

SITE USE LICENSE AGREEMENT
[for Richard T. Castro Building/Department of Human Services only]

THIS SITE USE LICENSE AGREEMENT (“Agreement”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (“City”), acting by and through the **Denver Department of Human Services** (“Agency”), and **AARP FOUNDATION**, whose address is 601 E. Street NW Washington, DC 20049 (“User”), (together “the parties”).

W I T N E S S E T H:

WHEREAS, AARP Foundation Tax-Aide provides financial education and programs and services to promote concepts of financial saving and asset building to underserved and low-income individuals; and

WHEREAS, in particular, AARP Foundation Tax-Aide offers a Volunteer Income Tax Assistance (VITA) program to underserved and low-income individuals in an attempt to reduce poverty and promote self-sufficiency; and

WHEREAS, the Agency desires to host a VITA program at its facility located at 1200 Federal Blvd., Denver, CO to meet the needs of the underserved and low-income people served by the Agency;

NOW, FOR AND IN CONSIDERATION of the payment of Ten Dollars (\$10.00) and the keeping and performing of the promises, covenants, terms and conditions herein by both parties, the parties hereto enter into this Agreement and the City hereby grants this License to User who hereby accepts the same, all on the terms and conditions and subject to the promises and provisions set forth below.

1. **SITE USE LICENSE**: User will fully coordinate its use of the Premises with the Manager of the Department of Human Services (“Manager”) or, the Manager’s Designee. The City hereby grants to User a revocable license to use one office or conference room to be designated by the Manager, not to exceed Two Hundred Forty (240) square feet of usable space, in the Richard T. Castro Building, 1200 Federal Boulevard, Denver, CO (the “Building”) including use of common hallways and restroom facilities (collectively referred to as the "Premises"), to operate a Volunteer Income Tax Assistance (VITA) program (the “Program”)

only. User, its officers, employees, volunteers, or agents, shall have the following license rights under this Agreement:

(a) The right to enter and remain upon the Premises with personnel and equipment for the purpose of administering the Program during the term stated below. User will provide at its own cost and expense, and at no cost or expense to the City or to individuals receiving services under the Program, all personnel, supplies, and materials necessary to provide the Program on the Premises.

2. **TERM:** The term of this Agreement shall begin at 8:00 a.m., M.T., on February 13, 2013, and end at 5:00 p.m., M.T., on March 31, 2013.

3. **FEE:** During the term of this Agreement, User shall pay the City Ten Dollars (\$10.00) for the Term. In addition, User shall reimburse the City for services, time and materials requested, required or necessitated by User's use of the Premises. The availability and amount of reimbursement shall be agreed upon in writing by User in advance of the performance by the City of the work eligible for reimbursement. The City will not be required to provide services, time, or materials without such an agreement.

4. **USE OF PREMISES:** User shall use and occupy the Premises in a safe and careful manner and, except where expressly waived by the City in writing, shall comply with all applicable City, State and federal laws, rules, and regulations, Executive Orders, and fiscal rules pertaining to the Premises promulgated by the City and all other rules and regulations prescribed by the Agency. User shall not do any act or suffer any act to be done during the term of this Agreement which will in any manner mar, deface, alter or injure any part of the Premises. User shall not interfere with any City operations in or about the Premises and shall not disturb any City fixtures, furniture, equipment, offices or agencies, documents, or files during such occupancy without the prior express approval of the City. The User shall also be allowed to use common areas of the Building that are made available on a non-exclusive basis for the general use of the public. The User will have access to any existing telephone service and internet services in the Premises, a designated bookshelf for paper and books, and a designated shredder to shred documents created or used in connection with this Agreement.

User shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by User, User's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the User, User shall indemnify, reimburse, and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the term and arising as a result of those actions or inactions by User. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if User causes or permits the presence of any Hazardous Substance on the Premises and that results in contamination, User shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. User shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

5. **INSURANCE; CERTIFICATES OF INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required

insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

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

C. **Additional Insureds:** For Commercial General Liability, Auto Liability

and Excess Liability/Umbrella, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

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

H. **Personal Automobile Liability:** User will ensure that volunteers will maintain Personal Automobile Liability insurance with minimum limits of \$100,000 bodily

injury per person; \$300,000 bodily injury per accident; \$50,000 property damage for all vehicles used in performing services under this Agreement. User shall provide proof of Personal Automobile Liability coverage either in the form of an Insurance Certificate or the Policy Declaration Page.

