

LOAN AGREEMENT

Part I

THIS LOAN AGREEMENT (this “Loan Agreement”), in two Parts, Part I and Part II, is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“Lender” or “City”), and **ST. CHARLES HOLDING COMPANY LLC**, a Colorado limited liability company whose address is 1800 Glenarm Place, 2nd Floor, Denver, Colorado 80202 (“Borrower” or “Contractor”).

WITNESSETH:

WHEREAS, the City is acting pursuant to federal grant conditions with respect to making loans of Community Development Block Grants (CDBG); and

WHEREAS, the Borrower is an eligible borrower and is ready, willing, and able to meet the conditions of the CDBG program; and

WHEREAS, the Borrower desires to relocate tenants and owners from property acquired by the Borrower located at 4406-4407 and 4325-4404 Morrison Road (the “Property”) for redevelopment of affordable housing units; and

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

1. LOAN TO BORROWER: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower up to the sum of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), with no interest. Borrower shall execute a promissory note in form satisfactory to the City evidencing this loan (the “Promissory Note”). The loan will be fully due and payable upon the earlier of (i) the sale or transfer of ownership of the Property, or (ii) the maturity date, which shall be the first day of the four hundred eightieth (480th) month following the effective date hereof. Notwithstanding the foregoing, in the event of a sale or transfer of ownership in which the Property remains subject to the affordability restrictions imposed in connection with the redevelopment of the Property into affordable housing units, such transaction shall not cause the loan to become due and payable so long as the purchaser of the Property assumes in writing the obligations of Borrower under this Loan Agreement and the Promissory Note.

2. SECURITY FOR REPAYMENT: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower

and encumbering Property subject to prior encumbrances not to exceed Four Million Dollars (\$4,000,000.00) in principal amount prior to the closing of the tax credit partnership and subsequent funding of the construction loan. Upon successful closing of the tax credit partnership and subsequent closing of the construction loan, the allowable prior encumbrances amount listed above would not apply; the Director of the Office of Economic Development (“Director”) shall execute necessary documents to further subordinate the City’s Deed of Trust to other project financing in a combined amount not to exceed Thirty Six Million Dollars (\$36,000,000).

3. SUBORDINATION: The Director of the Office of Economic Development or the Director’s designee is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust, so long as (i) such documents are in form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed the limitations listed in Section 2 above; and (iii) Borrower is not then in default of its obligations hereunder.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used for relocation of tenants and owners of the Property. All disbursements shall be in accordance with the requirements and specifications of Exhibit A, Scope of Services, attached hereto and incorporated herein.

5. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower agrees that it will request disbursement of funds in accordance with the requirements of Exhibit A, Scope of Services.

6. CDBG NATIONAL OBJECTIVE. The loan funds shall be used to benefit low- and moderate-income persons by undertaking provision of permanent residential structures that will be occupied by low and moderate income persons and to benefit all the residents of a particular area where at least 51% of the residents are low and moderate income persons, all by providing relocation payments or other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations where the assistance is required under the CDBG regulations.

7. RELOCATION. Borrower and City have developed a full and comprehensive relocation plan subject to the City’s reasonable approval including full compliance with any and all relocation requirements.

8. INTENTIONALLY DELETED.

9. INTENTIONALLY DELETED.

10. ENVIRONMENTAL AND HISTORIC CLEARANCE: No loan proceeds may be

obligated or spent until Borrower has received written environmental and historic clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project. The Borrower covenants that it shall not allow any hazardous substances to be above, in, on, or under the Property, and that it shall not generate, use, have, manage or release or allow the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property. Borrower shall be solely responsible for, and shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property.

11. DEFAULT AND ACCELERATION: Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, any other default or breach of this Loan Agreement, the Promissory Note, or Deed of Trust shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower, and made upon the date of execution of this Loan Agreement, in connection with this Loan proves to have been false in any material respect when made or furnished. Upon the existence of a default, and after written notice and failure by the Borrower to cure such default within 30 days of such written notice, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Borrower agrees to pay a late charge of five percent (5%) of any installment not received on or before the fifteenth (15th) day after the installment is due. Upon default, the principal shall draw interest at the rate of five percent (5%) per annum until such outstanding balance, together with accrued and unpaid interest, has been paid.

