

GRANT SERVICES AGREEMENT

THIS AGREEMENT between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **THE COLORADO NONPROFIT DEVELOPMENT CENTER**, a Colorado nonprofit corporation, with its principal place of business at 4130 Tejon Street, Suite A, Denver, Colorado 80211 (that nonprofit corporation, the "Contractor, that grant services agreement, the "Agreement"), collectively "the parties".

RECITALS

- A.** In 1990, Congress enacted the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act to help communities increase the availability of primary health care and support services, increase access to care for underserved populations, and to improve the quality of life of those affected by HIV/AIDS.
- B.** To this end, the U.S. Department of Health and Human Services ("U.S. DHHS") provides grants to localities under the Ryan White Part A program ("Ryan White Part A Funds or "Funds"). The City anticipates that for fiscal year 2012-2013, the U.S. DHHS will award an amount not to exceed Seven Million Five Hundred Thousand Dollars (\$7,500,000) in Ryan White Part A Funds to the City for the Denver Transitional Grant Area. The CFDA No. for that grant is 93.914.
- C.** The Denver's Office of HIV Resources (DOHR) is responsible for arranging for procurement of eligible services from service providers; disbursing and monitoring Ryan White CARE Funds; managing daily operations; providing technical assistance to service providers; and ensuring compliance with the Ryan White CARE Act and federal regulations applicable to such grants awarded to the City.
- D.** The purpose of the Agreement is to enable the City to comply with requirements of the Ryan White CARE Act, including, without limitation, those regarding and arising out of procurement of eligible services from service providers and disbursements of Funds to them.
- E.** The City believes that Contractor has the requisite qualifications to perform the services contemplated.

The parties agree as follows:

1. COORDINATION AND LIAISON: The Mayor of the City and County of Denver is the City's representative under this Agreement. The Mayor hereby designates the Program Manager of DOHR as his designee with whom Contractor shall fully coordinate all services to be performed under the Agreement.

2012-0305

2. SERVICES TO BE PERFORMED:

a. As directed by the Director of DOHR, Contractor shall:

- (1) Within thirty (30) days of the date Contractor executes the Agreement, it shall enter contracts with service providers that the City has approved to be eligible for reimbursement under the Ryan White CARE Act (“Service Providers”) in a form that the City will provide to Contractor.
- (2) Become an authorized signatory to the non-interest bearing account set-up exclusively for the Funds.
- (3) Submit monthly invoices for the Funds to be disbursed to sub-recipients; accept the Funds disbursed by the City to Contractor; and immediately deposit the Funds into the above-referenced account.
- (4) Disburse the Funds to approved sub-recipients as directed by the Mayor or his designee.
- (5) Reconcile the above-referenced account on a monthly basis.
- (6) Provide report of disbursements on a monthly basis.
- (7) Submit an accounting of the sub-recipients’ expenditures of Funds and return any portion of a Fund not properly expended for grant purposes to the City as the Director requests.
- (8) Remit all unspent Funds to the City.
- (9) Provide a complete accounting of the expenditure of all Funds, including a complete attested itemization of expenditure of all Funds received by each the grant recipient, to the City at the end of each Ryan White fiscal year, or upon termination of this Agreement.

b. Contractor may not commingle the Funds with any other funds and Contractor shall perform all services in accordance with the standards of care, skill, and diligence provided by competent professionals who perform work of a nature similar to the work described in this Agreement.

c. The parties acknowledge:

- (1) The estimated award of Ryan White Part A Funds for fiscal year 2012-2013 under CFDA No. 93.914 is approximately **Seven Million Five Hundred Thousand Dollars (\$7,500,000)**.
- (2) The fiscal year for Ryan White ends on the last day of February.

3. **TERM**: The Agreement will commence on March 1, 2012 and will expire on February 28, 2013 (the "Term").

4. **RECORDS AND REPORTS**. Contractor shall provide the DOHR with a monthly financial report by the fifth business day of each quarter following execution of this Agreement.

5. **PAYMENT; APPROPRIATIONS**: As full and complete compensation for services provided and expenses incurred under this Agreement, Contractor shall be paid an amount not to exceed **Twenty Thousand Dollars and No Cents (\$20,000.00)**, payable upon approval of Contractor's invoices by the DOHR with appropriate documentation. All invoices must be submitted to the Contract Administrator of the DOHR within thirty (30) days of the termination of this Agreement. The City's payment obligation stated above is further limited by Ryan White Funds received by the City and appropriated for this Agreement by the City Council, paid into the City Treasury, and encumbered for the purpose of this Agreement. By this Agreement, the City does not irrevocably pledge present cash reserves for payment or performance in future fiscal years; and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

6. **STATUS OF CONTRACTOR**: Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

7. **TERMINATION**:

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Contractor. However, nothing gives Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Manager.

