

GRANT AGREEMENT – IMPROVEMENT

THIS GRANT AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **THE DENVER RESCUE MISSION**, a Colorado nonprofit corporation, whose address is 3501 E 46TH Avenue, Denver, Colorado 80216 (“Grantee”).

WITNESSETH:

WHEREAS, the City is willing to provide funding to Grantee to further the goals of its Denver Road Home program by providing for the demolishing of the existing buildings located at 2222 and 2232 Lawrence Street in Denver (the “Property”) and for the construction of the Lawrence Street Community Center which will be a community center providing a homeless day center, court yard (park) and ancillary uses as generally depicted on the schematic plan attached and incorporated herein as Exhibit A (herein the “Work”);

WHEREAS, Grantee has provided education, assistance and temporary/transitional housing to the homeless and needy for over a hundred and twenty years and in support of goals 2.3 and 2.4 *Shelter System of Denver’s Ten-Year Plan to End Homelessness – 2013 Updated – Year 8- Fourth revision* administered by Denver’s Road Home, Grantee will be completing the Work on the Property; and

WHEREAS, the Grantee is eligible to receive these funds for the purposes outlined herein and is ready, willing and able to meet the conditions associated therewith;

WHEREAS, The Grantee has executed a Purchase and Sale Agreement and Joint Escrow Instructions dated December 9, 2013 for the acquisition of the Property, as amended by the First Amendment to Purchase and Sale Agreement dated March 7, 2014 (collectively referred to as the “PSA”).

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

1. **GRANT TO GRANTEE**: Subject to the terms of this Agreement, the City agrees to grant to Grantee the sum of Four Million Eight Hundred Eighty-Nine Thousand Seven Hundred Thirty-Nine and no/100ths Dollars (\$4,889,739.00), and an additional ten percent (10%) of the above amount as a construction contingency, which amount is the preliminary itemization of the Work for the demolition of the existing buildings and construction of a new

facility on the Property as set forth on Exhibit B, attached hereto and incorporated herein (the “Grant” or the “Improvement Grant”). Repayment of the total grant amount shall be deferred so long as Grantee is in compliance with the terms and conditions of this Agreement and a promissory note in form satisfactory to City evidencing this grant (the “Promissory Note”). Provided Grantee complies with the terms of this Agreement, repayment of all amounts due under the Promissory Note shall be forgiven on the first day of the one hundred eighty-first (181st) month following the month of execution of the Promissory Note.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Grantee and encumbering the Property subject to prior encumbrances of record.

3. **SUBORDINATION**: The Manager of Finance (“Manager”) or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust, including without limitation, a Subordination, Nondisturbance and Attornment Agreement in Grantee’s lender’s standard form so long as (i) such documents are in a form reasonably satisfactory to the City Attorney; (ii) encumbrances which will have priority over any of the City’s Deed of Trust do not exceed an amount greater than Eighty Percent (80%) of the then market value of the Property; and (iii) there are no uncured defaults by Grantee of its obligations pursuant to this Agreement, the Promissory Note, or the Deed of Trust.

4. **USE AND DISBURSEMENT OF FUNDS**: Grant proceeds will be used to finance costs associated with the Work on the Property. All of the Grant is for the Work and shall reimburse Grantee for the costs of the Work during the construction of the Work on a monthly trailing arrears. Within forty (40) days of presentment to the City of a copy of the draw request from Grantee’s contractor which formed the basis of the payment by the Grantee, the City shall pay that portion of the Grant equal to the amount of the draw request or as otherwise documented by Grantee for costs incurred pertaining to the Work. The draw requests shall itemize line item construction costs and a comparison as to budgeted line item costs and be in the form attached hereto as Exhibit E. In the event the City does not fund within the time frame outlined herein, the City shall pay any and all contractual interest or penalty costs Grantee is required to pay Grantee’s contractor

5. **DEVELOPMENT ASSISTANCE**: To the extent allowable under the Grantor’s Charter, Grantor shall provide guidance and assistance to Grantee with respect to the process and

procedures for the approval of the Work which may include facilitating meetings and discussions with various departments within the City and County of Denver. For consideration, the amount and sufficiency of which is hereby acknowledged by the parties, Grantor and Grantee have agreed Grantee shall provide to the Manager of Finance, within ten (10) days after the later to occur of Grantee has opened the facility at the Property to the general public or completion of the Work, the sum of Two Million Two Hundred Sixty-Six Thousand and no/100 Dollars (\$2,266,000) (herein the "Contribution"). The Contribution shall be due solely in the event Grantee has received the Acquisition Grant and the Improvement Grant and shall be subject to the terms and conditions of the Note.