The City may also suspend or terminate this Contract, in whole or in part, if Contractor materially fails to comply with any term of this Contract, including if Contractor becomes delinquent to the City on any loan, contract, or tax obligation as due, or with any rule, regulations, or provisions referred to herein, subject to applicable cure periods; and the City may declare the Contractor ineligible for any further participation in City funding, in addition to other remedies as provided by law, until such delinquency has been cured. In the event there is probable cause to believe the

Contractor is non-compliant with any applicable rules, laws, regulations, or Contract terms or City loan obligation, and only after the City provides a 30 day notice to cure that remains uncured by Contractor, the City may withhold up to one hundred (100) percent of said Contract funds until such time as the Contractor is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

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

13. INSECURITY: The Borrower agrees that the voluntary or involuntary dissolution or cessation of business by the Borrower, the filing of a petition in bankruptcy or an assignment for the benefit of creditors which is not dismissed within sixty (60) days, or the breach of any condition of the Community Development Block Grant Agreements set out below and not cured within a reasonable period of time, , such insecurity shall be deemed a default under the Article herein entitled "DEFAULT AND ACCELERATION" and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with any payment obligations under this Loan Agreement or the Promissory Note or Deed of Trust.

14. EXAMINATION OF RECORDS: The Borrower agrees that the Comptroller General of the United States, the U. S. Department of Housing and Urban Development ("HUD") the City or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Loan Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Borrower involving transactions related to this Loan Agreement.

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

Community Development Block Grant Agreements referred to above.

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

16. ASSIGNMENT: The City is not liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign its interest in this Loan Agreement except upon prior written consent of the City, except that Borrower may assign its interest in this Loan Agreement to a related entity, including a low income housing tax credit partnership in which an affiliated entity of the Borrower is a partner.

17. PURCHASE OPTION AGREEMENT: The City may enter into, and the Director or his designee may execute, a Purchase Option Agreement to grant a third-party the option to purchase the Note at fair market value under terms and conditions agreeable to the Director.

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

A. Upon closing of the loan contemplated herein,

- i. Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 for each personal and advertising injury claims, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.
- ii. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

B. Upon execution of the tax credit partnership and subsequent funding of the construction loan, special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust, with the City named as loss payee.

C. Certificates of Insurance evidencing the above shall be submitted to OED upon procurement of such required insurance policies. Policies shall include a waiver of subrogation and

rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

19. DEFENSE & INDEMNIFICATION:

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

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

C. Borrower will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

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

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

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

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

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

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

24. 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 contract 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.

25. NON-RECOURSE OBLIGATION: None of Borrower, or any director, officer, manager, member, partner, shareholder, trustee, trust beneficiary, or employee of Borrower, shall have personal liability under this Loan Agreement or the Promissory Note, or any other document executed in connection therewith, for the repayment of the Loan evidenced thereby or for the performance of any other obligations of Borrower thereunder, and Lender's only recourse for the satisfaction of such indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Property and any other collateral held by Lender as security for such indebtedness.

26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Loan 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 Loan 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 Loan Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: OEDEV-201522420-00

Contractor Name: ST CHARLES HOLDING COMPANY LLC

By: *Charles H. Woolley, II*

Name: Charles H. Woolley, II
(please print)

Title: Manager
(please print)

ATTEST: [if required]

By: *D. R. Grammeck*

Name: Darrin R. Grammeck
(please print)

Title: Member
(please print)



EXHIBIT A

SCOPE OF SERVICES

OFFICE OF ECONOMIC DEVELOPMENT
DIVISION OF HOUSING AND NEIGHBORHOOD (HAND)

NEIGHBORHOOD SUPPORT CPS No 18
ST. CHARLES HOLDING COMPANY LLC
BELMONT AND SHADY NOOK MOBILE HOME RELOCATION
2015 CDBG Public Services

I. INTRODUCTION

The purpose of this contract agreement is to provide a Community Development Block Grant (CDBG) for \$ 1,700,000 through the Office of Economic Development’s Division of Housing and Neighborhood Development (HAND). These funds will be provided to St. Charles Holding Company LLC (St. Charles) to be utilized for relocation expenses for the existing tenants, mobile home owners and businesses of Belmont and Shady Nook Mobile Home Parks (4325 – 4331 and 4404 Morrison Road).

