AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and **HR RESOURCING, LLC,** a Colorado limited liability company**,** with an address of **10303 East Dry Creek Road, Suite 400, Englewood CO 80112** (the "Contractor").

The parties agree as follows:

1. DEFINITIONS: The capitalized terms used in this Agreement and any and all exhibits hereto, will have the meanings given such terms in the paragraph in which such terms are parenthetically defined. The meanings given to terms defined will be equally applicable to the singular and plural forms of such terms. In addition, the following capitalized terms shall have the following meanings:

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

B. "Subcontractor" means an entity, other than a Contractor, that furnished or furnishes to the City or the Contractor services or supplies (other than standard office supplies, office space or printing services) pursuant to this Agreement.

C. "Federal Government" shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the expenditure of Federal Funds which are or may hereafter become obligated under this Agreement.

D. "Federal Law" shall include any laws of the United States of America which govern funds which are or may after become obligated under this Agreement. Federal Law may include, but is not limited to, federal laws set forth in Article 23 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.

E. "Program" shall mean any and all authorized services and activities necessary to administer the Agency's responsibilities concerning youth and adult employment and training programs.

F. "State Government" shall include representatives of the agency, department or office of the State of Colorado which is or may hereafter be empowered to promulgate, review or enforce rules governing the expenditure of State funds which are or may hereafter become obligated under this Agreement.

G. "State Law" shall include any laws of the State of Colorado which govern funds which are or may become obligated under this Agreement. State Law

includes, but is not limited to, the state laws set forth this Agreement, as well as amendments thereto which may currently or hereafter be in effect.

2. COORDINATION AND LIAISON: The Contractor will fully coordinate all services hereunder with the City acting by and through the Director of Workforce Development, Office of Economic Development (the "Director" and the "Agency" respectively, or the Director's Designee.

3. SERVICES TO BE PROVIDED: As the Director instructs, the Contractor will provide comprehensive payroll services (the "Services") as set forth on Exhibit A, the Contractor's Work Statement, to the City's satisfaction. The Contractor is ready, willing, and able to provide the services required by this Agreement. The Contractor shall faithfully perform the services in accordance with the standards of care, skill, training, diligence, and judgment provided by competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

4. TERM:

A. Initial Term. The initial term of this Agreement is from January 1, 2014, to December 31, 2014, (the "Initial Term") unless earlier terminated in accordance with the Agreement.

B. Renewal Terms. The City shall have the unilateral option to renew and extend the Initial Term for up to four (4) additional one-year terms, on the same terms and conditions, including pricing, by written amendment to this Agreement. If the City exercise its option, the renewal terms will be as follows:

First Renewal Term	January 1, 2015, to December 31, 2015
Second Renewal Term	January 1, 2016, to December 31, 2016
Third Renewal Term	January 1, 2017, to December 31, 2017
Fourth Renewal Term	January 1, 2018, to December 31, 2018

In no event shall the full term of this Agreement, including all authorized renewal terms, extend beyond December 31, 2018.

The City's option to renew shall be exercised by the act of City Council appropriating funds for the payment of services for another year for the amounts set forth in Article 5 below. If an appropriation and resulting encumbrance for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for such year, and this Agreement shall terminate on the expiration of the then current term. In the event the City determines not to appropriate, the Director shall as a courtesy provide thirty (30) days prior notice of the termination; however, failure to notify shall not extend the then current term of this Agreement.

5. COMPENSATION AND METHOD OF PAYMENT:

A. Maximum Contract Amount. The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement an amount not to exceed **Five Million Dollars and 00/100 Cents ($5,000,000.00)** (the "Maximum Contract Amount") in accordance with the administrative fee schedule contained in Exhibit B. The Contractor will be paid on a reimbursement basis except for any advance payments permitted by the Agreement.

B. Budgets. The budget for the Initial Term of this Agreement, and any subsequent Renewal Terms, will not exceed the following amounts:

Initial Term	**$1,000,000.00**
First Renewal Term:	**$1,000,000.00**
Second Renewal Term:	**$1,000,000.00**
Third Renewal Term:	**$1,000,000.00**
Fourth Renewal Term:	**$1,000,000.00**

C. Reimbursable Expenses: Except as set forth on **Exhibit B**, there are no reimbursable expenses allowed under the Agreement.