6. **DEADLINE FOR DISBURSEMENT OF FUNDS:** Grantee must provide evidence of private funding commitments necessary to fund the completion of the Work prior to funding. Failure to meet this deadline shall result in the termination of this Agreement. No funds shall be disbursed under this Agreement until such time as this condition is met. Further, subject to the contingency allocation in the Grant, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Grantee.

7. **RESTRICTIONS ON USE OF PROPERTY:**

A. Grantee agrees to continue to use the Property as set forth herein, or similar uses as approved by Grantor for a period of fifteen (15) years from the date of this Agreement. For value received, the Grantee shall pay to the City the principal sum of Four Million Eight Hundred Eighty-Nine Thousand Seven Hundred Thirty-Nine and no/100ths Dollars (\$4,889,739.00) or the amount actually disbursed by the City, whichever is less, less the Contribution (with an additional credit for use of the funds based upon the sum equal to per annum interest calculated at seven percent (7%) on the amount of the Contribution from the date of the Grant), if and only if the Property ceases to be used as set forth herein during such fifteen-year period or in the event the Grantee is prohibited from completing the Work. The Grantee agrees a condition of the grant is its execution of the Promissory Note and Deed of Trust.

B. Within sixty (60) days after fifteen (15) years from the date of this Agreement, presuming compliance by Grantee with its obligations hereunder, the Promissory Note will be cancelled, and the Deed of Trust will be released by the City (at Grantee's expense).

C. The Grantee shall at its own expense, maintain said premises and real property in good condition, and repair and rehabilitate any improvements which may be

damaged or destroyed by fire, casualty or causes whatsoever. The City is not obligated to make any repairs or replacements to the Property.

8. **MAINTENANCE AND REPLACEMENT**: Grantee shall maintain the Property in compliance with all applicable state and local code requirements.

9. **EXPENSE**: The Grantee agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with the Grantee's breach or default of this Agreement, the Promissory Note, or the Deed of Trust, and agrees to pay reasonable third party closing costs, including the costs of lender's title insurance as determined by City.

10. **EXAMINATION OF RECORDS/ANNUAL MONITORING**: The Grantee agrees that the City, or any of their duly authorized representatives shall, until the expiration of three (3) years after the expiration of the affordability period set forth in Section 6 above entitled "**RESTRICTIONS ON USE OF PROPERTY**," have access to and the right to examine any directly pertinent books, documents, papers, and records of the Grantee involving transactions related to this Agreement. Grantee shall fully cooperate with City in an annual monitoring of Grantee's performance and site inspection to verify compliance with the requirements of this Agreement.

11. **PROJECT REQUIREMENTS**: This Agreement is subject to the following requirements of the Project Funding Agreement for Downtown Denver Improvements between the City and DURA, dated November 9, 2013:

A. **First Source Program**: Grantee shall cooperate with the City, and shall cause its contractor(s) to cooperate with the City in implementing DURA's First Source Program, attached as Exhibit C which provides local preferences for filling jobs created by the Work funded by this Agreement.

B. **Small Business Enterprise Utilization Program**: Grantee shall cooperate with the City, and shall cause its contractor(s) to cooperate with the City in implementing DURA's Small Business Enterprise Utilization Program, attached as Exhibit D, which provides opportunities for small business enterprises.

12. **CONDITIONS**: This Agreement is also subject to the provisions of the City Charter and Revised Municipal Code as the same may be amended from time. The obligation of the City to grant the above sums is limited to funds appropriated for the purpose of this Agreement by the City Council and paid into the City treasury. No less than (5) five days prior

to the Approval Date, as defined in the PSA, as modified, but in no event later than July 10, 2014, Grantor shall inform Grantee if the grant has not been funded.

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

14. INSURANCE: Grantee or its contractor(s) shall procure and maintain insurance in the following types and amounts:

A. Commercial General Liability Insurance covering all operations by or on behalf of Grantee on the Property, 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. Grantee's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

B. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Grantee under Colorado law.

C. 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 and Covenant, with the City and Denver Urban Renewal Authority named as loss payees.

D. Certificates of Insurance evidencing the above shall be submitted to the City prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City and Denver Urban Renewal Authority. 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.

15. DEFENSE & INDEMNIFICATION:

A. Grantee agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees, and the Denver Urban Renewal Authority ("DURA"), collectively the ("Indemnitees") against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the

Work ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the Indemnitees, however Grantee's indemnity shall not extend to acts or omissions, in whole or in part, based upon the Indemnitees' their appointed and elected officials, agents or employees conduct pertaining to governmental or quasi-governmental decision making including the zoning and building permit process.

B. Grantee's duty to defend and indemnify City or DURA shall arise at the time written notice of the Claim is first provided to City or DURA regardless of whether Claimant has filed suit on the Claim.

