

LOAN AGREEMENT

Part I

THIS LOAN AGREEMENT (this “Agreement”), in two Parts, Part I and Part II, is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (“Lender” or “City”), and **ROCKY MOUNTAIN PUBLIC BROADCASTING NETWORK, INC.**, a Colorado non-profit corporation whose address is 1089 Bannock Street, Denver, Colorado 80204 (“Borrower”).

WITNESSETH:

WHEREAS, the City is acting pursuant to federal grant conditions with respect to making Revolving Loan Fund (RLF) Loans to selected business entities within a designated target area; and

WHEREAS, the Borrower is an eligible borrower pursuant to the provisions of the CDBG - RLF (Community Development Block Grant) Loan Program and is ready, willing, and able to meet the conditions of the Program;

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

- 1. CONTINGENCIES:** None.
- 2. LOAN TO BORROWER:** Subject to the terms of this Agreement, the City agrees to lend Borrower up to the sum of One Million Five Hundred Thousand Dollars and NO Cents (\$1,500,000.00) (the “Loan”). In addition to this Agreement, the Borrower will enter into a promissory note in form satisfactory to the City (the “Promissory Note”) and deed of trust on the Property (as defined below), containing terms and conditions satisfactory to the City, evidencing and securing the Loan.

A. REPAYABLE LOAN AMOUNT: Five Hundred Thousand Dollars and NO Cents (\$500,000.00) of the Loan to the Borrower (the “Repayable Loan Amount”) shall be repaid, together with interest at the rate of two percent (2.0%) per annum, over a term of eighty-four months (84) months from the date of the Promissory Note. Payments shall be due and payable in monthly installments, commencing on the first day of the first month following execution of the Promissory Note and on the first day of each succeeding month through the first day of the twelfth month following the execution of the Promissory Note, an interest payment of Eight Hundred Thirty-Three Dollars and 33 Cents (\$833.33) shall be paid by Borrower to the City. On the first day of the

thirteenth month following execution of the Promissory Note and on the first day of each succeeding month thereafter, the Borrower shall make a principal and interest payment to the City the amount of Six Thousand Three Hundred Eighty-Three Dollars and 72 cents (\$6,383.72). The entire unpaid balance of the Repayable Loan Amount shall be due and payable on or before the first day of the eighty-fourth (84th) month following the month of execution of the Promissory Note (the “Maturity Date”). Interest shall commence accruing upon the execution of the Promissory Note.

B. PERFORMANCE BASED LOAN AMOUNT: The amount to be paid by the Borrower to the City shall not exceed One Million Dollars and NO Cents (\$1,000,000.00) (the “Performance Based Loan Amount”). For value received, the Borrower shall pay to the City the principal sum of the Performance Based Loan Amount, or the amount of the Performance Based Loan Amount actually disbursed by the City, whichever is less, if and only if the Borrower does not comply with the requirements of this Agreement, including but not limited to the requirements set forth in Sections 6 and 7 of this Agreement. The Performance Based Loan Amount shall bear simple interest at a rate of zero percent (-0-%) per annum commencing on the date of the Promissory Note until paid in full or forgiven in accordance with the terms hereof. Repayment shall be forgiven by the City on the Maturity Date so long as Borrower is in compliance with the terms and conditions of this Agreement.

3. SECURITY FOR REPAYMENT:

This loan will be secured by a deed of trust (the “Deed of Trust”), in form satisfactory to City, on the property owned by Rocky Mountain Public Broadcasting Network, Inc. and located at 21st and Arapahoe Streets, Denver, Colorado (the “Property”) and subject to prior encumbrances not exceeding Fifty-Four Million Dollars and No Cents (\$54,000,000.00) in principal amount.

4. SUBORDINATION:

The Executive Director of the Office of Economic Development (“OED”) or the Executive Director’s 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 substantially in the form attached hereto as **Exhibit C**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed Fifty-Four Million Dollars and No Cents (\$54,000,000.00); and (iii) Borrower is not then in default of its obligations hereunder.

5. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used for the design and soft costs of a new facility for Borrower on the Property (the “Project”). Funds will be disbursed upon receipt of documentation satisfactory to the fiscal department of OED, in accordance with the following budget:

Design and Soft Costs	\$1,500,000.00
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These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to June 1, 2016 will not be reimbursed. The Borrower agrees to comply with the financial administration requirements set forth in **Exhibit B**, which is attached hereto and incorporated herein by this reference. The City shall retain up to One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) of the Loan funds and shall disburse such amount upon receipt of all “Employment and Income Certification forms” (the “E&I form,” as further described in Section 7, below) for all jobs required by Section 7 of this Agreement from the Borrower.

6. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower agrees that all conditions required for a closing hereunder shall have been met within ninety (90) days following the date of this Agreement, or the City may terminate this Agreement. Documentation for all draw down requests will be submitted no later than September 30, 2017. These deadlines may be extended with the written approval of OED. Draw request documentation with a minimum of Five Hundred Thousand Dollars and No Cents (\$500,000.00) of Performance Based Loan Amount shall be submitted to OED no later than September 30, 2016. The remaining balance of the Loan proceeds in the amount of One Million Dollars and No Cents (\$1,000,000.00) shall be disbursed no later than September 30, 2017. If the Borrower does not draw at least Five Hundred Thousand Dollars and No Cents (\$500,000.00) of Performance Based Loan Amount by September 30, 2016, then: (a) the principal balance of the Performance Based Loan Amount shall be reduced from a total of One Million Dollars (\$1,000,000) to a total of Five Hundred Thousand Dollars (\$500,000) and (b) the remaining balance of the Repayable Loan Amount in the amount of Five Hundred Thousand Dollars (\$500,000) shall be disbursed no later than September 30, 2017. Borrower shall commence construction of the Project (as defined below), which includes demolition of existing buildings and foundation construction, no later than ninety (90) days from the date of this Agreement. Unless

extended in writing by OED, failure to meet this deadline will constitute default under the Article entitled “Default and Acceleration,” herein below.

7. JOB CREATION AND RETENTION:

A. Borrower agrees to create, with enterprises occupying the Property, Forty-three (43) new permanent, full-time jobs with funds received under this Agreement. Borrower agrees that at least fifty-one percent (51%) of these jobs will be held by or will be made available to low and moderate income persons as defined by the United States Department of Housing and Urban Development pursuant to 24 C.F.R. 570.208. In addition to the other requirements of 24 C.F.R. 570.208, jobs that are not held or filled by a low or moderate income person may be considered to be available to low and moderate income persons for the purposes of this section only if: (A) special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or Borrower agrees to hire unqualified persons and provide training; and (B) Borrower takes actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

B. A chart identifying the total number of permanent jobs, including job title and job classification, to be created and retained is attached hereto and incorporated herein as **Exhibit A-1**. The listing of definitions for job titles and job classifications as defined by the Economic Development Administration (EDA) is attached hereto and incorporated herein as **Exhibit A-2**. Borrower agrees to create these jobs, with enterprises occupying the Property, by the twenty-fourth (24th) month from the date of execution of the Promissory Note. Unless extended in writing by OED, failure to meet this deadline will constitute default under the Article entitled “Default and Acceleration,” herein below.

C. For each new person hired, Borrower agrees to provide the City with all of the information required by the “Employment and Income Certification form” (E&I form) which is attached hereto and incorporated herein as **Exhibit A-3**. The E&I forms must be submitted to the City until such as time as the number of jobs indicated above have been created and filled. In the event that fifty-one percent (51%) of the new positions created are not held by low and moderate income persons, the Borrower is required to submit a report to the City once every twelve (12) month period calculated from the month of execution of the Promissory Note, describing what steps were

taken to ensure that the position(s) was made available to low and moderate income persons as detailed by (A) and (B) of this section delineated above.

8. ENVIRONMENTAL AND HISTORIC CLEARANCE: No loan proceeds may be obligated or spent until Borrower has received written environmental and historic clearance from OED. 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.