Funding Source: Amount: CFDA # 14.218
 CDBG \$ 1,700,000.00

HUD Matrix Code: 08 Relocation
HUD Eligible Activity: 24CFR 570.201(i) Relocation payments and other assistance for permanently and temporarily relocation individuals, families, businesses, nonprofit organizations and farm operations where the assistance is (1) required under the provisions of 570.606 (b) or (c)
Accomplishment Code: 04 Households
08 Businesses
Proposed Number of outcomes: 72 Households
2 Businesses

CDBG – Only
HUD National Objective (include brief excerpt from regulation): Households – LMH – Low/Mod Housing Benefit
24CFR 570.208(a)(3) – Activities undertaken to provide or improve permanent residential structures that will be occupied by low/mod income households.

Businesses - LMA – Low/Mod area benefit.
24 CFR 570.208(a)(1) – Activities providing benefits that are available to all residents of a particular area, at least 51% of whom are low/mod income.

Organization: St. Charles Holding Company LLC
EIN#: 37-1753188
DUNS#: 079480423
CCR (Central Contractor Registration) Expiration Date: 08/25/2015
Address: 1800 Glenarm Place, 2nd Floor, Denver, CO 80202
Contact Person: Charles Wooley
Phone: 303-595-8710
Email: charlie@stcharlestown.com
Organization Type: Non-profit For-profit

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

EXHIBIT A

Is the organization woman owned? Yes No

Contract Relationship:

Sub recipient Vendor Beneficiary Community Based Development Organization CHDO

Council

District(s): 3 Neighborhood(s): Westwood Census Tracts: _____ (only required for Low Mod Area)

The Federal Funding Accountability and Transparency Act (FFATA)

1. In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, sub grants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, sub grants, and/or cooperative agreements?: NO

If YES, continue to question 2.

2. Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?: N/A

If YES, stop here. If NO, continue to question 3.

3. Please provide the names and amounts of the five most highly compensated officers or executives.

N/A

Contract Period: May 18, 2015 - December 31, 2016

Will program income be generated by this activity? Yes No
Will this contract be funding architectural, engineering or other project soft cost? Yes No
And if yes, will the final project be completed within 24 months? Yes No
Is the purpose of this activity to:
Help prevent homelessness Yes No
Help the homeless Yes No
Help those with HIV/AIDS Yes No
Primarily help persons with disabilities Yes No

II. ACTIVITY DESCRIPTION

1. **Description of Activity:** As a result of its acquisition with CDBG funds of the property **4325 – 4331 and 4404 Morrison Road**, St. Charles must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and provide resources to the existing tenants to relocate the tenants and mobile home owners to safe, sanitary and adequate residences.

Program Requirements and Responsibilities: St. Charles will

- o Direct the work of their relocation subcontractor in the implementation of the relocation plan dated May 18, 2015, subject to final approval by OED.
- o Provide contract and scope of services with relocation subcontractor to OED

EXHIBIT A

- Provide required relocation documentation as stipulated under the OED’s Uniform Relocation Act Policy & Procedures dated July 31, 2014
 - Maintain individual case files for each tenant and tenant personal property relocated under this contract pursuant to the requirement and templates provided by HUD Handbook 1378
 - Make available the case files for desk and on-site review conducted by OED.
2. **Funds will be used to** pay for the relocation of existing tenants, mobile home owners, and businessses from the acquired property at **4325 – 4331 and 4404 Morrison Road.**
3. **Implementation Plan and Timeline**
The following table outlines the implementation plan and time lines for this contract.