C. Subject to the terms of this Section 15, Grantee will defend any and all Claims which may be brought against City or DURA and will pay on behalf of City or DURA any expenses incurred by reason of such Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City or DURA shall be in addition to any other legal remedies available to City or DURA and shall not be considered City's or DURA's exclusive remedy.

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

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

16. DEFAULT AND ACCELERATION. Grantee expressly agrees that any breach of this Agreement, the Promissory Note, or the Deed of Trust, after fifteen (15) business days' written notice from the City to Grantee of any breach and after a reasonable opportunity to cure 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 Grantee in connection with this Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default (and Grantee's failure to cure or failure to use reasonable efforts to cure following receipt of written notice set forth herein), and thereafter without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Grantee, the City shall have the right to accelerate any outstanding obligations of the

Grantee, 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. Upon default, the principal shall draw interest at the rate of seven percent (7%) per annum. In the event of a default, Grantee shall be entitled to a credit against the Note in the amount of the Contribution compounded at seven percent (7%) per annum.

17. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Agreement to any party other than the Grantee. The Grantee shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement except upon prior written consent of the City which consent shall not be unreasonably withheld, conditioned or delayed provided the assignee is a non-profit entity acquiring all or substantially all of the Grantee's assets.

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

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

20. DURATION/BINDING EFFECT: This Agreement shall remain in effect for the period of compliance specified in Section 6(A) above, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

21. COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

22. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Grantee 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:

Grantor Name:

ATTEST:

CITY AND COUNTY OF DENVER

DEBRA JOHNSON, Clerk and
Recorder, Ex-Officio Clerk of the
City and County of Denver

By: _____
Mayor

APPROVED AS TO FORM:
DAVID W. BROADWELL, City Attorney
for the City and County of Denver

RECOMMENDED AND APPROVED:

By: _____
Assistant City Attorney

By: _____
Director _____

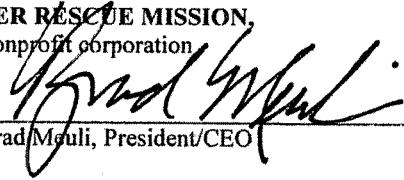
REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No. _____

By: _____
Auditor

THE DENVER RESCUE MISSION,
a Colorado nonprofit corporation

By:

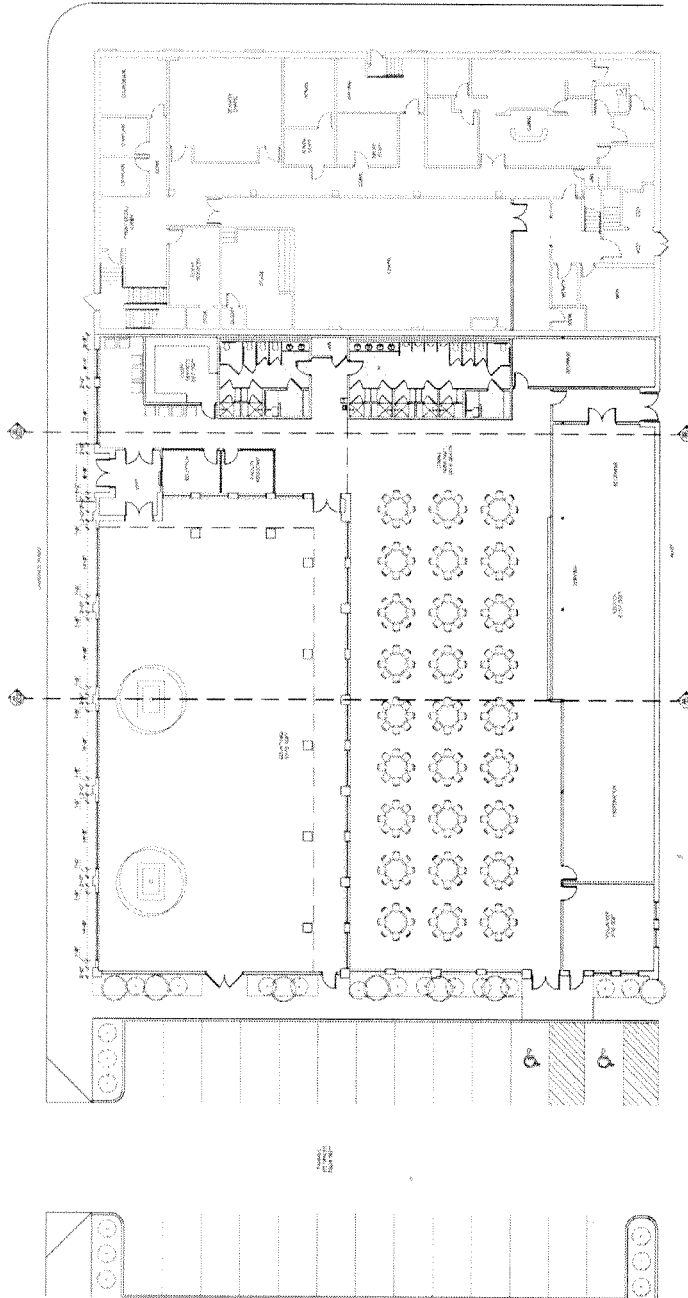


Brad Meuli, President/CEO

EXHIBIT A



LAWRENCE STREET
COMMUNITY CENTER
Denver, Colorado
March 12, 2014



Scale: 1/4" = 1'-0"
Date: 03/12/14
F.A.S. - 231

Main Level Floor Plan
Scheme A



EXHIBIT B



Space Program - Downtown
The Denver Rescue Mission
Lawrence Street Community Center
Denver, Colorado

March 17, 2014

Eidos Project No. 14001

Interior Spaces

• Entry / Vestibule	152 sq. ft.
• Men's- 4 toilets, 4 urinals, 6 showers/changing	580 sq. ft.
• Women's- 4 toilets, 3 showers/changing	313 sq. ft.
• Mechanical	150 sq. ft.
• Electrical	150 sq. ft.
• Dining (216 seats)	3,688 sq. ft.
• Kitchen	2,158 sq. ft.
• Client Services	227 sq. ft.
• Volunteer Orientation Area	374 sq. ft.
• Offices	221 sq. ft.
• Lobby	402 sq. ft.
• Storage	330 sq. ft.
	<hr/>
	8,395 sq. ft.

Net to Gross Square Footage for Circulation 2,749 sq. ft.

Subtotal 11,474 sq. ft.

Exterior Spaces

• Delivery Drop-Off (on street)	2 spaces
• On-Site Parking (25 spaces)	7,604 sq. ft.
• Courtyard	5,579 sq. ft.
• Landscape	777 sq. ft.
• Sidewalk	774 sq. ft.
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Total Square Footage = Lot Total 26,208 sq. ft.

EXHIBIT C
DURA First Source Hiring and Outreach Program

**DURA FIRST SOURCE HIRING AND OUTREACH
PROGRAM FOR LOW INCOME DENVER RESIDENTS FOR
URBAN RENEWAL PROJECTS**

BACKGROUND

I. Purpose of the First Source Program In connection with DURA's primary goal of undertaking urban renewal projects to revitalize the City and foster sound growth and development, DURA will develop a program, in cooperation with the appropriate agencies of the City and County of Denver or other governmental agencies chosen by DURA, which is intended to provide preferential opportunities for employment and training of low-income Denver residents and will require developers with Redevelopment Agreements approved by DURA after May, 1995 to participate in such programs.

II. Development and Implementation of the First Source Program; Division of Responsibility.

(a) DURA will require developers to participate in the program as a condition to receiving tax increment financing or similar assistance from DURA for urban renewal projects. Developers will require their tenants to participate by including this requirement in their tenant's leases or other documents. The term of the developer commitment will be the lesser of the (10) years or the term of repayment of DURA's financial assistance for the project. This obligation will be set forth in the Redevelopment Agreement between DURA and the developer.

(b) The Colorado Department of Labor & Employment, Denver Job Service Center will provide a staff member to act as the employment coordinator (First Source Program Coordinator). The Mayor's Office of Employment and Training (MOET), the Mayor's Office of Economic Development (MOED) or other appropriate agency chosen by DURA are cooperating agencies for providing training in the First Source Program.

The specific steps of the First Source Program are discussed below.

**FIRST SOURCE PROGRAM
FOR LOW INCOME DENVER RESIDENTS**

A. **Pre-Hiring Training Outreach**

1. The First Source Program applies to both the construction period and post construction long-term jobs. For the construction period jobs, the Developer's Job Placement Coordinator and First Source Program Coordinator (a staff member of the Colorado Department of Labor & Employment, Denver Job Service Center) will meet as early as feasible, but prior to the pre-bidding process for construction contracts, to determine employee skill needs and number of employees needed by the Developer and its construction contractors for the Project. For the post construction long-term jobs, the Developer's Job Placement Coordinator and First Source Program Coordinator will meet, in concert with employers in the Project, as early as possible but no later than the middle

of the construction period, to determine employee skill needs and number of employees needed by the employers in the Project.