9. DEFAULT AND ACCELERATION: Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, any other default or breach of this Agreement, 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, including non-monetary default, or termination of this Agreement, 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, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Borrower agrees to pay a late charge of five percent (5%) of any monthly installment not received on or before the fifteenth (15th) day after the installment is due. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum.

The City may also suspend or terminate this Agreement, in whole or in part, if Borrower materially fails to comply with any term of this Agreement, including if Borrower becomes delinquent to the City on any loan, contractual, or tax obligation as due, or with any rule, regulations,

or provisions referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Agreement terms or City loan obligation, and only after the City provides a 30 day notice to cure that remains uncured by Borrower, the City may withhold up to one hundred (100) percent of said Agreement funds until such time as the Borrower is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder. This Agreement may also be terminated as provided in **Part II**, attached hereto and incorporated herein by this reference.

10. 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 Agreement, the Promissory Note, or Deed of Trust. The Borrower agrees to pay reasonable costs associated with the loan closing.

11. INSECURITY: The Borrower agrees that should the City deem this loan to be insecure, in accordance with this Agreement or with 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 Community Development Block Grant Agreements set out below, the breach of any loan agreement or security agreement to any other lenders on the project, such insecurity shall be deemed a default under the Article herein entitled "DEFAULT AND ACCELERATION" and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with any payment obligations under this Agreement or the Promissory Note or Deed of Trust.

12. EXAMINATION OF RECORDS: The Borrower agrees that the Comptroller General of the United States, the U. S. Department of Housing and Urban Development ("HUD") 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.

13. CONDITIONS: This Agreement is subject to the Housing and Community

Development Act of 1974, as amended, regulations issued by HUD, 24 C.F.R. 570 *et seq.*, and the Community Development Block Grant Agreements entered into between the City and HUD. This Agreement is also subject to the City's Charter and Revised Municipal Code, as the same may be amended from time to time. The obligation of the City to lend the above sums shall only extend to payment of monies appropriated for this Agreement by the United States of America and paid into the Treasury of the City and County of Denver as an applicable cost under the terms of the Community Development Block Grant Agreements referred to above.

This Agreement is also subject to the terms and conditions set forth in **Part II**, attached hereto and incorporated herein by this reference.

14. ASSIGNMENT: The City is not liable under this Agreement to any party other than the Borrower. The Borrower shall not assign its interest in this Agreement except upon prior written consent of the City.

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

A. Where loan proceeds are disbursed for construction, Builders Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

B. Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 for each personal and advertising injury claims, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

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

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

E. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust, with the City named as loss payee.

F. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

16. DEFENSE & INDEMNIFICATION:

A. Borrower hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Borrower 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. Borrower’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. Borrower 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 Borrower under the terms of this indemnification obligation. The Borrower 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.

17. 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.

18. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this contract, 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 the Borrower further agrees to insert the foregoing provision in all subcontracts hereunder.

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

20. 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.

21. 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 OED in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this 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.

22. 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.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: OEDEV-201629108-00

Contractor Name: ROCKY MOUNTAIN PUBLIC BROADCASTING NETWORK, INC.

By: 

Name: Doug Price
(please print)

Title: Chief Executive Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Exhibit A-1
Job Creation/Retention Grid

The U.S.Dept. of Housing and Urban Development provides funding for this loan program. At least 51% of the jobs to be created or retained be made available to low and moderate income persons.

# of Positions	Postion/ Title	Classification	Currently Employed	New Hires	Hours/Week	Requires Special Skills or Education	Available to Low to Moderate Income Persons	Hourly Wage Rate (estimated)
10	Teacher	Professional	No	Yes	400	Yes	Yes	
1	Principal	Professional	No	Yes	40	Yes	Yes	
1	Counselor	Professional	No	Yes	40	Yes	Yes	
4	Teacher Assistant	Professional	No	Yes	160	Yes	Yes	
4	Program Leaders	Professional	No	Yes	160	Yes	Yes	
1	Office Manager	Professional	No	Yes	40	Yes	Yes	\$ 15.00
1	Property Manager	Officials & Managers	No	Yes	40	Yes	Yes	\$ 20.00
9	Server	Service Workers	No	Yes	360	No	Yes	\$ 10.00
2	Manager	Professional	No	Yes	80	No	Yes	\$ 15.00
5	Administrative	Professional	No	Yes	200	Yes	Yes	\$ 15.00
5	Content Creator	Professional	No	Yes	200	Yes	Yes	\$ 25.00
43					43			

