

AGREEMENT
PART I
NSP2

THIS AGREEMENT (this "Agreement"), in two parts, Part I and Part II, is made and entered into this _____ day of _____, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the "City"), and **NEIGHBORHOOD DEVELOPMENT COLLABORATIVE, INC.**, a Colorado nonprofit corporation (the "Contractor"), whose address is 777 Grant Street, 6th Floor, Denver Colorado 80203.

WITNESSETH

WHEREAS, the City desires to provide funds to be utilized for implementing program activities related to the Neighborhood Stabilization Program 2(NSP2); and

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

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

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

10-1129

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

2. **TIME OF PERFORMANCE:** This Agreement shall begin on February 11, 2010, and end on March 20, 2019, unless such time is extended by written agreement of the parties, executed in the same manner as this Agreement. The term of this Agreement and the provisions herein shall automatically be extended to cover any additional time period during which the Contractor remains in control of NSP2 funds or other NSP2 assets.

3. **COMPENSATION:** The amount to be paid by the City to the Contractor shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00). The obligation of the City for payments under this Agreement is limited to monies appropriated by the U.S. Congress and the City Council, and paid into the City Treasury as an applicable cost under the NSP2 Agreements referred to below. Funds will be released to the Contractor in accordance with the budget and other requirements set forth in Exhibits A and B. The parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

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

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

6. **DEFENSE & INDEMNIFICATION:**

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

omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating 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 Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection. City acknowledges that Contractor's only funds, in addition to insurance proceeds, are those available through the NSP.

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

7. **CONTRACTOR'S INSURANCE:**

A. GENERAL CONDITIONS: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A" VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any

coverage be reduced before the expiration date thereof, the issuing company shall send written notice to Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 via certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The City reserves the right to require the Contractor to provide a bond, at no cost to the City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

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

C. ADDITIONAL INSURED: For general liability, Contractor's insurer shall name the City as an additional insured.

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

E. SUB-CONSULTANTS: All sub-consultants, subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such sub-consultants, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subconsultants maintain the required coverages. Contractor agrees to

provide proof of insurance for all such sub-consultants, subcontractors, independent contractors, suppliers or other entities upon request by the City.

F. WORKERS' COMPENSATION/EMPLOYER'S LIABILITY INSURANCE: The parties recognize and agree that the Contractor is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not (1) require the Contractor to work exclusively for the City, provided that the Contractor may have elected to work exclusively for the City for the period of time specified in the term of this Agreement; (2) establish a quality standard for the Contractor, provided that the parties agree that while the City may provide plans regarding its expectancy of the work to be performed by the Contractor, the City will not oversee the actual work of the Contractor or instruct the Contractor as to how the work will be performed; (3) pay a salary or hourly wage to the Contractor instead of the fixed contract rate stated herein; (4) terminate the work of the Contractor for cause during the term of this Agreement unless the Contractor violates the terms of the Agreement or fails to produce a work product or result that meets the specific terms provided in the Agreement; (5) provide any training for the Contractor other than minimal orientation to the site or other parameters of the Contractor activity; (6) provide tools or benefits to the Contractor; (7) dictate the time of performance; except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (8) pay the Contractor personally instead of making City warrants payable to the professional name of the Contractor, except that in this Agreement the Contractor is an individual and sole proprietor; and (9) combine the regular operation of the City in any way with the professional or business operations of the Contractor instead of maintaining office operations separately and distinctly.

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

H. AUTOMOBILE LIABILITY: Contractor represents, as material representations upon which the City is relying, that Contractor does not own any motor vehicles and that in performing Services under the Agreement, Contractor's owners, officers, directors, and employees use their personal vehicles. Contractor shall ensure that any person operating a

motor vehicle in performing Services under the Agreement shall keep in full force Personal Auto Liability coverage with minimum required limits.