2. The First Source Program Coordinator contacts eligible Community Based Organizations (CBOs), MOET and MOED to notify them of job opportunities. Eligible CBOs are understood to be organizations interested in participating in the First Source Program and organizations with the capacity to perform employment outreach notification, as determined by the First Source Program Coordinator. The First Source Program Coordinator will co-sponsor with CBOs workshop(s) to explain the types of development projects, the list of employers, and the anticipated job position requirements. At future meeting(s), information will be supplied about the nature of employment (full or part-time), the employee benefits offered, the employer's promotion policy, the possibility of advancement, the employee's expected hours, and other employer policies.
3. The Developer's Job Placement Coordinator and First Source Program Coordinator work together to determine general training needs for specific project employers. Interested job applicants are directed to MOET or other appropriate existing community training opportunities relevant to employment training for the Project. The First Source Program Coordinator, in consultation with the Developer's Job Placement Coordinator, will determine the need for additional pre-hiring training, such as job application preparation, interview preparation, general work or construction readiness, and arrange referrals for interested applicants.

B. Interview Outreach and Preferential Hiring Period

1. Developer's Job Placement Coordinator provides employer job listings to First Source Program Coordinator within a time frame which allows for an interview at least five (5) calendar days in advance of filling an applicable position for low-income Denver residents. The First Source Program Coordinator will notify CBO's, by a method mutually agreeable to the CBO's and the First Source Program Coordinator, such as by facsimile or community meeting, or job listings and the proposed interview schedule.
2. Within the original five days, as referenced above, applications are provided by the First Source Program Coordinator to the employers or the Developer for interview when the employer is ready to hire.
3. The employer interviews only people referred by the First Source Program Coordinator who meet the employment qualifications as proposed by the employer for positions covered by the First Source Program first, for a period of five (5) calendar days preceding the employer's opening general interview date. The First Source Program Coordinator consults with the Developer and employer(s) to determine which staff positions or staffing situations, by their nature to the daily operation of the employer's business, will be considered exempt from inclusion in the First Source Program.

4. Employers may exempt management employees, licensed professionals, and those hired on a temporary or emergency basis. The First Source Program will consider management hires filled by an employer's current employee, on a transfer basis or as a promotion in manager development process, as positions which may be excluded from the Program, at the sole discretion of the Employer.
5. At the expiration of the five (5) day period the employer will be free to follow its standard recruitment and selection procedures to fill vacant positions, so long as the same full and fair consideration is given to applicants referred by the First Source Program Coordinator. As employment vacancies continue to occur, the employer will continue to contact the First Source Program Coordinator as a first step in filling the vacancy. The First Source Program Coordinator will allow the employer some flexibility in the five-day preference period when the number of vacancies is small, after start-up, so long as the same full and fair consideration is given to applicant(s) referred by the First Source Program Coordinator first. The employer retains, at all time, full choice of whom to hire and, except as otherwise applicable, such employees will be employed at the will of the employers.

C. Reporting and Monitoring

The First Source Program Coordinator will develop quarterly reports for the first year and annual reports thereafter relating to the First Source Program. The Developer's Job Placement Coordinator and the Developer will cooperate with the First Source Program Coordinator to accumulate performance data. These reports are to accumulate performance data. These reports are intended to allow the First Source Program Coordinator to monitor and evaluate First Source Program performance, and the Developer and tenant performance. The First Source Program's performance will be measured, after the first year, by the percentage of Denver residents employed (referenced by zip codes), the percentage of First Source Program job placements made to and hired at the respective project during the review period, and by race, sex, age, national origin, handicap or veteran status.

The First Source Program Coordinator will provide the quarterly and annual reports to DURA. DURA will arrange for an advisory group which would include representatives from interested parties such as the Denver City Council, the Denver Job Service Center, MOET, MOED, CBO's (such as ACORN, Servicios de La Raza, Urban League, SWIC, and Mi Casa) and other representatives of governmental agencies appointed by DURA, to periodically evaluate the performance of the First Source Program and recommend appropriate future modifications. DURA will also solicit suggestions from the Developer and employers for suggestions from the Developer and employers for additional advisory group representatives which could provide valuable input into the review and evaluation process.

EXHIBIT D

DURA Guidelines for Utilization of Small Business Enterprises

DENVER URBAN RENEWAL AUTHORITY

GUIDELINES FOR UTILIZATION OF SMALL BUSINESS ENTERPRISES IN

URBAN REDEVELOPMENT PROJECTS

March 2002

Policy Statement

The Denver Urban Renewal Authority ("DURA") has determined that an ongoing race and gender-neutral program to enhance and maintain opportunity for small business participation in construction, reconstruction and remodeling, and professional design and construction services for DURA projects would benefit DURA and the citizens of Denver by promoting competition in bidding and by enhancing the economic growth of such businesses. This program is not designed or intended to alleviate or remediate discrimination suffered by minority or women business enterprises.

The establishment of a Small Business Enterprise Outreach and Assistance Plan ("SBE Plan") as described below is required for proponents ("Developer") of projects funded in whole or in part by tax increment revenues supplied by DURA.