D. Expenditure Reconciliation Reports. The Contractor shall prepare and submit to the City, within 30 days of prior month of each month following the date of commencement of this Agreement, and continuing through the month following the date of termination of this Agreement, or within fifteen (15) days of the effective date early termination of this Agreement, a report (the "Contractor's Expenditure Reconciliation Report") setting out in detail the following information: 1) the amount of all payroll expenditures actually made by the Contractor during the term of the Agreement; and 2) any unexpended funds carried forward or advanced to the Contractor by the City in accordance with the terms hereof. The Expenditure Reconciliation Report shall be certified to be correct by an authorized representative of Contractor and shall reference the Contract Control number of this Agreement as designated below on the City's signature page. If the Expenditure Reconciliation Report reveals that Contractor did not disburse all funds previously forwarded by the City, if any, then Contractor shall credit all such excess amounts to the very next succeeding payment, if any, provided by the City under this Agreement or if no further payments are made by the City then Contractor shall return any and all unspent funds to the City within fifteen (15) calendar days after the date of delivery of the Expenditure Reconciliation Report. The Expenditure Reconciliation Report shall be supported with official documentation evidencing, in detail, the nature and propriety of the charges including time sheets, payrolls, receipts and any other document which may be pertinent in light of the nature of services to be performed under this Agreement and showing that services were performed within the period for which the payment is requested. Contractor shall provide the City with a copy of any and all such documentation upon request at no additional charge to the City.

E. Modifications to Exhibit A and/or Exhibit B: Exhibit A and Exhibit B may only be modified by the written approval of the Director or the Director's

designee, if in the sole judgment of the Director or the Director's designee such modification is reasonable and appropriate. However, no such approved budget modifications will alter the Maximum Contract Amount. Any modification to Exhibit A or Exhibit B shall not take effect until approved in writing. Any modification to Exhibit A and/or B agreed to by the parties that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by both parties in the same manner as this Agreement.

F. Budget "Carry Forward". If the City exercises its option to renew the Initial Term, or any Renewal Term, then any unused amounts maintained by the Contractor may be carried forward by the Contractor for payroll services in a subsequent renewal term. At such time, if ever, that the unexpended funds of the Contractor, as evidenced by the Monthly Expenditure Report(s) referenced in section 5. D., exceed by 100% the anticipated expenditures of the Contractor in any ensuing month, the City may upon written notice to the Contractor reduce subsequent payments accordingly. Furthermore, if at such time, if ever, the Contractor holds unexpended funds from the City and there are no subsequent periods permitted by this Agreement, to continue services, then the Contractor will return such funds to the City without prior written notice from the City within fourteen (14) days of the date of expiration of the then current Term.

G. Maximum Contract Amount: Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed the Maximum Contract Amount. The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A.** Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.

The City's payment obligation, whether direct or contingent, extends only to funds received and budgeted for the Program, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

H. <u>Program Funds Contingency</u>. All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of State or City general funds for the purposes of the Program. In the event that funds made available for the Program, or any part thereof, are not awarded to the City or are reduced or eliminated by the City, then the City may reduce the total amount of compensation to be paid to the Contractor by revising Exhibits A and B or it may terminate this Agreement. However, the City shall pay the Contractor for all work performed prior to any revision or termination of this Agreement.

I. Advancements. Only to the extent permitted by this Agreement, any monies that are made available on an advance payment basis for estimated payroll disbursement needs will be subject to the following provisions:

(1) Cash advances should be limited to immediate cash needs, and may not be made less than sixty (60) days prior to the expiration date of this Agreement.

(2) The request for advance shall be accompanied by a detailed estimate of costs to be disbursed during the period covered by the advance.

(3) Advance payments are limited to the total amount specified in the projected budget and could be limited or eliminated at any time by the City should the Contractor present a programmatic or financial risk to the City.

J. Funds held in trust. The funds to be provided under this Agreement, as identified on Exhibit C, consist of funds for participant wages and fringe benefits ("Participant Payroll Funds") and funds for Contractor's administrative fees ("Contractor's Fee"). The Contractor will have no right, title, or interest in any Participant Payroll Funds provided to under this Agreement in advance, if so provided. If Participant Payroll Funds are advanced to the Contractor, Contractor will hold all advanced funds in trust in a bank account designated solely for Participant payroll purposes only (the "Payroll Account"). The Contractor will comply with any other restrictions designated by the City concerning the establishment and use of the Payroll Account and the use of Participant Payroll Funds. Upon the City's prior written notice, the Contractor will deliver to the bank providing the Payroll Account an authorization signed by the Contractor stating that:

(1) The Payroll Account is maintained pursuant to an agreement with the City;

(2) The Contractor authorizes the bank to forthwith comply with any written request made by the City to furnish any bank statements, canceled checks, or other information in the possession or control of the bank relating to the Payroll Account; and

(3) The Contractor authorizes the bank to forthwith comply with any written requests by the City to transfer the balance of funds remaining in the account as designated by the City upon the expiration or earlier termination of this Agreement. If such request is made, the Contractor shall submit to the City a written list of any and all outstanding checks and unpaid expenses, within sixty (60) calendar days from the expiration date or effect date of termination of this Agreement.

