

LOAN AGREEMENT

Part I

THIS LOAN AGREEMENT (this "Loan Agreement"), in two Parts, Part I and Part II, is made and entered into this _____ day of _____, 2014 by and among the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, ("Lender" or "City"), **SKETCH RESTAURANT, LLC**, a Colorado limited liability company whose address is 101 Broadway, ~~Unit 103~~, Denver, Colorado 80203 ("Borrower" or "Contractor"), and **JESSE MORREALE**, an individual, whose address is 3224 East 7th Avenue Parkway, Denver, Colorado 80206 ("Guarantor").



10-1262

WITNESSETH:

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

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

WHEREAS, Guarantor is desirous that Borrower receive the loan described herein, will be benefited thereby, and is willing to personally guarantee repayment of the loan;

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

1. **CONTINGENCIES:** INTENTIONALLY OMMITTED.

2. **LOAN TO BORROWER:** Subject to the terms of this Loan Agreement, the City agrees to lend Borrower up to the sum of Three Hundred Ten Thousand and No/100 Dollars (\$310,000.00), to be repaid, together with interest at the rate of three and one-quarter percent (3.25%) per annum, over a term of eighty-four (84) months. Such principal and interest shall be due and payable in monthly installments of One Thousand Seven Hundred Fifty-Eight and 31/100 Dollars (\$1,758.31), commencing on the first day of the seventh (7th) month following the month of execution of a promissory note in form satisfactory to the City evidencing this loan (the "Promissory Note"), and should continue thereafter on the first day of each succeeding month. The entire unpaid balance shall be due and payable on or before the first day of the eighty-fifth (85th) month following the month of execution of the Promissory Note. Interest shall

commence accruing on the first day of the sixth (6th) month following the month of execution of the Promissory Note.

3. SECURITY FOR REPAYMENT: As security for this loan, the Borrower agrees to grant and properly perfect a security interest in all of its assets, including accounts, goods, inventory, machinery, equipment, furniture, fixtures, contract rights, and general intangibles, now owned or hereafter acquired, and wherever located, but including those located at 101 Broadway, ~~Unit 103~~, Denver, Colorado (the "Property"), and the proceeds thereof. The City's security interest shall be documented as required by the City, and those documents are referred to herein as the "UCC Security Documents."

Repayment shall be personally guaranteed in form satisfactory to City, by Guarantor.

4. SUBORDINATION: INTENTIONALLY DELETED.

5. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance working capital and FF&E expenses. Funds will be disbursed upon receipt of documentation satisfactory to the fiscal department of OED, in accordance with the following budget:

Marketing	\$20,000
Inventory	\$18,000
FF&E	\$95,000
Working Capital	\$177,000

Working capital in an amount not to exceed the immediate needs of Borrower's business will be disbursed at closing and on an as needed basis in accordance with a budget approved by OED. Draw requests for the advance of working capital must be accompanied by fully-executed contracts and detailed estimates justifying the working capital amounts needed. These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to April 1, 2010 will not be reimbursed.

6. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower agrees that all conditions required for a closing hereunder shall have been met within ninety (90) days following the date of this Loan Agreement, or the City may terminate this Loan Agreement. Documentation for all draw down requests will be submitted no later than one hundred eighty (180) days after loan closing. These deadlines may be extended with the written approval of OED.

7. **JOB CREATION AND RETENTION:** Borrower agrees to create ten (10) new permanent, full-time equivalent jobs with funds received under this Loan Agreement. Borrower agrees that at least fifty-one percent (51%) of these jobs will be held by or will be made available to low and moderate income persons as defined by the United States Department of Housing and Urban Development pursuant to 24 C.F.R. 570.208. In addition to the other requirements of 24 C.F.R. 570.208, jobs that are not held or filled by a low or moderate income person may be considered to be available to low and moderate income persons for the purposes of this section only if: (A) special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or Borrower agrees to hire unqualified persons and provide training; and (B) Borrower takes actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

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

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

8. **ENVIRONMENTAL AND HISTORIC CLEARANCE:** No loan proceeds may be obligated or spent until Borrower has received written environmental and historic clearance from OED. Any special environmental and historic conditions imposed by the City

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

9. DEFAULT AND ACCELERATION: Borrower expressly agrees that the refusal or inability of the Borrower to make the payments called for to the City, any other default or breach of this Loan Agreement, the Promissory Note, or UCC Security Documents shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, and to enforce or assign its rights under the UCC Security Documents. Borrower agrees to pay a late charge of five percent (5%) of any monthly installment not received on or before the fifteenth (15th) day after the installment is due. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum.