I. ADDITIONAL PROVISIONS:

(1) For all general liability, the policies must provide the following:

- (a) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Contractor shall notify the City within ten (10) days and reinstate the aggregates required;
- (b) Unlimited defense costs in excess of policy limits;
- (c) Contractual liability covering the indemnification provisions of this Agreement;
- (d) A severability of interests provision;
- (e) Waiver of exclusion for lawsuits by one insured against another;
- (f) A provision that coverage is primary; and
- (g) A provision that coverage is non-contributory with other coverage or self-insurance provided by the City.

(2) In the event the Contractor is unable to obtain inclusion in the policies of any such additional provisions at reasonable cost, the Contractor may request from the City's Department of Risk Management approval of an alternative to such additional provision, provided that approval of such alternative shall be in the Department's sole discretion.

(3) For all general liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement or the first date when any goods or services were provided to the City, whichever is earlier.

8. **INTENTIONALLY DELETED.**

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

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

11. **ASSIGNMENT AND SUBCONTRACTING:** The City shall not be obligated or liable under this Agreement to any party other than the Contractor named herein. The Contractor understands and agrees that it shall not assign with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City to such assignment; and, in the event any such assignment shall occur, such action shall not be construed to create any contractual relationship between the City and such assignee, and the Contractor herein named shall in any and all events be and remain responsible to the City according to the terms of this Agreement. City acknowledges that Contractor intends to subcontract with other parties for the performance of various activities and obligations in the scope of services attached as Exhibit A.

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

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

14. **STATUS OF CONTRACTOR:** It is understood and agreed that the status of the Contractor shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.2(C) of the Charter of the City and it is not intended, nor shall it be construed, that

the Contractor or its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever.

15. **CONDITIONS:**

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

B. This Agreement is also subject to the Housing and Community Development Act of 1974, as amended, regulations issued by HUD, 24 C.F.R. 570 et seq. (as applicable), Title XII of Division A of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 (enacted February 17, 2009), and the NSP2 Agreements entered into by and between the City and HUD. Additionally, this Agreement is subject to the City's Charter and all applicable City ordinances, as the same may be amended from time to time.

C. This Agreement is also subject to the City and County of Denver Neighborhood Stabilization Program Affordability Policy, as may be amended by the Office of Economic Development from time to time.

16. **RECAPTURE AND REALLOCATION OF DEVELOPER'S ALLOCATION OF NSP2 FUNDS:** If Contractor fails to expend NSP2 funds as indicated with regard to the goals and delivery schedule in Exhibit A, City at its sole discretion may recapture a portion or all of the Contractor's total NSP funding allocation. The portion recaptured will be equal to Contractor's estimate of the amount of NSP funds that would remain unspent by the spending deadlines described herein, based on Contractor's activities to date and capacity to complete the work.

In addition, the amount of Contractor's NSP funding allocation that is not obligated or expended by the expenditure deadline will be recaptured immediately unless City grants a brief extension of the deadline in writing based on extenuating circumstances and compelling evidence that expenditures will be completed during the extended period.

17. **LEGAL AUTHORITY:**

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

B. The person or persons signing and executing this Agreement on behalf of Contractor do hereby represent and warrant that he/she or they have been fully authorized by

Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

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

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

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

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

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

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

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

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

20. **PUBLICATIONS/ANNOUNCEMENTS**. Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any

other marketing methods funded by OED or publicizing activities funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver, Office of Economic Development."

21. **CONTRACT MONITORING.** The Contractor shall be subject to various monitoring and evaluation requirements to assure compliance with applicable federal requirements and that the "Indicators" detailed in Exhibit A are being achieved. The Contractor's performance may be reviewed monthly by the appropriate operational unit at OED which has program management responsibility. All records required to perform such monitoring shall be made available to the authorized OED staff by the Contractor. All reports submitted by the Contractor shall be utilized as part of the evaluation of Contractor's performance hereunder. All reviews shall be conducted in accordance with internal OED procedures. Procedures will be available to the Contractor no less than thirty (30) days prior to any review. The Contractor is further subject to a final program audit at the City's expense. The City Auditor reserves the right to select the audit firm. The Contractor shall provide all appropriate records to the auditing personnel. The Audit Guide will be the basis of the performance of the audit. The Contractor agrees to abide by the administrative procedures of OED regarding the resolution of audit exceptions.