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

c. Upon termination of the Agreement, with or without cause, Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in Contractor's

possession, custody, or control by whatever method the City deems expedient. Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

8. EXAMINATION OF RECORDS:

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

b. In accordance with the provisions of OMB Circular No. A-133 (Revised, June 24, 1997), Audits of States, Local Governments, and Non-Profit Organizations, nonfederal entities that receive financial assistance of Five Hundred Thousand Dollars (\$500,000.00) or more in Federal awards will have a single or a program-specific audit conducted for each program year. Nonfederal entities that expend less than Five Hundred Thousand Dollars (\$500,000.00) a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in Circular No. A-133. In addition, grants and cooperative agreements are subject to inspection and audits by DHHS and other Federal government officials.

c. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of five years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following: 1) If any litigation, claim, financial management review, or audit is started before the expiration of the five year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken; 2) Records for real property and equipment acquired with Federal funds shall be retained for three years after final disposition.

9. OPEN RECORDS; PROTECTED INFORMATION.

a. **Open Records:** All the materials relating to the Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. (2003), including Contractor's proprietary or confidential material provided or produced to the City. If the City receives a request for disclosure of materials relating to the Agreement, the City will advise Contractor of the request in order to give Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel disclosure, the parties will tender all responsive material in their respective possession to the court for judicial determination of the issue of disclosure. Contractor shall intervene in any lawsuit to protect and assert claims of privilege and against disclosure of material concerning any of the persons or entities directly or

indirectly receiving services or funds from Ryan White Part A and may do the same with regard to any of its proprietary or confidential information. Contractor's failure to intervene and assert claims of privilege and against disclosure in relation to its proprietary or confidential information will result in waiver the same. Contractor hereby releases and shall defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of or in any way relating to requests for disclosure of material provided or produced under this Agreement. In relation to this Section 12, Contractor shall promptly reimburse the City for all reasonable attorney fees, costs and damages that the City incurs directly or is ordered to pay by any court.

b. Protected Information:

(1) In performance of work under the terms of the Agreement, Contractor could have access to proprietary data or confidential information, including confidential information of persons or entities directly or indirectly receiving services or funds from Ryan White Part A (collectively "Protected Information"). Contractor shall hold in confidence all Protected Information provided by the City, disclosed by the City, or otherwise acquired by Contractor in relation to work performed under the Agreement. Contractor shall limit access to all Protected Information to only those employees who have a need to know information in order to provide services under the Agreement. Contractor may only use Protected Information in the performance of its obligations under the Agreement. Contractor shall exercise the same standard of care to protect Protected Information as a reasonably prudent contractor would to protect its own confidential information.

(2) Employees and Service Providers and other Subcontractors: Contractor shall inform its employees and officers of the obligations under the Agreement, and all requirements and obligations of Contractor under the Agreement survive the expiration or earlier termination of the Agreement. Contractor shall not disclose Protected Information to Service Providers and other subcontractors unless they are bound by non-disclosure and confidentiality provisions at least as strict as those contained in the Agreement.

c. Notwithstanding any other term of this Agreement, Contractor is solely responsible for marking each page of all materials that it believes contains proprietary or confidential information that it provides or causes to be provided to the City, including its officers, agents and employees, under this Agreement.

10. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or

default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

11. INSURANCE:

a. General Conditions: Contractor agrees to secure, at or before the time of execution of the Agreement, the following insurance covering all operations, goods or services provided pursuant to the Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of the Agreement. Such notice shall reference the City contract number listed on the signature page of the Agreement. This notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Contractor. 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 the Agreement.

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

c. Additional Insureds: For commercial general liability and auto liability, Contractor and Service Providers and other subcontractors' insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Contractor's insurer shall waive subrogation rights against the City.

e. Service Providers and Other Subcontractors:

(1) All Service Providers shall be subject to the insurance requirements set forth in this subparagraph 11.e(1). Contractor shall ensure that each Service Provider obtains and maintains the required coverages throughout the term of any contract it enters into with a Service Provider and agrees to provide the City with Service Providers' proof of insurance upon the City's request for proof of insurance. Required coverages for service providers are as follows:

(A) Commercial general liability \$1,000,000

(B) Statutory workers' compensation coverage

(C) For any Service Provider performing medical or health services, \$1,000,000 in professional liability

