Neighborhood(s): Lincoln Park Census Tracts: 19.01
(only required for Low Mod Area)

Is the purpose of this activity to:

- Help prevent homelessness? Yes No
- Help the homeless Yes No
- Help those with HIV/AIDS Yes No
- Primarily help persons with disabilities Yes No
- Address public housing needs Yes No

Contract Period: See Section IV – Financials for breakdown

- 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 Housing Authority

II. ACTIVITY DESCRIPTION

1. Purpose

Purpose/Description of Activity: create public facility/community resource center for seniors
 Funds will be used to building a community center serving disabled and seniors, along with infrastructure expenses

2. Program Requirements and Responsibilities SEE ATTACHMENT A-1

3. Performance Objective & Outcome

The intent of this activity is to create a community center for the Lincoln Park neighborhood.

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.

Indicators – must be measurable	
4a. Common Indicators:	
<i>Money Leveraged:</i>	<i>yes, LIHTC and ARRA funding were awarded this project</i>
<i>Number of proposed outcomes (from above)</i>	<i>One</i>
<i>Income Levels of people family(if applicable to outcome)</i>	<i>30% AMI</i>
<i>Race and Ethnicity (if applicable to outcome)</i>	<i>not applicable benefits senior and disabled populations</i>
4. b Specific Indicators: <i>Specific to this particular scope of work</i>	
Number of neighborhoods assisted:	55

5. Implementation Plan and Timeline 10/1/2010 – 3/31/2012

See attached timeline A-2 -- Denver Housing Authority's general development timeline

Task	Projected Beginning & End Dates
Site preparation	10/01/2010 - January 21, 2011
Vertical construction of buildings and community center	February 1, 2011 – December 31, 2011
Interior work related to buildings	May 1, 2011 - December 31, 2011
Lease-up and occupancy	November 1, 2011 - March 31, 2012

III. Budget

Please refer to the Cost Allocation Plan and budget narrative for a detailed estimated description and allocation of funds.

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

Are non-personnel costs being funded? Yes No

IV. Financials

Total Loan Amount: \$1.5 million

Uses: .8 million → infrastructure

.7 million → community center hard construction costs

Loan Terms:

\$1.0 million → full repayment – lump sum payment at end of contract period, due 10/31/2020

.5 million → full repayment -- lump sum payment at end of contract period, due 10/31/2030

Security

\$1.0 million → collateral to be provided equal to or greater than amount at later date

\$500,000 → collateral to be provided equal to or greater than amount at later date

V. Reporting

Data collection is required and must be completed demonstrating income eligibility and achievements met towards meeting the indicators contained in the Scope of Services. All disbursement of funds is contingent based on the ability to collect the required information.

Contractor will email the following report(s) to BHS and CPM (Contracts & Performance Management):

Outcome Performance Measurement Report

Frequency: quarterly

Monthly by the 15th day

Quarterly: 10 days after the end of the quarter

Other: _____

Business Support Office HUD Performance Indicators Report

Frequency:

Monthly by the 15th day

Quarterly: 10 days after the end of the quarter

Other: _____

Homeowner/Homebuyer Completion Report

Frequency:

Monthly by the 15th day

Quarterly: 10 days after the end of the quarter

Other: _____

CHDO Report

Frequency:

Monthly by the 15th day Quarterly: 10 days after the end of the quarter Other: _____

BHS will provide the format of the performance report to the Contractor. 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.

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:

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.

ATTACHMENT A-1

V. PROGRAM REQUIREMENTS AND RESPONSIBILITIES

REQUIREMENTS AND RESPONSIBILITIES

1. Architectural/Engineering Services

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EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the BHS Financial Management Unit and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by BHS shall be in accordance with established Financial Management Unit (FMU) procedures for line-item reimbursements. The Contractor must submit expenses and accruals to BHS on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with BHS policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to BHS in order to be paid.
 - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
 - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from BHS.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with the OMB cost principles applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
 - a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to BHS prior to the draw request. The standardized BHS "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll—1) the amount of time worked by the employee for this pay period; and 2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, workmen's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

1.5 General Reimbursement Requirements:

- a. Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- b. Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- c. Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- d. Administration and Overhead cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by BHS.
- e. Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received

by BHS within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income:

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS APPROVED IN WRITING BY BHS, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by BHS.

3.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc. shall be provided for all disbursements. The Contractor will maintain auditable records-i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for BHS funds as referenced in 24 C.F.R. 85.20 and OMB Circular A-110.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in BHS provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

- 4.1.1 If the Contractor expends five hundred thousand dollars (\$500,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."
- 4.1.2 A copy of the final audit report must be submitted to the BHS Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to BHS along with the reporting package prepared in accordance with the Single Audit Act Amendments and OMB Circular A-133. If the management letter is not received by the sub recipient at the same time as the Reporting Package, the Management Letter is also due to BHS within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period,

whichever is earlier. If the Management Letter has matters related to BHS funding, the Contactor shall prepare and submit a Corrective Action Plan to BHS in accordance with 24 C.F.R. Part 45 for each applicable management letter matter.

- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc. shall be submitted to **BHS Financial Management Unit**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to BHS with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by BHS. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to BHS prior to the last Quarter of the Contract Period, unless waived in writing by the BHS Director.

6.1 Procurement:

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

- 7.1.1 BHS may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required BHS contract close-out forms and submitting these forms to their appropriate BHS Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by BHS in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by BHS within sixty (60) days prior to end of contract.
- 9.1.3 BHS will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, BHS reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

10.1 Collection of amounts due:

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, BHS may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.

EXHIBIT C

VERIFICATION AFFIDAVIT

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

_____ I am a United States citizen, or

_____ I am a Permanent Resident of the United States, or

_____ I am an alien lawfully present in the United States pursuant to Federal Law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that State law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute §18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

DATE

[Print] Name of Applicant

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, disability/handicap, familial status, 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. Part 6 and Section 570.602), 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, religion 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 City or of a sub-recipient, if applicable, 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.