22. **ENFORCEMENT.** If the Contractor materially fails to comply with the terms of this Agreement, the City may take one or more of the following actions:

- A. Temporarily withhold cash payments pending correction of the deficiency by the Contractor.
- B. Disallow (that is deny use of funds) all or part of the cost of the activity or actions not in compliance.
- C. Wholly or partially suspend or terminate the current award for the Contractor's program.
- D. Pursue any other remedies that may be legally available.

23. **PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Contractor is liable for any violations as provided in the Certification Statute.

B. The Contractor certifies that:

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

(2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

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

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

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

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

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

information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

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

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

25. **AFFIRMATIVE MARKETING**: Contractor shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit E** and incorporated herein, to provide information and otherwise attract eligible tenants and home buyers from all racial, ethnic, and gender groups in the housing market area for the target neighborhoods set forth in Exhibit A.

26. **AFFORDABILITY REQUIREMENT**: All NSP2-assisted properties shall have long-term affordability restrictions and/or Deeds of Trust recorded against the units for the benefit of the Contractor or one of Contractor's participating entities in order to ensure long term affordability. The affordability restrictions shall comply with the terms set forth in Attachment A-1 of Exhibit A attached hereto. Contractor hereby agrees that any document recorded against the NSP2-assisted properties imposing said required affordability restrictions shall be in a form agreeable to the City and the City Attorney's Office. Contractor and/or its participating entities

which are the beneficiaries of the long term affordability restrictions and/or Deeds of Trust shall execute a Contingent Assignment of such restrictions and/or Deeds of Trust to the City such that the City can enforce such long-term affordability restriction and/or Deeds of Trust should Contractor and/or its participating entities fail to enforce either.

27. **LEAD-BASED PAINT HAZARDS:** Housing Assisted with NSP2 funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), and is therefore subject to 24 C.F.R. Part 35.

28. **CITY NOT PARTY TO CONSTRUCTION CONTRACT:** The City is not, and nothing in this Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the grant proceeds hereof are expended.

29. **SECTION 3 COMPLIANCE:** This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

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

ATTEST:

CITY AND COUNTY OF DENVER:

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

By: _____
MAYOR

RECOMMENDED AND APPROVED:

By: [Signature]
Office of Economic Development

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By: _____
Manager of Finance
Contract Control No. GE0A045

By: _____
Assistant City Attorney

By: _____
Auditor

"CITY"

LIST OF EXHIBITS

NEIGHBORHOOD DEVELOPMENT
COLLABORATIVE, INC., a Colorado
nonprofit corporation Taxpayer
(IRS) I.D. No. 26-4810482

- EXHIBIT A: Scope of Services
- EXHIBIT B: Financial Administration
- EXHIBIT C: Certificate of Insurance
- EXHIBIT D: Verification Affidavit
- EXHIBIT E: Affirmative Marketing

By: [Signature]

Name: Debra Bustos
(please print)

Title: President

"CONTRACTOR"

EXHIBIT "A"

EXHIBIT A

OFFICE OF ECONOMIC DEVELOPMENT
DIVISION OF BUSINESS AND HOUSING SERVICES

NEIGHBORHOOD DEVELOPMENT COLLABORATIVE, INC.
NEIGHBORHOOD STABILIZATION PROGRAM 2 (NSP2)
SCOPE OF SERVICES

I. INTRODUCTION

The purpose of this contract agreement is to provide a Neighborhood Stabilization Program 2 grant for \$2,500,000 through the Office of Economic Development's Division of Business and Housing Services (BHS). These funds will be provided to the Neighborhood Development Collaborative, Inc. (NDC) to be utilized for implementing program activities related to the Neighborhood Stabilization Program 2 (NSP2).