The Contractor will deliver to the City a copy of the authorization with the signature of the authorized bank representative indicating that the authorization has been received and accepted by the bank. The Contractor will notify the City in writing within thirty (30) calendar days of the date of execution of this Agreement, of the person

authorized by the Contractor to receive, handle, or disburse monies under this Agreement.

K. Recovery of incorrect payments. The City has the right to recover from the Contractor any and all incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation including but not limited to applying a deduction from subsequent payments under this Agreement or other means of recovery by the City as a debt due to the City or otherwise as provided by law. If, as a result of any audit or program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Contractor shall be responsible to indemnify, reimburse, and save harmless the City, its officers, agents and employees, from and against any and all disallowed costs.

L. Additional Program Conditions. If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive order, rules and regulations, or other written policy instrument, the Contractor will comply with all such additional conditions. If the Contractor is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to the Contractor of any unearned funds. If the City withholds payment for this reason, the City shall advise the Contractor and specify the actions that must be taken as a condition precedent to the resumption of payments.

M. Return of unexpended funds. In the event the City determines that the Contractor possesses an unexpended balance of funds from any advance payments made to the Contractor, then all such unexpended advanced funds will be returned to the City within ten (10) days written notice to the Contractor. The City's acceptance of any such amounts shall not constitute a waiver of any claim that the City may otherwise have arising out of this Agreement.

N. No duplication of funds for same services. The monies provided for and received under this Agreement are the only and sole funds received by the Contractor from or through the City and County of Denver for payment of the Services provided under this Agreement. In the event the Contractor shall receive any other monies from or through the City or any other party in order to provide the Services, then the compensation received hereunder may be reduced by such amount or amounts at the sole option of the City. The Contractor shall report promptly, in writing to the Director, all amounts received upon receipt.

6. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the

City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

7. TERMINATION OF AGREEMENT:

A. The City has the right to terminate the Agreement with cause or without cause upon twenty (20) days prior written notice to the Contractor. However, nothing herein shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Director.

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

C. The Contractor may terminate this Agreement by written notice to the City in the event that the City materially breaches this Agreement and fails to cure such breach within thirty (30) days of written notice specifying the breach.

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

E. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

8. EXAMINATION OF RECORDS:

A. Any authorized representative of the City, including the City Auditor or his or her representative, or any duly authorized representative of the State of Colorado or the federal government will have the right to access and examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of six (6) years after the final payment under the Agreement or expiration of the applicable statute of limitations whichever is longer.

B. The Contractor will keep true and complete records of all business transactions under this Agreement, will establish and maintain a system of bookkeeping satisfactory to the City's Auditor and give the City's authorized representatives access during reasonable hours to such books and records, except those matters required to be kept confidential by law. The Contractor agrees that it will keep and preserve for at least six (6) years all evidence of business transacted under this Agreement for such period.

C. The Contractor acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget including, but not limited to, all applicable laws, rules, regulations, policy statements, and guidance issued by the Federal Government (including the United States Office of Management and Budget), regarding audit requirements.

9. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event shall any payment or other action by the City hereunder constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the Contractor. No payment, or other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach of any term of Agreement constitutes a waiver of any other breach.

10. INSURANCE:

A. If the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.,* C.R.S., as amended ("Act"), the Contractor shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Contractor's liabilities under the Act. Proof of such insurance shall be provided upon request by the City.

B. If the Contractor is not a "public entity" then, the following general conditions apply:

(1) <u>General Conditions:</u> 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 stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 and to the Office of Economic Development-Workforce Development, Attn: Contract Compliance Technician, 201 West Colfax Avenue, Dept. 1011, Denver, CO 80202 by certified mail, return receipt requested. Such written 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." Additionally, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. 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.

(2) 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 D, 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.

(3) 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.

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

(5) 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.