Name of Borrower: _____
 Signature: _____
 Date: 6/30/2016

For OED purposes only:
 Total FTE jobs created (hours/week of employees divided by 40): _____
 Total FTE jobs retained: _____
 pw jobcreation

Exhibit A-1
Job Creation/Retention Grid

ined must

Estimated Date of Hire
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018
6/1/2018

Exhibit A-2

Economic Development Administration (EDA) Job Category/Classification Definitions:

1. **Officials and Managers**
Occupant requiring administrative personnel who set broad policies, exercise overall responsibility of execution of these policies, and individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, and kindred workers.
2. **Professional**
Occupants requiring either college graduation or experience of such kind and amount as to provide a comparable background includes: accountants and auditors, airplane pilots and navigators, architects, artist, chemist, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientist, registered professional nurses, professional and labor relations workers, physical scientist, physicians, social scientist, teachers, and kindred workers.
3. **Technicians**
Occupants requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education such as is offered in many technical in states and junior colleges, or through equivalent on the job training. Includes: computer programmers and operators, drafters, engineering aides, junior engineers, mathematic sides, licensed practical or vocational nurses, photographers and radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical science) and kindred workers.
4. **Sales**
Occupants engaging wholly or primarily in direct selling includes: advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, sale workers, demonstrators retail sale workers, and sales clerks, grocery clerks and cashiers, and kindred workers.
5. **Office and clerical**
Includes all clerical-type work regardless of level of difficulty, where the activities and predominately non manual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and account), messengers, and office helpers, office machine operators, shipping and receiving clerks, stenographers, typist, and secretaries, telegraph and telephone operators and kindred workers.
6. **Craft Worker (skilled)**
Manual workers of relatively high level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisor and lead operators (who are not members of management). Mechanic and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal) motion picture projectionist, pattern and model makers, stationary engineers tailors, and kindred workers.

7. **Operatives (semi-skilled)**

Workers who operate machines or other equipment to perform other factory-type duties or intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics, plumbers, electricians, machinist, mechanics, building trades, metal working trades, printing trades, etc.), operatives, attendants (auto service and parking), blasters, chauffeurs, delivery workers, dressmakers and sewers (except factory), dryer's furnaces workers, heaters (metal), laundry and dry cleaning, operatives, milliners, mine operative and laborer, motor operators, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, boiler tenders, truck and tractor drivers, weavers (textile), welders, and flame metal, and kindred workers.

8. **Laborers (unskilled)**

Workers in manual occupations which generally require no special training perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and ground keepers, stevedores, wood choppers, laborer performing lifting, digging, mixing, loading and pulling operations, and kindred workers.

9. **Service Workers**

Workers in both protective and non protective service occupation includes attendants (hospital and other institutions, professional and personal service, including nurses aides and orderlies), barbers, chair workers and cleaners, cook (except household), counter and fountain workers, elevator operators, firefighters and fire protection guards, doorkeepers, stewards, janitors, police officers and detectives, porters, waiters and waitresses, and kindred workers.



EXHIBIT A-3

EMPLOYMENT AND INCOME CERTIFICATION FORM

YOU MAY TAKE A PICTURE OF THIS COMPLETED FORM AND TEXT TO: 720-350-3694, OR

EMAIL TO: OED_Job_Creation@denvergov.org

ALL RESPONSES WILL BE KEPT CONFIDENTIAL



Your employer has received economic development loan funds from the City and County of Denver. The City's Office of Economic Development requires that the business entity demonstrate creation and/or retention of jobs for low- and moderate-income individuals. Please complete all the information requested below.