Funding Source: Amount: CFDA #: 14.256
CDBG \$
HOME \$
NSP \$ 2,500,000

HUD Matrix Code: 1: Acquisition of Real Property
2: Disposition
12: Construction of Housing
4: Clearance and Demolition
14A: Rehabilitation: Single-unit Residential
14B: Rehabilitation: Multi-unit Residential

HUD Eligible Activity: 570.201; 570.202; 570.206
Accomplishment Code: 10: Housing Units

CDBG - Only
HUD National Objective: LMH: Low/mod housing benefit to improve permanent residential housing

HOME - Only
HUD Eligible Cost: N.A.

Organization: Neighborhood Development Collaborative, Inc. EIN: 26-4810482
DUNs 030721580
Address: 777 Grant Street, Denver, CO 80203
Contact Person: Larry Troyano
Phone: 720-932-3166
Email: ltroya@denverhousing.org
Organization Type: [X] Non-profit [] For-profit [] Quasi-Governmental Agency

Is the organization a Faith-based/Community Initiative? [] Yes [X] No
Is the organization woman owned? [] Yes [X] No

Contract Relationship:
[] Subrecipient [] Vendor [] Beneficiary [X] Developer [] Community Based Development Organization
[] CHDO

Council District(s): CW Neighborhood(s): CW Census Tracts: CW

Is the purpose of this activity to:
Help prevent homelessness? [] Yes [X] No
Help the homeless [] Yes [X] No
Help those with HIV/AIDS [] Yes [X] No
Primarily help persons with disabilities [] Yes [X] No

Contract Period:

February 11, 2010 – March 20, 2019

Will program income be generated by this activity? Yes No

Program income is not anticipated, but may be generated as the program is implemented. If program income is produced, all program income requirements will be followed.

Will activity be carried out by an entity other than grantee? Yes No

If yes, please list entity: Neighborhood Development Collaborative, Inc. (NDC) will be the contracting entity. The NDC team is comprised of Denver Housing Authority, the Colorado Coalition for the Homeless, Del Norte Neighborhood Development Corp., NEWSED Community Development Corp., Northeast Denver Housing Center, Inc., and the Urban Land Conservancy (each a "Collaborative Organization"). Each Collaborative Organization will also carry out activities under this Agreement.

II. ACTIVITY DESCRIPTION

1. Purpose

Purpose/Description of Activity: To implement activities under the Neighborhood Stabilization Program 2 Plan.

Funds will be used to Acquire, rehabilitate and resell foreclosed, vacant or abandoned properties.
Acquire and demolish blighted properties for redevelopment.
Develop and redevelop low income rental and homeownership housing.
Provide financial assistance to homebuyers for home purchases.

2. Program Requirements and Responsibilities: SEE ATTACHMENT A

3. Performance Objectives & Outcomes

The intent of this activity is to acquire, rehabilitate and/or demolish, redevelop and /or resell foreclosed properties.

(Select Objectives with Outcomes)

Availability / Accessibility

- Enhance Suitable Living Environment Through New/Improved Accessibility
- Create Decent Housing with New/Improved Availability
- Promote Economic Activity Through New/Improved Sustainability

Affordability

- Enhance Suitable Living Environment Through New/Improved Accessibility
- Create Decent Housing with New/Improved Availability
- Promote Economic Activity Through New/Improved Sustainability

Sustainability

- Enhance Suitable Living Environment Through New/Improved Accessibility
- Create Decent Housing with New/Improved Availability
- Promote Economic Activity Through New/Improved Sustainability

4. Indicators

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

Indicators	
Rehabilitation Loan Program	
Number of homeownership units estimated rehabbed and sold:	20 (includes below 50% units)
Amount of money estimated leveraged:	\$1,000,000 Mortgage lenders