Goals

DURA has established goals relating to utilization of small business enterprises ("SBEs") for projects supported by DURA funding. In order to be counted towards these goals, SBEs must be certified through; (i) the City of Denver Mayor's Office of Contract Compliance, (ii) State of Colorado or Federal government, (iii) another public entity approved by DURA, or (iv) firms or entities determined by DURA to be qualified as SBE's. The goals are as follows:

Construction Related Contracts and Professional Services --15% SBE (Year 2002).

1. Construction Related Contracts include general contractors, construction management, subcontractors and suppliers for construction, reconstruction and remodeling.
2. Professional Services includes architects, engineers, interior design, surveyors, appraisers, environmental consultants, etc.

DURA may modify the goals on an annual basis. Until modified, the goals set forth herein shall continue in effect.

DURA reserves the right to establish different goals than those listed above or to waive participation of Developer in this program on a project by project basis. An SBE Plan would not be required for projects with DURA tax increment financing of \$100,000 or less.

The Developer must incorporate these goals into a SBE Plan which becomes a part of a redevelopment or similar agreement between the Developer and DURA.

The following factors shall count toward project goals: portions of work undertaken by SBEs as contractors, consultants, subcontractors, subconsultants, suppliers, manufacturers, brokers or joint venturers. The participation of a SBE shall not count toward project goals to the extent it acts as a conduit or fails to perform a commercially useful function. All expenditures for materials, supplies and equipment obtained from a SBE manufacturer or supplier shall count toward the SBE project goals.

SBE Plan Components

The Developer's SBE Plan for professional and construction-related services must include:

1. An outreach plan which details the process for disseminating information regarding the project, bid and selection process to SBE organizations.
 - a. Hold preliminary meetings open to all SBE organizations to present the project scope and schedule.
 - b. Create a direct mail information package for SBE organizations. The package should contain: (1) an overall project budget range; (2) an indication by percentage or dollar amount of each construction trade category for the project; (3) a general block schedule of activities including pre-bid conferences, bidding schedules and projected completion date; (4) any prequalification criteria for bidders, such as bonding or the bidder's commitment to meet SBE goals.
2. A bid advertising plan which provides outreach to SBE construction organizations.
 - a. Place ads in focused media, trade publications and general circulation newspapers, as needed, to invite bidders and advise them of project goals.
 - b. Place bid documents in plan rooms of all SBE organizations. Plans should be provided so that there is ample time for bidders to respond to the bid.
3. A process for structuring the construction project into bid package sizes which will facilitate bid opportunities for SBE construction firms.

- a. Break out and analyze second-tier packages and subsystems based on the potential to offer opportunities to SBE firms. Require that all potential major subcontractors indicate those areas of work that are normally subcontracted out. All tiers of bidders shall be required to complete the attached Form B, Letter of Intent, and submit it with the bid. Any bid not containing this form will be considered non-responsive.
 - b. Establish bid packages by size and complexity that are within the project budget and schedule, which also facilitate maximum feasible SBE participation. Provide all bidders with lists of SBE subcontractors and suppliers.
 - c. Where feasible, separate purchase of materials from labor and performance aspects by: (1) allowing bidders to bid both or either; (2) allowing two separate contracts for subcontractor and material supplier.
 - d. Examine joint venture opportunities between large and SBE firms.
4. A procedure for outreach and reviewing the qualifications and capabilities of all relevant SBE firms.
- a. SBE firms should be contacted with a schedule of activities, prequalification requirements and project description as soon as such is available. This contact should provide the name of a Developer contact person designated to offer technical assistance and a log of all these contacts and communications should be kept. Contact should be made at least ten (10) days prior to bid opening.
 - b. A brief prequalification form should be prepared by the Developer for the project. It should request from SBE firms basic business information, a general statement of interest and any request for specific assistance.
 - c. Meet with representatives of the Mayor's Office of Contract Compliance to obtain information regarding certification requirements and documents for SBE firms that wish to be considered for the project.
5. A statement of any selection criteria to be used for professional or consulting services.
6. A commitment to either hire a consultant or assign Developer staff to carry out the goals and objectives of the SBE Plan.
7. A commitment to maintain the information outlined in Appendix A, Good Faith Efforts, and to provide this information to DURA upon request.

A project-specific proposal process designed by the Developer and acceptable to DURA may be substituted for any aspect of the project if such process is structured to afford SBE organizations substantially equivalent participation in the project as would occur in a competitive bid process.

Additional actions which can be taken to assist in the compliance with the SBE Plan goals are outlined in Appendix B attached. The Developer may select any of these actions to include in the SBE Plan or may include actions developed specifically for the project to assist in accomplishing the goals.