1. **Employer Name:** _____
Employer Address: _____
Employer Phone Number: _____

2. **Employee Name:** _____
Employee Address: _____

3. **Date Hired:** _____
• Original Job Title: _____
• Current Job Title: _____
• Select the Classification that best fits your title:
 Officials & Managers Sales Operative (semi-skilled)
 Professional Office & Clerical Laborer (unskilled)
 Technician Craft Worker (skilled) Service Worker
• Prior to this current employment, were you unemployed? Yes No
• Were you referred to this employer through Connecting Colorado? Yes No Don't Know

4. **Employee Status:** Permanent: Hours/Week: _____
 Seasonal: Hours/Week: _____
 Temporary: Hours/Week: _____
Receiving health care benefits? Yes No

5. **Household Status *as it was 12 months prior to date of hire with this employer:***
Number of individuals in household _____
Check the appropriate range for the total income of **all household members** over the age of 18 living with you, including your income, ***for the 12 months prior to the date you were hired: 2016 HUD Income Limits (effective 3/28/2016)***

<input type="checkbox"/>	\$ -	-	\$44,900	<input type="checkbox"/>	\$64,101	-	\$69,250
<input type="checkbox"/>	\$44,901	-	\$51,300	<input type="checkbox"/>	\$69,251	-	\$74,400
<input type="checkbox"/>	\$51,301	-	\$57,700	<input type="checkbox"/>	\$74,401	-	\$79,500
<input type="checkbox"/>	\$57,701	-	\$64,100	<input type="checkbox"/>	\$79,501	-	\$84,650

6. **Employee Information:**
• Gender: Female Male
• Is the Head of Household Female? Yes No
• Ethnicity (select only one): Hispanic or Latino Not Hispanic or Latino
• Race: (select only one):

SINGLE RACE CATEGORY	MULTI-RACE CATEGORY
White	American Indian/Alaska Native & White
Black/African American	Asian & White
Asian	Black/African American & White
American Indian/Alaska Native	American Indian/Alaska Native & Black/African American
Native Hawaiian/Other Pacific Islander	Other Multi-race (Please explain)

I hereby certify that, to the best of my knowledge, the above information is complete and correct. I understand that the information I have provided is subject to verification by the City and County of Denver and by the U.S. Department of Housing and Urban Development (HUD). *NOTE: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U. S. C. 3729, 3802).* _____

Employee Signature _____ Date _____

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to OED 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 OED 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 OED 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 OED.
- 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 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) 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 OED prior to the draw request.
- 1.2.8 The standardized OED “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, worker'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

- 1.5.1 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.
- 1.5.2 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.
- 1.5.3 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.
- 1.5.4 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 OED.
- 1.5.5 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 OED 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 OED, 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 OED.

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 OMB Omni Circular 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 OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 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 OED 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 seven hundred and fifty thousand dollars (\$750,000) 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 OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the OED 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 OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to OED 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 OED

funding, the Contactor shall prepare and submit a Corrective Action Plan to OED in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 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 **OED 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 OED 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 OED. 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 OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED 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 OED 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 OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.
- 9.1.3 OED 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, OED 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, OED 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

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the "Junior Lender") and [INSERT LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (the "Senior Lender").

PRELIMINARY STATEMENTS

A. The Junior Lender has made the a loan to [INSERT BORROWER NAME], a [INSERT STATE][INSERT ENTITY TYPE] (the "Borrower") in the principal amount of \$[INSERT DOLLAR AMOUNT], evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], made by the Borrower and payable to the Junior Lender and secured by that certain Deed of Trust [the "Junior Deed of Trust"] made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado, encumbering the following described property (the "Property"):

[FILL IN LEGAL DESCRIPTION OR SEE LEGAL DESCRIPTION – ATTACHMENT A]

B. The Senior Lender plans to grant Borrower a loan of \$[INSERT NUMERIC AMOUNT], and will execute a deed of trust ("Senior Deed of Trust") which will cover and encumber all or part of the Property and securing a note in like amount, and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado.