(D) For Service Providers that own or lease vehicles, \$1,000,000 business auto combined single limit insurance

(E) For Service Providers that do not own or lease vehicles, Contractor shall ensure that these providers represent, as material representations upon which Contractor relies, that the Service Provider does not own any motor vehicles and that in performing services relating to or arising out of the Agreement, that Service Providers' owners, officers, directors, and employees use their personal vehicles. Contractor shall ensure that any person operating a motor vehicle in performing services relating to or arising out of the Agreement obtain and maintain in full force personal auto liability coverage with minimum limits of \$100,000 bodily injury per person; \$300,000 bodily injury per accident; and \$50,000 property damage for all vehicles used in performing services relating to or arising out of the Agreement. Contractor shall ensure that such policies include a business use endorsement.

(2) All other subcontractors (including independent contractors, suppliers or other entities providing required by this Agreement), if any, shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Contractor under the Agreement. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of workers' compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor shall to provide proof of insurance

for all such subcontractors and subconsultants upon request by the City.

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

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

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

i. Commercial Crime: Contractor shall maintain \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities, or property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

j. Additional Provisions:

- (1) For commercial general liability, the policies must provide the following:
 - (A) That the Agreement is an Insured Contract under the policy;
 - (B) Defense costs in excess of policy limits;
 - (C) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (D) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

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

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

12. DEFENSE AND INDEMNIFICATION:

a. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under the 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 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 the Agreement shall in no way lessen or limit the liability of Contractor under the terms of this indemnification obligation. Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

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

13. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.* Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

14. ASSIGNMENT; SUBCONTRACTING: Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Manager's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of the Agreement by the City. The Manager has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor or assign.

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

16. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

17. NO AUTHORITY TO BIND CITY TO CONTRACTS: Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

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

19. CONFLICT OF INTEREST:

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

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

20. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at as indicated below. Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

City and County of Denver
Director, Denver's Office of HIV Resources
200 W 14th Avenue, Suite 210
Denver, CO 80204-5420

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

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

a. The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

b. Contractor certifies that:

- (1) At the time of its execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement.
- (2) It will participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

- c. Contractor also agrees and represents that:
- (1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
 - (2) It shall not enter into a contract with a subcontractor that fails to certify to 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 the Agreement, through participation in either the E-Verify Program.
 - (4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
 - (5) If it obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor and the City within three (3) days. Contractor will also then terminate such subcontractor if within three (3) days after such notice the subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
 - (6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

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

22. DISPUTES: All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that

administrative procedure, the City official rendering a final determination shall be the Manager as defined in the Agreement.

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

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

25. COMPLIANCE WITH ALL LAWS: Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver. The following federal requirements are hereby incorporated:

a. Grievance Policy: Contractor shall ensure that all persons to whom services are provided under the Agreement are adequately informed over pending actions concerning their continued participation in the program or activity provided by Contractor and allowed adequate opportunity to communicate dissatisfaction with the facilities or services offered by Contractor. In order to satisfy this requirement, Contractor shall provide a written "Grievance Policy" as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of services. The formal "Grievance Policy" must be adopted by its governing body and submitted to the Director for approval at the Manager's discretion on or before the commencement of the term of the Agreement. Failure to provide an acceptable Grievance Policy constitutes a material breach of the Agreement.

b. Debarment:

(1) If required by applicable federal law, Contractor is subject to the prohibitions on contracting with a debarred organization set out in U.S. Executive Order 12549, Debarment and Suspension implemented at 45 C.F.R. Part 76. By its signature below, Contractor assures and certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded

from participation in this transaction by any federal department or agency. Contractor shall provide immediate written notice to the Director if at any time it learns that its certification to enter into the Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If Contractor is unable to certify to any of the statements in the certification contained in this Section, Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of the Agreement. Further, if Contractor is unable to certify to any of the statements in the certification contained in this Section, the City may pursue any and all available remedies available to the City, including termination of the Agreement, effective upon written notice to Contractor.

- (2) Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" as this clause is set forth at 45 C.F.R. Part 76, in all covered transactions associated with the Agreement. Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations.

c. No Discrimination in Program Participation: In accordance with 42 U.S.C. §9918(c), "Nondiscrimination provisions," no person shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the Agreement. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*) or with respect to an otherwise qualified individual with a disability as provided in §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) or Part AI of the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*), also applies to the foregoing programs or activities. Violations are subject to the penalties set forth in subsections (b) and (c) of 42 U.S.C. §9906. Contractor shall indemnify and hold the City harmless from any claims or demands that arise under this Article.

d. Prohibited Transactions:

- (1) Interest of Contractor. Contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under the Agreement. Contractor further covenants that in the performance of the Agreement, it will not employ any person whose interests would so conflict.
- (2) Members of Congress. No member of or delegate to the Congress of the United States of America may be admitted to any share or part hereof or to any benefit to arise from the Agreement.