5. Implementation Plan and Timeline

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

Task	Projected Beginning & End Dates
Secure appraisals for proposed acquisitions	February 11, 2010– February 11, 2013
Complete rehabilitation inspections for proposed acquisitions	
Complete demolition on blighted acquisitions	
Close acquisitions of targeted properties	
Provide homeownership development parcels	
Provide redevelopment funding for affordable housing units	
Coordinate redevelopment activities of non-profit and for-profit developers	
Ensure adequate property management for acquired properties	
Coordinate and contract for ancillary services	
Ensure completion of homebuyer counseling component	
Ensure all affordability restrictions are met	
Coordinate all property sales and lease purchases	
Coordinate marketing activities with the Office of Economic Development	
Complete all acquisition, rehabilitation and resale development of properties	
Expend 50% of the contract amount by February 11, 2012	
Expend 100% of the contract amount by February 11, 2013	

III. Budget

Acquisition, demolition, rehabilitation, and/or construction	\$2,025,000
Developer Fee	\$ 475,000
TOTAL	\$2,500,000

Developer's Fee will be allocated proportionally as projects are developed.

If program income is generated, how will income be used? *To acquire, rehabilitate, and resell additional foreclosed homes or redevelop other foreclosed properties for housing purposes. As of February 11, 2013, all unencumbered program income remaining must be returned to the City.*

Program Income/Program Revenue: Any program income or program revenue generated from completing activities under this contract must be recycled and used to complete NSP activities. All NSP regulations and procedures must be followed with any funds considered program income or program revenue under this contract. Any funds generated during the course of the NSP implementation and considered program income must be used prior to requesting additional fund draw downs. As of February 11, 2013, all remaining unencumbered program income or program revenue must be returned to the City.

Is a copy of the Program Budget form attached? Yes No
 Are non-personnel costs being funded Yes No
 If yes, attach a cost allocation plan Yes No N/A-NDC is a Developer entity

IV. Reporting

The *Neighborhood Development Collaborative, Inc. Neighborhood Stabilization Program 2* will provide the following monthly reports to **BHS/CPM (Contract Performance Management)**: (emailed to Contractor and to be provided with executed contract if the contractor does not already have):

1. The *Statement of Household Income/Demographics* for each program participant (signed by each program participant and kept on file at NDC).
2. The *Outcome Performance Measurement Report*
3. The *Race/Ethnicity Report* which will be a monthly cumulative report.
4. Other reporting as requested by BHS/CPM (such as quarterly narrative reports).
5. HUD requires reporting of NSP activities in the Disaster Recovery Grant Reporting system. Final requirements of the DRGR have not been received. BHS will provide reporting format and review with contractor when available.
6. Most acquisition and rehabilitation activities will be completed within 36 months. HUD allows land banking activities to be completed in 10 years, requiring a 10 year contract period. As the contract progresses, reporting will only be required for continuing activities.

Is the Outcome Performance Measurement Report attached? Yes No

Type of income verification utilized:
 Self-Certified Verification Not Applicable

Self-certification is sufficient for counseling activities; however, verification is required for homebuyers.

Job Creation/Retention

Contractor must report monthly on direct jobs that have been created and/or retained in accordance with the job definitions:
1) a job created is a new position created and filled or an existing unfilled position that is filled only as a result of ARRA and/or 2) a job retained is an existing position that would not have been continued to be filled were it not for ARRA funding.

**ATTACHMENT A
PROGRAM REQUIREMENTS AND RESPONSIBILITIES**

NEIGHBORHOOD STABILIZATION PROGRAM 2 (NSP2)

A. PURPOSE

The purpose of this agreement is to make \$2,500,000 available to the Neighborhood Development Collaborative, Inc. (NDC) to complete program activities outlined in Denver's Neighborhood Stabilization Program 2 (NSP2) Plan.

B. PROGRAM ACTIVITIES

Eligible NSP2 activities are:

1. Establish financing mechanisms for the purchase and redevelopment of foreclosed homes;
2. Purchase and rehabilitate properties that have been abandoned or foreclosed;
3. Demolish blighted structures; and
4. Redevelop demolished or vacant properties.