I. **Volunteer Accident and Liability:** If User authorizes or allows volunteers to perform work related to the Program on or in the Premises, then User will first either maintain Volunteer Accident and Liability Insurance in the amount of \$25,000 or obtain from each and every such Volunteer a signed release and waiver of liability waiving and discharging all liability against the City and County of Denver and its appointed and elected officials, agents and employees for any and all claims, causes of action, losses, judgments, liens, costs, demands, or damages that are caused or arise from any injury (including death) to the volunteer or his or her property regardless of the cause(s) of such injury. User will not authorize or allow any volunteers to perform work related to the Program on or in the Premises without first obtaining Volunteer Accident and Liability Insurance or a signed statement of waiver and release.

J. **Additional Provisions:**

(a) For Commercial General Liability and Excess Liability, the policies must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs are in excess of policy limits;
- (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (iii) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (iv) No exclusion for sexual abuse or molestation.

(b) For claims-made coverage:

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

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate

limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

6. **CLEANLINESS**: In the event that food, beverages, or materials are brought onto the Premises or opened or consumed on the Premises, then User shall be responsible for promptly cleaning any crumbs, spills or debris from such food, beverages, or materials and properly disposing of such debris to the satisfaction of the City.

7. **REPAIR AND MAINTENANCE**: User shall keep and maintain the Premises in as good an order, condition and state of repair as was their order, condition and state of repair on the commencement date of this Agreement. In no event and under no circumstances shall the City ever be required to provide, and it shall never be called upon or be responsible to provide, any upkeep, repair, maintenance, betterments or improvements to any part or portion of the Premises.

8. **LIEN PROTECTION**: User shall keep the Premises free and clear from any and all liens or claims of whatsoever type or nature, including mechanic's liens and materialman's liens.

9. **DEFENSE AND INDEMNIFICATION**:

A. User 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 User 's performance or operations in connection with this Agreement or User's use or occupancy of any portion of the Premises, the Building, or any public or private property hereunder, and including acts or omissions of User's officers, employees, representatives, suppliers, invitees, subcontractors and agents ("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 User 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. User'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. User'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. User 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 User under the terms of this indemnification obligation. The User 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.

10. **COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

11. **FIRE OR OTHER CASUALTY:** If any part of the Premises is damaged or destroyed by fire or other casualty, then this Agreement shall be terminated without any right in User to receive any compensation or proceeds of insurance resulting from such fire or other casualty.

12. **VACATION UPON EXPIRATION OR TERMINATION:** User shall vacate the Premises promptly upon the expiration, termination, or cancellation of this Agreement or upon an earlier direction of the Facility Manager.

13. **DAMAGE TO PROPERTY:** The City assumes no responsibility of any

kind for any property placed in the Premises or in the outside areas of the Premises, and the City is hereby released and discharged from any and all claims or liabilities for any loss, injury or damages to User's property that may be sustained by reason of the occupancy of the Premises or the use or occupancy of the Premises under this Agreement, including those claims or liabilities based on negligence or breach of warranty.

14. **REMOVAL OF PROPERTY**: Any property left in the Premises by the User or its invitees, employees, or agents shall be deemed, after a period of forty eight (48) hours from the last time of use of the Premises provided for under this Agreement, to be abandoned and shall become the property of the City and County of Denver.

15. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, User 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.

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

17. **GOVERNING LAW; VENUE**: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders,

or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

18. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** User, its officers, agents, and employees, shall cooperate and comply with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring User from City facilities or participating in City operations.

19. **TOBACCO PRODUCTS:** User and its officers, agents, and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code §24-304 prohibiting smoking in City owned and controlled buildings and facilities, and Denver Executive Order No. 13 dated October 19, 1995, prohibiting the sale or advertising of tobacco products in or on premises or in facilities owned or operated or controlled by the City and County of Denver. User agrees it will prohibit smoking by its employees and agents in or on the premises and will not sell or advertise tobacco products. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and non-commercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities.

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

21. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will

not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

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

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

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

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

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

27. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement shall be

executed in counterparts, each of which shall be deemed to be an original of this Agreement.

28. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** User 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.

END

Signature Pages follow this Page

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

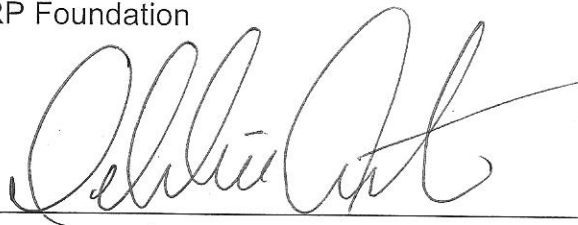
By _____

By _____



Contract Control Number: SOCSV-201310080-00

Contractor Name: AARP Foundation

By: 

Name: Debbie Arment
for Jo Ann Jenkins
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