C. It is the desire of the parties and to the mutual benefit of all parties that the lien of the Junior Deed of Trust be subordinated to the lien of the Senior Deed of Trust.

AGREEMENT

For and in consideration of the mutual benefits accruing to the parties hereto, and the promises set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Junior Deed of Trust. As used herein, the following terms shall have the meanings assigned to them:

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust, whether such debt, liability or

obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

"Junior Obligations" means any deed of trust or other mortgage, lien or encumbrance made by the Borrower to and for the benefit of the Junior Lender, including, without limitation, the Junior Deed of Trust and any and all security interests, liens or other encumbrances granted in connection with the Property by the Borrower and in favor of the Junior Lender.

2. Subordination. All Junior Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of the Senior Obligations. The Junior Lender hereby agrees that (regardless of any priority otherwise available to the Junior Lender by law or by agreement) any security interest that the Junior Lender might now hold in the Mortgaged Property, is fully subordinate to any security interest that the Senior Lender may now or hereafter hold in the Mortgaged Property.

3. Collateral and Security Interest. Until all of the Senior Obligations have been paid in full, the Junior Lender shall not demand, receive or accept (i) a pledge of any of the Mortgaged Property as security for the Junior Obligations, or (ii) a grant of any security interest or any other right or interest in any of the Mortgaged Property.

4. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

5. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to

such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

6. Notice of Default to Senior Lender. Any notice provided to Borrower by the Junior Lender of any default under the Junior Deed of Trust shall also be sent to Senior Lender.

7. Notice of Default to Junior Lender. Senior Lender shall deliver to the Junior Lender a default notice within ten business days in each case where Senior Lender has given a default notice to the Borrower. The Junior Lender shall have the right, but not the obligation, to cure any default under the Senior Loan Documents within the same time, and the same manner, as the Borrower pursuant to the Senior Loan Documents. All amounts paid by the Junior Lender to Senior Lender to cure a default under the Senior Loan Documents shall be deemed to have been advanced by the Junior Lender pursuant to, and shall be secured by the lien of, the Junior Deed of Trust.

8. No Representations or Warranties. Neither the Junior Lender nor the Senior Lender (i) makes any representation or warranty concerning the Mortgaged Property or the validity, perfection or (except as to the subordination effected hereby) priority of any security interest therein, or (ii) shall have any duty to preserve, protect, care for, insure, take possession of, collect, dispose of or otherwise realize upon any of the Mortgaged Property.

9. Binding Effect; Miscellaneous. This Agreement shall be binding upon the Junior Lender and its respective successors and assigns and shall inure to the benefit of the Senior Lender and its participants, successors and assigns, but neither the Borrower nor any other secured party shall be entitled to rely on or enforce this Agreement. This Agreement cannot be waived or changed or ended, except by a writing signed by the party to be bound thereby. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Colorado. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by either of them in connection with this Agreement shall be venued in the City and County of Denver. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Junior Lender waives notice of the Senior Lender's acceptance hereof.

10. Notice. Any notice required under this Agreement shall be deemed to have been given when mailed by certified mail, return receipt requested, or by overnight express mail or courier service, to the addresses of the Junior Lender or the Senior Lender, as the case may be, set out in the first paragraph of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

By: _____

Title: _____, Office of Economic Development

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 20 ____, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

“SENIOR LENDER”

[INSERT SENIOR LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE]

By: _____

Title: _____

\

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day
of _____, 20____, by _____ as _____ of

Witness my hand and official seal.
My commission expires: _____.

Notary Public

Acknowledged by BORROWER:

[INSERT BORROWER NAME], a [INSERT STATE]
[INSERT ENTITY TYPE]

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Part II:

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 United States Department of Housing and Urban Development or a person authorized to act on its 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 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), 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 the OMB Omni Circular 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 CDBG Part II rev.1/26/2016

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.

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

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 CDBG Part II rev.1/26/2016

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. Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, 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. 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 effect 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.

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