Information Resource

A list of certified SBEs and project plan rooms is available at:
www.denvergov.org/MOCC.

Compliance

1. The Developer must submit monthly reports containing at a minimum the information set forth on Form A attached. If a different reporting form is to be utilized, it must be pre-approved by DURA along with the SBE Plan.
2. The Developer must show that the goals are being reached by the monthly employment reports or must show evidence that the process outlined in the SBE Plan and in Appendix A, Good Faith Efforts, was followed if the goals are not being reached.

Potential Violations

A Developer of the project shall not, at any time before completion of the project:

1. fail to utilize a SBE which was originally listed at bid opening in order to satisfy project goals, and which submitted a letter of intent, without substituting another SBE performing the same commercially useful function and dollar amount, or demonstrating each element of the Good Faith Efforts to substitute another SBE; or
2. fail to allow a SBE functioning as a subcontractor, subconsultant, joint venturer, supplier, manufacturer, or broker to perform the commercially useful function, the value of which was originally counted for that SBE in awarding the contract; or
3. modify or eliminate all or a portion of the scope of work attributable to a SBE upon which the contract was awarded, unless approved by DURA; or
4. terminate a SBE originally utilized without replacing such SBE with another SBE performing the same commercially useful function and dollar amount, or demonstrating Good Faith Efforts to substitute another SBE; or

Remedies for Failure to Comply

Failure of a Developer to comply with the SBE Plan, or to demonstrate Good Faith Efforts to comply with the SBE Plan, shall be cause for DURA to exercise any remedies, to the extent provided in the redevelopment agreement, including withholding payment of the funding of the project from tax increment revenues or tax increment bond proceeds.

APPENDIX A

Good Faith Efforts

If the Developer has not fully met the SBE Plan goals as agreed to in the redevelopment agreement, then the Developer shall demonstrate that it has made good faith efforts to meet the goals. The Developer shall furnish to the Authority within three (3) working days after bid opening a detailed statement of its Good Faith Efforts to meet the SBE Plan goals. This statement shall address each of the items listed below and any additional criteria that the Developer has established in the adopted SBE Plan to ensure maximum outreach and utilization efforts.

The different kinds of efforts as well as the quantity and intensity of the efforts will be considered in determining whether the Developer has used Good Faith Effort.

The statement of Good Faith Efforts shall include a specific response to each of the following. The Developer may include any additional information believed relevant. Failure of the Developer to show Good Faith Efforts as to any one of the following criteria may render its overall good faith showing insufficient. The Developer may require this information to be provided by the project general contractor, construction manager and subcontractors, however, the Developer is ultimately responsible for compliance, or Good Faith Efforts to comply, with the SBE Plan goals.

Actions Reviewed to Determine Good Faith Effort

1. Attendance at pre-bid meetings, if pre-bid meetings are scheduled by the Developer, at which SBEs may be informed of subcontracting opportunities under a given project solicitation. Attendance by the Developer at such pre-bid meetings is not mandatory; however, the Developer is responsible for the information provided at these meetings.
2. Verification of advertisements soliciting bids from SBEs in general or construction-related publications. All such advertisements must expressly advertise the project and expressly state that SBE participation on the project is being sought. All such advertisements for bids shall begin at least fifteen (15) days prior to bid opening.
3. Verification of efforts to contact, by timely notice, appropriate SBEs within identified subcontracting categories listed in the most current certification list of the Office of Contract Compliance, or other approved listings. The notice shall expressly describe the potential subcontracting categories for the project. Written notice to SBE firms that could not provide subcontracting or supplies consistent with the project's scope of work and reasonably consistent with industry practice will not be considered as satisfying the purposes of this category. If potential bidders have purchased project plans seven (7) calendar days or less before bids

are due, documented phone calls to such potential bidders in lieu of written notice shall be permitted.