Task	Projected Beginning & End Dates
Tenant, Business and Mobile Home Owner Relocation	May 18, 2015 – December 31, 2016

4. **Objective & Outcome and Indicators**

Objective (select one)

- Enhance Suitable Living Environment
- Create Decent Housing
- Promote Economic Activity

Outcomes (select one)

- Availability/Accessibility
- Affordability
- Sustainability

Indicators

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

Indicators – must be measurable
Common Indicators:
<i>Money Leveraged \$1.3M</i>
<i>Number of proposed outcomes (from 1st page) 72 Households 2 Businesses</i>
<i>Income Levels of people/family(if applicable to outcome)</i>
<i>Race and Ethnicity (if applicable to outcome) Yes</i>
Housing and Neighborhood Outcomes (To be reported on the Outcome and Performance Measurement Report OPMR):
Tenants, mobile home owners and businesses will receive assistance to relocate from 4325 – 4331 and 4404 Morrison Road , Denver, CO

III. Budget

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

EXHIBIT A

If program income is generated, how will income be used?
Are non-personnel costs being funded? Yes No

IV. Reporting

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

Regardless of when the executed contract was received by the Contractor, Contractor is responsible for submitting a report from the start date of the contract; **even if no activity was conducted or expensed – Contractor should report “No Activity” or outline those activities reimbursed with grant funds. If the Contractor completes the project and all money is drawn a final report will be submitted indicating “final report” and no further reports are required.**

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

Outcome Performance Measurement Report
Frequency:

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

HAND will provide the format of the performance report to the Contractor. The information reported must include progress on the indicators included in this Scope of Services. The report includes current and cumulative (year-to-date) indicator information. Information on the overall progress of the program and/or project should be reported in the narrative section of the report. If the project is not being performed in a timely manner then an explanation should be included in the narrative section of the report.

Income and Demographic Reporting Requirements

For programs that must fulfill the limited clientele activities, income data must be collected to verify that at least 51 percent of program participants are low- or moderate-income persons. The income limitations are set by HUD annually and HAND will provide the income limitations.

Select what method of income verification will be used to demonstrate income compliance:

Self-Certification Verification with supporting income documentation Not Applicable

HAND has a form entitled “STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS” that may be used to collect income and demographic information or an existing form incorporating the required data may be used. This information must be retained and be made available to HAND staff or designee upon request. The minimum data required for each program participant is as follows:

1. Unique identifier – name and address
2. Identify whether the head of household is female or/or disabled
3. Total number of household members
4. Total income of the household
5. Number of household members served by the program
6. The **ethnicity** – Hispanic or Latino OR Not Hispanic or Latino of each household member served
7. The **race** of each household member served –
 - a. White
 - b. Black/African American
 - c. Asian
 - d. American Indian/Alaska Native
 - e. Native Hawaiian/Other Pacific Islander
 - f. American Indian/Alaska Native & White
 - g. Asian & White
 - h. Black/African American & White
 - i. American Indian/Alaska Native & Black / African American
 - j. Other Multi-race (Please explain)

EXHIBIT A

NOTE: each household member served by the program is required to select **BOTH** an ethnicity and a race category!

8. Individual signature on “STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS” form attesting to the accuracy of the information submitted.

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

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

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

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

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

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

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

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

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

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

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

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

B. In the sale, lease or other transfer of land acquired, cleared or improved

with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

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

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

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

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

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

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

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

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

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

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

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

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

Sec. 110. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing

regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

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

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

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

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

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

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

Sec. 113. Lobbying Prohibited. None of the funds provided under this Agreement

shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

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

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

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

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

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

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

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

Sec. 116. Theft or embezzlement from OED funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

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

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

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

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

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

ARTICLE II **DISBURSEMENTS AND ACCOUNTING**

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

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

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

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

Sec. 203. Charges Against Project Account.

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

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

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

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

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

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

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

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be

collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

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

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

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

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

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

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment

practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

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

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers’ representatives of the Contractor’s commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

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

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

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

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

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

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

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

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to

mandatory purchase of flood insurance in areas having special flood hazards;

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

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

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

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

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

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

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

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

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10)

days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI **MISCELLANEOUS**

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development. Either of the parties may designate in writing substitute addresses or persons to receive notices.