A majority of City's program funds will be used to provide subsidies for the acquisition and rehabilitation of foreclosed and abandoned homes in targeted neighborhoods with the most foreclosures, subprime loans and a higher likelihood of a rise in foreclosures.

A minimum of 20% (\$500,000) of the funds will be set aside for activities benefiting households earning no more than 50% of Area Median Income (AMI).

C. NEIGHBORHOODS

NDC will conduct NSP2 activities in certain target neighborhoods. The following neighborhoods shall be the target neighborhoods for NSP2 activities:

- | | |
|------------------------|--|
| 1. Green Valley Ranch | 7. Sunnyside (Census Tract 11.01 only) |
| 2. Westwood | 8. Cole |
| 3. Globeville | 9. Clayton |
| 4. Northeast Park Hill | 10. Villa Park |
| 5. West Colfax | 11. Elyria/Swansea |
| 6. Chaffee Park | 12. Montbello |

Additional neighborhoods may be considered for inclusion in NDC's NSP work plan on a case-by-case basis; however, any expansion or alteration from the areas listed above must be pre-approved, in writing, by the BHS Director and the NDC President.

D. AFFORDABILITY REQUIREMENTS

Denver will ensure long-term affordability for NSP units through the use of Deeds and/or Covenants that will be recorded against NSP-assisted property in favor of the Contractor, or other entity approved by the City, and in a form and on terms mutually agreeable to the City, City Attorney's Office and the Contractor. Covenants will not typically be eligible for subordination, but specific requests for subordination of covenants will be reviewed Contractor and City for possible allowance based upon the circumstances surrounding each specific request. The initial sales of residences under NSP must be to households earning up to 120% of AMI. Subsequent sales by the purchaser are not subject to a limit based on AMI of the purchaser. Based on

the level of investment of NSP funds, recapture periods will be established to comply with NSP requirements and in a form that is agreeable to the City, City Attorney's Office and the Contractor.

When recapture provisions are used, the method of recapture will be one of three allowed by HUD and approved by BHS:

1. Recapture of the entire amount of the investment, except that the NSP investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period.
2. If the net proceeds (i.e., the sales price minus loan repayment, other than NSP funds, and closing costs) are not sufficient to recapture the required NSP investment plus enable the homeowner to recover the amount of the homeowner's down payment and any capital improvement investment, the recapture provisions may share the net proceeds. The net proceeds may be divided proportionally.
3. Alternatively, Denver may allow the homebuyer to recover all the homebuyer's investment (down payment and capital improvements) first before recapturing the NSP investment.

If acquired, foreclosed properties are placed into a lease-purchase structure for home ownership, the affordability criteria regarding for-sale properties as opposed to rental properties shall be applicable.

To prevent the loss of NSP investment and to the extent that the Contractor is aware, the City must be notified promptly in the event of possible foreclosure to find other income-qualified buyers or a non-profit organization to purchase the home and keep the NSP investment intact.

The minimum affordability period based on investment of NSP funds is:

Amount of NSP Funds Invested	Minimum Affordability Period For Rental Units
Up to \$15,000	5 Years
\$15,001 to \$40,000	10 Years
More than \$40,000	15 Years
New Construction - Any Amount	20 Years

E. CONTRACTOR RESPONSIBILITIES

Contractor's responsibilities for program implementation will include:

1. Complete preliminary inspections and due diligence for properties being considered for purchase.
2. Determine rehabilitation needs and develop comprehensive work specifications.
3. Complete energy audits on housing post purchase.
4. Participate in periodic meetings to review reports of homes purchased and NSP program activities and coordinate program goals with the City and County of Denver.
5. Coordinate NSP activities with the City Council members who represent the neighborhoods where NDC is carrying out NSP development.
6. Acquire eligible foreclosed homes and properties at a discount of at least 1% from the current market-appraised value of the home or property for all properties purchased with NSP funds.
7. Obtain appraisals on all acquisitions using NSP funds.
8. Ensure a maximum developer fee of 19% of total contract amount (\$475,000).