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

11. INSECURITY: The Borrower agrees that should the City deem this loan to be insecure, in accordance with this Loan Agreement or with Borrower's Promissory Note including, but not limited to the voluntary or involuntary dissolution or cessation of business by the Borrower, the filing of a petition in bankruptcy or an assignment for the benefit of creditors,

the breach of any condition of the Community Development Block Grant Agreements set out below, the breach of any loan agreement or security agreement to any other lenders on the project, such insecurity shall be deemed a default under the Article herein entitled "DEFAULT AND ACCELERATION" and the entire amount of the loan shall be immediately due and payable, notwithstanding the Borrower's full compliance with any payment obligations under this Loan Agreement or the Promissory Note.

12. EXAMINATION OF RECORDS: The Borrower agrees that the Comptroller General of the United States, the U. S. Department of Housing and Urban Development ("HUD") the City or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this 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.

13. 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.

14. 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.

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

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

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

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

D. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the UCC Security Documents, with the City named as loss payee.

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

16. DEFENSE & INDEMNIFICATION:

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

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

sole cause of claimant's damages.

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

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

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

17. **WAIVER:** No waiver of any breach or default under this 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.

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

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

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

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

A. The 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 subconsultants 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.

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

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

B. The Contractor shall verify the lawful presence in the United States, of each natural person eighteen years of age or older (the "Applicant"), who applies for Federal, State or Local Public Benefits ("Benefits") conferred pursuant to this Loan Agreement, as such Benefits are defined in the Applicant Verification Statute. The Contractor shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and

execute an affidavit in the form attached hereto as **Exhibit B** and incorporated herein by this reference. The Contractor shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request.

23. VERIFICATION OF LAWFUL PRESENCE IN UNITED STATES OF GUARANTOR:

A. This Loan Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, as now existing or hereafter amended (the "Verification Statute"). Compliance by the Guarantor with the Verification Statute is expressly made a contractual condition of this Loan Agreement.

B. Guarantor shall verify his or her own legal status in the United States by execution of the Verification Affidavit attached hereto as **Exhibit C**.

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IN WITNESS WHEREOF, the parties have executed through their respective authorized representatives, this Loan Agreement as of the day and year first above written.

ATTEST:


CITY AND COUNTY OF DENVER

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

By: _____
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:
DAVID FINE
for the City and County of Denver

By: 
Director, Business and Housing Division
Office of Economic Development

By: 
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance
Contract Control No. GE0A039

By: _____
Auditor

“CITY”

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SKETCH RESTAURANT, LLC, a
Colorado limited liability company
I.R.S. No. 26-3649336

By 

Name:

JESSE MORREALE
(please print)

Title

MANAGING MEMBER

"BORROWER"


JESSE MORREALE

"GUARANTOR"

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Exhibit A-1: Job Creation/ Retention Grid

Exhibit A-2: Economic Development Administration (EDA) Job Category/ Classification Definitions

Exhibit A-3: Employment & Income Certification Form

Exhibit B: Applicant Verification

Exhibit C: Guarantor Affidavit

Exhibit A-2

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

1. **Officials and Managers**
Occupant requiring administrative personnel who set broad policies, exercise overall responsibility of execution of these policies, and individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers and superintendents, salaried supervisors who are members of management, purchasing agents and buyers, and kindred workers.

2. **Professional**
Occupants requiring either college graduation or experience of such kind and amount as to provide a comparable background includes: accountants and auditors, airplane pilots and navigators, architects, artist, chemist, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientist, registered professional nurses, professional and labor relations workers, physical scientist, physicians, social scientist, teachers, and kindred workers.

3. **Technicians**
Occupants requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education such as is offered in many technical in states and junior colleges, or through equivalent on the job training. Includes: computer programmers and operators, drafters, engineering aides, junior engineers, mathematic sides, licensed practical or vocational nurses, photographers and radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical science) and kindred workers.

4. **Sales**
Occupants engaging wholly or primarily in direct selling includes: advertising agents and sales workers, insurance agents and brokers, real estate agents and brokers, sale workers, demonstrators retail sale workers, and sales clerks, grocery clerks and cashiers, and kindred workers.