- (3) City Employees. No officer or employee of either the City or Contractor may derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other party to the Agreement. Any contractual provision that contravenes the provisions of this section is null and void. This section does not prohibit an officer or administrator of one party to the Agreement from being reimbursed by the other party for actual, out-of-pocket expenses incurred on behalf of the other party.
- (4) No Political Activity. Without limiting the foregoing, political activities are prohibited under the Agreement, and no funds may be paid to Contractor under the Agreement for providing transportation of any person to polling places or for providing any other services in connection with elections.

26. LEGAL AUTHORITY: Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

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

28. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

29. INTELLECTUAL PROPERTY RIGHTS: The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Contractor and paid for by the City pursuant to the Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. Contractor shall disclose all such items to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," Contractor (by the Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure

copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

30. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Contractor's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

31. ADVERTISING AND PUBLIC DISCLOSURE: Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of Contractor's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. Contractor shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

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

33. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

34. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

35. COUNTERPARTS OF THE AGREEMENT: The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

36. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or

enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number: ENVHL-201205236-00

Contractor Name: COLORADO NONPROFIT DEVELOPMENT CENTER

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: ENVHL-201205236-00

Contractor Name: COLORADO NONPROFIT DEVELOPMENT
CENTER (CNDC)

By: 

Name: MELINDA A. HIGGS
(please print)

Title: PRESIDENT CNDC
(please print)

ATTEST: [if required] N/A

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A

CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/30/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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

PRODUCER ISU Insurance Services of Colorado, Inc. 950 17th Street, Suite 1000 Denver CO 80202-2819		CONTACT NAME: Dawn Box PHONE (A/C, No, Ext): (303) 534-2133 E-MAIL ADDRESS: dbox@isuinsurance.com FAX (A/C, No): (303) 892-5579	
INSURED Colorado Nonprofit Development Center 4130 Tejon Street, Suite A Denver CO 80211		INSURER(S) AFFORDING COVERAGE INSURER A: Philadelphia Indemnity Co. INSURER B: Pinnacol Assurance Co. 41190 INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 11 12 Master Liability **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			PHPK801300	12/1/2011	12/1/2012	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input checked="" type="checkbox"/> SAM Sublimit*						MED EXP (Any one person) \$ 5,000
<input checked="" type="checkbox"/> Professional Liability**			PERSONAL & ADV INJURY \$ 1,000,000				
GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE \$ 3,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY						
	<input type="checkbox"/> ANY AUTO			PHPK801300	12/1/2011	12/1/2012	\$100,000 Each Incident \$ 2,000,000
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS	<input checked="" type="checkbox"/>				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					BODILY INJURY (Per person) \$
			BODILY INJURY (Per accident) \$				
							PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB						
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE \$ 3,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTIONS \$ 10,000	<input type="checkbox"/> CLAIMS-MADE		PHUB366759	12/1/2011	12/1/2012	AGGREGATE \$ 3,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		Y/N		4024004	12/1/2011	12/1/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
If yes, describe under DESCRIPTION OF OPERATIONS below		N/A					E.L. EACH ACCIDENT \$ 500,000
A	Professional Liability			PHSD683994	12/1/2011	12/1/2012	E.L. DISEASE - EA EMPLOYEE \$ 500,000
	Claims Made Form			10,000 Deductible			E.L. DISEASE - POLICY LIMIT \$ 500,000
							Each Claim 1,000,000 Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
City and County of Denver, its elected and appointed officials, employees, and volunteers are included as named additional insureds as their interest may appear, per policy coverage form.*Sexual Abuse & Molestation Sublimit \$100,000 per occurrence/\$300,000 aggregate.
** Human Services Professional Liability included with general liability. \$1,000,000 each incident/\$2,000,000 aggregate limit. **CRIME COVERAGE:** Philadelphia Policy #PHSD675460 12/01/2011 to 12/01/2012 \$1,000,000 Limit; \$1,000 deductible.

CERTIFICATE HOLDER

CANCELLATION

Denver Office of HIV Resources
Department of Environmental Health
City & County of Denver
200 West 14th Avenue, Suite 21
Denver, CO 80204-2732

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Dawn Box/CL7