9. Complete required environmental and historic review processes.
10. Establish Rehabilitation Standards (minimum of Housing Quality Standards and local codes, with green building and energy and water efficiency encouraged). Use Enterprise Community green rehab standards or similar standard for rehabilitation of the units as appropriate. Monitor construction on homes.
11. Structure contractor bidding and selection process as necessary and maintain a list of eligible contractors, which shall include names of City's designated Minority Business Enterprises (MBE's) and Women Business Enterprises (WBE's). Contractor shall make a good faith effort to utilize qualified MBE/WBE's as eligible contractors.
12. Incorporate energy saving appliances and construction methods and practices wherever possible.
13. Monitor rehabilitation activity.
14. Market and sell houses to qualified buyers. Assist potential eligible buyers identify appropriate houses.
15. Provide technical assistance to buyers and potential buyers through the loan and construction process.
16. Determine applicant eligibility and collect source documentation. Income shall be determined based on the census definition of income for homeownership.
17. Arrange for and ensure buyers have completed a HUD-approved 8 hour homebuyer counseling class prior to closing.
18. Develop and execute affordability covenants on all properties that are consistent with requirements outlined in the Denver NSP2 Plan and are in a form approved by BHS and mutually agreed upon with the Contractor.
19. Develop, within 30 days of the date of this contract, program activity and client characteristic records in compliance with HUD and BHS source file monitoring procedures.
20. Maintain program activity records and provide monthly reports to BHS on or before the 10th day of the following month.
21. Ensure monitoring and compliance with all federal, state and city requirements, including Davis Bacon, the Uniform Relocation Act, Section 3 and lead-based paint regulations on all units built prior to 1978. These requirements are current HUD regulations for NSP and apply in a manner similar to Community Development Block Grant requirements.
22. Documentation must be maintained on the purchase and sale amounts of each property and the sources and uses of funds for each activity.
23. Maintain information on all draw downs, deposits and expenditures of grant funds and program income and program revenue.
24. Ensure compliance with fair housing and affirmative marketing requirements.
25. Ensure that 100% of NSP funds are used to serve families whose income is less than 120% of Area Median Income (AMI) and that a minimum of 20% of the funds (\$500,000) assist households whose income does not exceed 50% of AMI.
26. Ensure NSP funds are spent as follows: 50% by February 11, 2012 and 100% by February 11, 2013.

27. Contractor is required to collaborate with the OED Division of Workforce Development (DWD) to identify opportunities to train and recruit skilled workers for all projects under this contract. Activities DWD can assist with may include, but are not limited to, the design and implementation of strategies related to job profiling, skill assessment, targeted recruitment, wage subsidies and bonding opportunities.

DATA COLLECTION

Contractor will maintain statistical data on all households assisted including but not limited to: name of purchaser(s); street address, census tract and council district, ethnicity, race and gender of borrower; age of head of household; household size; female head of household; and household income. Contractor shall also maintain data on home purchased, including acquisition price, sales price, discount rate, address, unit size, rehabilitation costs and neighborhood.

Contractor will maintain statistical data on all construction contracts awarded during the previous year including the name of the contractor, street address, city, state, zip code; the contractor's federal identification number; the race and gender of the contractor; and the dollar amount of contracts awarded to the contractor.

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

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

1.2 Vouchering Requirements

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

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

1.3 General Reimbursement Requirements:

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

- d. Administration and Overhead cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by BHS.
- e. Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by BHS within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income:

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 The Contractor shall apply Program income as specified in Exhibit A, Section III of this Agreement.

3.1 Financial Management Systems

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

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

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

4.1 Audit Requirements

- 4.1.1 If the Contractor expends five hundred thousand dollars (\$500,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."
- 4.1.2 A copy of the final audit report must be submitted to the BHS Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to BHS along with the reporting package prepared in accordance with the Single Audit Act Amendments and OMB Circular A-133. If the management letter is not received by the sub recipient at the same time as the Reporting Package, the Management Letter is also due to BHS within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to BHS funding, the Contractor shall prepare and submit a Corrective Action Plan to BHS in accordance with 24 C.F.R. Part 45 for each applicable management letter matter.