5. **Office and clerical**
Includes all clerical-type work regardless of level of difficulty, where the activities and predominately non manual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and account), messengers, and office helpers, office machine operators, shipping and receiving clerks, stenographers, typist, and secretaries, telegraph and telephone operators and kindred workers.

6. **Craft Worker (skilled)**
Manual workers of relatively high level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, hourly paid supervisor and lead operators (who are not members of management). Mechanic and repairers, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal) motion picture projectionist, pattern and model makers, stationary engineers tailors, and kindred workers.

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

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

8. **Laborers (unskilled)**

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

9. **Service Workers**

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



Exhibit A-3

EMPLOYMENT AND INCOME CERTIFICATION FORM

Your employer has received economic development loan funds from the City and County of Denver. The City's Office of Economic Development requires that the business entity demonstrate creation and/or retention of jobs for low- and moderate-income individuals. Please complete all the information requested below. For assistance in completing this form, please call (720) 913-1543.

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

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

3. **Date Hired:** _____

- Original Job Title: _____
- Current Job Title: _____
- Please match subject position with EDA classification found in Exhibit A-2: _____
- Prior to this current employment, were you unemployed? Yes _____ No _____

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

5. **Family Status:**
Number of individuals in household _____

Check the appropriate range for the total income of all related family members living with you, including your income, for the 12 months prior to the date you were hired:

- () \$0 - \$42,500
- () \$42,501 - \$48,600
- () \$48,601 - \$54,650
- () \$54,651 - \$60,700
- () \$60,701 - \$65,600
- () \$65,601 - \$70,450
- () \$70,451 - \$75,300
- () \$75,301 - \$80,150

6. **Employee Information:**

- Gender: () Female () Male
- Is the Head of Household Female? _____ Yes or _____ No
- Ethnicity (select only one):
Hispanic or Latino _____ Not Hispanic or Latino _____
- Race: (select only one):

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

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

Employee Signature

Date

EXHIBIT B

VERIFICATION AFFIDAVIT

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

_____ I am a United States citizen, or

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

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

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

Signature

DATE

[Print] Name of Applicant

EXHIBIT C

GUARANTOR AFFIDAVIT

For the City and County of Denver as Proof of Lawful Presence in the United States

I, **JESSE MORREALE**, Guarantor, swear or affirm under penalty of perjury under the laws of the State of Colorado the following:

1. I am over eighteen years of age and am competent to make this Affidavit.

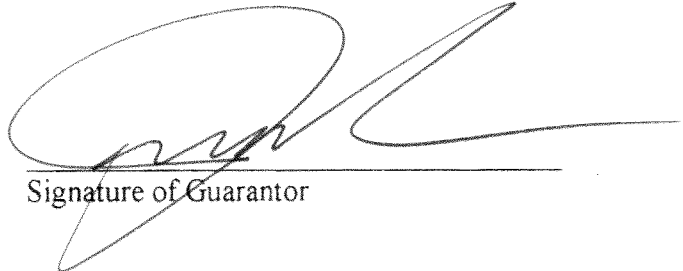
2. I swear or affirm that (check one):

I am a United States citizen, or

I am a legal permanent resident of the United States, or

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

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


Signature of Guarantor

DATE: 11/15/2010, 2010.

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 U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 110. Relocation Assistance and Property Acquisition Requirements. If the Contractor is a department, agency or instrumentality of a State or of a political subdivision of the State, then this Agreement is subject to the relocation and acquisition requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 C.F.R. Part 42, and 24 C.F.R. 570.606.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

under any patent shall be allocated and administered in order to protect the public interest.

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

- A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;
- B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;
- C. Willfully obstructs or impedes an investigation or inquiry under HUD;
- D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by OED funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;
- E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

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

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

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

Sec. 203. Charges Against Project Account.

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

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

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

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

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

Sec. 204. Method of Payment and Disbursements. The Contractor 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 State of Colorado must be specifically authorized in advance by OED.

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 the 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) business 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 Contractor and City may terminate this Agreement by agreeing upon termination conditions, including effective date. 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 and in the case of partial termination, the portion to be terminated.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work completed and funds obligated at the effective date of the termination. Contractor shall provide DHND with a complete list of obligated funds within thirty (30) days.

Sec. 505. Reversion of Assets. Upon termination of this Agreement as provided in this Article V, any CDBG funds from this Agreement, inclusive of program income, must be returned to the City within sixty (60) days. 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 (5) 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. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 606. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 607. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development. Either of the parties may designate in writing substitute addresses or persons to receive notices.