4. Verification of efforts to subcontract, consistent with industry practice, with the SBEs who the Developer has contacted, or who have contacted the Developer, including the names, addresses and telephone numbers of all SBEs contacted; a description of efforts made to subcontract; a description of the information provided to the SBEs regarding the plans and specifications for portions of the work to be performed by subcontractors; and, if attempts to subcontract actually occurred, the dates and places of such process and a description of the outcome.
5. Verification that the Developer attempted to recruit SBEs from at least the same geographic area from which it attempted to recruit other subcontractors.
6. Verification that, consistent with industry practice, the Developer gave SBEs necessary access to and adequate time to review all necessary project plans, drawings, specifications and other documents, as well as adequate time to prepare subcontract bids and/or negotiate joint venture arrangements.
7. Verification that the Developer selected portions of the work to be performed by SBEs in order to achieve the SBE Plan goals. Such portions of work should be reasonably consistent with industry practice and past practice on similar projects. Verification that the Developer made a reasonable attempt to structure contracts into economically feasible units to facilitate meaningful SBE participation.
8. For each SBE which contacted the Developer or which the Developer contacted or attempted to contract, consistent with industry practice, a statement giving the reasons why the Developer and the SBE did not succeed in reaching a general contracting, subcontracting or joint venture agreement.
9. Verification that the Developer rejected SBEs because they did not submit the lowest bid or they were not qualified. If a SBE is rejected because it did not submit the lowest bid, such verification shall include a statement of the amounts of all bids received from potential contractors on the project and that the Developer rejected the SBE because it did not submit the lowest bid from among such bids. If a potential SBE contractor is rejected because it was not qualified, the Developer shall be guided by the definition of "qualified" in Division 1 of Article III of Chapter 28 of the Revised Municipal Code of the City and County of Denver but evidence of lack of qualifications must be based on factors other than the amount of the SBE's bid. For each SBE found to be not qualified, the verification shall include a statement giving the Developer's reasons for its conclusions.

APPENDIX B

Additional Employment Options

Any, or all, of these options may be incorporated into the Developer's SBE Plan for a project in addition to the required SBE Plan components.

1. Assist SBE firms in establishing necessary industry relationships with financial institutions and surety bonding companies.
2. Advise and instruct major general and subcontractors on methods to utilize SBE subcontractors and suppliers to the maximum feasible levels. Counsel these businesses on joint venture opportunities, and offer simplified contracting methods to facilitate such opportunities.
3. Make available to the SBEs background information and technical personnel to facilitate the ability of SBEs to professionally analyze bid documents and prepare adequate responses thereto, including detailed briefing meetings by the general contractor, the architects and engineers.
4. Anticipate potential obstacles and challenges to smaller SBE contractors and provide necessary administrative and technical support to overcome such; including scheduling support, manpower estimates, and regular progress meetings to ensure that SBEs are able to meet performance milestones. Offer special financial assistance and/or payment procedures, such as joint check agreements, and credit support for selected SBE companies.
5. Set up meetings with appropriate SBE consultants, bonding/surety agencies, specialized technical information or service providers to SBEs, and relevant SBE trade associations in advance of project bids to ensure maximum available technical support.
6. Prequalify bidders including as a criteria for selection their prior commitment and willingness to meet SBE Plan goals. Allow and encourage companies to prequalify with SBE Plan joint venture partners.
7. Where possible, prequalify major manufacturers. Encourage these manufacturers to establish distribution lines with SBE suppliers.
8. Encourage major wholesale supply houses to establish joint venture or joint supply relationships with SBE suppliers.

[INSERT FORM A TO EXHIBIT D]

**EXHIBIT E
EXPENDITURE CERTIFICATION**

City Project: _____

Date: _____
Project: Lawrence Street Community Center
Payment Request No: _____
Amount Requested: \$ _____

The following documents are attached to this certification are;

1. Project Schedule of Total Costs for Expenditure Certification (Schedule A to Exhibit E).
2. Itemized bill or statement of account for each itemized cost as listed on the Schedule of Total Costs for Payment.
3. Partial and/or Final Lien Waivers from each Contractor and/or Sub-Contractor for the previous expenditure certification showing payments made per the previously approved Schedule of Total Costs for Payment.

I, David Schunk, as Chief Financial Officer of the Denver Rescue Mission, as of _____ (date) _____ certify the following:

The items of costs for which payment is certified herein (i) are or were necessary in connection with, and are reasonably attributable to, the above referenced City Project and (ii) have not formed the basis for any previous payment to the person receiving payment as described herein.

Dated: _____ 201____ THE DENVER RESCUE MISSION

By: _____
David Schunk, Chief Financial Officer

Schedule A to Exhibit E
City Project: Lawrence Street Community Center
Project Schedule of Total Costs for Expenditure Certification

Payment Request No. _____
 Date: _____, 201_____

Schedule of Total Costs

Cost Categories	Budget	Amount Requested for Reimbursement This Draw	Prior Amount Requested for Reimbursement	Amount Remaining to be Spent (per line item)
Eligible Costs				
Non Eligible Costs				

**Schedule B to Exhibit E
CERTIFICATION OF COSTS ELIGIBLE FOR PAYMENT**

Date: _____
Project: Lawrence Street Community Center
Payment Request No: _____
Amount Requested: \$ _____

By signing below, the City and DURA hereby approve the above amount of City Project Costs as Eligible to be reimbursed by DURA to the City, pursuant to the Project Funding Agreement for Downtown Denver Improvements _____.

The City Project Costs certified herein were incurred pursuant to the Project Funding Agreement for Downtown Denver Improvements.

Dated: _____, 201_____

City and County of Denver

Denver Urban Renewal Authority

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