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

5.1 Budget Modification Requests

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

6.1 Procurement:

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 INTENTIONALLY OMITTED.

8.1 Records Retention

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

9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required BHS contract close-out forms and submitting these forms to their appropriate BHS Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by BHS in writing, but no less than 30 days notice after notice from BHS.
- 9.1.2 Contract close out forms will be provided to the Contractor by BHS within sixty (60) days prior to end of contract.
- 9.1.3 BHS will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, BHS reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

10.1 Collection of amounts due:

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

EXHIBIT C

(See Attached Insurance Certificate)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/14/2009

PRODUCER (203)272-8220 FAX: (203)271-2265
 Housing Insurance Services
 189 Commerce Court
 P. O. Box 189
 Cheshire CT 06410

INSURED
 Neighborhood Development Collaborative, Inc.
 777 Grant Street, 6th Floor
 Denver CO 80203

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

INSURERS AFFORDING COVERAGE NAIC #
 INSURER A: Endurance American Specialty 41718
 INSURER B:
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY				EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	CMC10000809200	10/5/2009	10/5/2010	MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC			
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
	EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
					\$
	DEDUCTIBLE				\$
	RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N				E.L. EACH ACCIDENT \$
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$
	OTHER				E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER	CANCELLATION
City and County of Denver Office of Economic Development 201 W Colfax Ave., Dept 1011 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE Ed Malaspina/KIM

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT D

VERIFICATION AFFIDAVIT

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

_____ I am a United States citizen, or

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

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

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

Signature

DATE

[Print] Name of Applicant

EXHIBIT E

(Affirmative Marketing)

City and County of Denver Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining its programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the NSP Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City's NSP program on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
- (2) require compliance with all applicable fair housing and equal opportunity laws, and
- (3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City's Housing Loan Program, the objective of the Affirmative Marketing Program and a project's Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project's tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity.

In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the

owner's actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity.

The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. These actions will include notifying the City or its designee in writing of the vacancy. The owner will provide the date the unit will be available, the number of bedrooms; the rent, the location of the unit, and the name, address, and telephone number of the property manager or rental agent. The City will circulate this notice to specific community and other organizations serving those racial/ethnic groups identified in the project's plan as least likely to apply for housing in that particular project without special outreach. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.

PART II
SUPPLEMENTARY GENERAL CONDITIONS

ARTICLE I
FEDERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 110. Relocation Assistance and Property Acquisition Requirements.

If the Contractor is a department, agency or instrumentality of a State or of a political subdivision of the State, then this Agreement is subject to the relocation and acquisition

requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 C.F.R. Part 42, and 24 C.F.R. 570.606.

Sec. 111. Conflict of Interest

A. Conflicts Prohibited

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 115. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Theft or embezzlement from OED funds; Improper

Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

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

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

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

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

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

ARTICLE II **DISBURSEMENTS AND ACCOUNTING**

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

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

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

part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account

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

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

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

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

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

Sec. 204. Method of Payment and Disbursements. The Contractor shall submit invoices and requests for payment in accordance with Exhibit B. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

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

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment

or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III
CONSTRUCTION CONTRACTS AND LABOR STANDARDS

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

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

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

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

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

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth

below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

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

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal

occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. No funds under this Agreement may be obligated or spent for acquisition or construction until Contractor has received written environmental clearance from OED. OED shall respond as to environmental clearance within 48 hours. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

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

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

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

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

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

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

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

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

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

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

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

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

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

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

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

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City or Contractor 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 or Contractor may terminate this Agreement at any time the City or Contractor desires. The City or Contractor shall effect such termination by giving written notice of termination to the other party 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 (NSP?) funds on hand and any accounts receivable attributable to the use of (NSP?) 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 (NSP?) 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-(NSP?) 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. 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. 606. 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. 607. 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.