(6) 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.

(7) 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.

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

(9) Professional Liability: Contractor shall maintain limits of $1,000,000 for each claim, and $1,000,000 aggregate limit for all claims.

(10) Crime/Employee Dishonesty: Contractor shall maintain coverage limits of no less than the maximum amounts of City funds advanced to the Contractor and in Contractor's Care, Custody and Control at any one time.

(11) 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 in excess of policy limits;

(iii) A severability of interests, separation of insureds or cross liability provision; and

(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(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.

11. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse, and hold harmless City, its appointed and elected officials, agents and employees 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 the Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

C. Contractor will defend any and all Claims which may be brought or threatened against City, its appointed and elected officials, agents and employees, and will pay on behalf of City, its appointed and elected officials, agents and employees, 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, its appointed and elected officials, agents and employees, 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 Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

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

13. ASSIGNMENT AND SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining the Director'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 Director 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 Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

Services subcontracted under this Agreement shall be specified by written agreement and shall be subject to each applicable provision of this Agreement and any and all applicable Federal and State Laws with appropriate changes in nomenclature in referring to such subcontract. The Contractor shall submit proposed subcontract agreements to the Director for the Director's review and approval. Such consent of the City obtained as required by this paragraph shall not be construed to constitute a determination of approval of any cost under this Agreement, unless such approval specifically provides that it also constitutes a determination of approval of such cost.

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

15. NO AUTHORITY TO BIND CITY TO CONTRACTS: The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the D.R.M.C.

16. 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 or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. 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. The Agreement is, and any amendments thereto will, be binding upon the parties and their successors and assigns. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

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

18. CONFLICT OF INTEREST:

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

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

19. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

Director of Workforce Development or Designee
Office of Economic Development
City and County of Denver
201 West Colfax Avenue, Dept. 1011
Denver, CO 80202

With a copy of any such notice to:

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

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon

deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

20. DISPUTES: All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b)-(f). For the purposes of that procedure, the City official rendering a final determination shall be the Director as defined in this Agreement.

21. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code. The Charter, Revised Municipal Code and Executive Orders of the City and County of Denver are expressly incorporated into the Agreement. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

22. COMPLIANCE WITH APPLICABLE LAWS: The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations, and codes of the United States, State of Colorado, and with the Charter, ordinances, regulations, policies, and Executive Orders of the City and County of Denver whether or not specifically referenced herein. Any references to specific federal, state, or local laws or other requirements incorporated into this Agreement are not intended to constitute an exhaustive list of federal, state, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the services referenced in this Agreement and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Compliance with all such statutes, regulations and other documents is the responsibility of the Contractor. Contractor shall ensure that any and all Subcontractors also comply with applicable laws. In particular, and not by way of limitation, the services shall be performed in strict compliance with all laws, executive orders, ordinances, rules, regulations, policies and procedures prescribed by the City, the State of Colorado, and the United States Government, and the following additional federal requirements:

A. The general terms and conditions contained in **Exhibit C** are general in scope and may contain requirements covering conditions that may not be encountered in the performance of services under the Contract and which, for this reason, are not necessarily applicable thereto. Where any stipulation or requirement set forth therein applies to any such non-existing condition and is not applicable to the services under this Agreement, and the City so determines in writing, such stipulation or requirement shall have no meaning relative to the performance of such services.

B. Any and all Grant Awards, Contracts, or other Agreements governing this Agreement;

C. Any and all Requests for Proposals, or portions thereof, issued by the City for purposes of this Agreement as designated by the Director;

D. All applicable policies, procedures, information memoranda, Program guidance, instructions or other written documentation issued by the federal government, State of Colorado, or the City and provided to the Contractor concerning the Program or the expenditure of Federal Funds;

E. All circulars of the U.S. Office of Management and Budget ("OMB") including but not limited to A-133.

F. Pass-Through Of City Obligations Pursuant To The Applicant Verification Statute:

(1) This 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 Agreement.

(2) The Contractor shall verify the lawful presence in the United States, of each natural person eighteen (18) years of age or older (the "Applicant"), who applies for Federal, State or Local Public Benefits ("Benefits") conferred pursuant to this 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 E 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. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

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

B. The Contractor certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

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

24. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the Contractor 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 Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

25. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 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 barring the Contractor from City facilities or participating in City operations.

26. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. Confidential Information: The Contractor acknowledges and accepts that, in the performance of all work under the terms of this Agreement, the Contractor will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City ("City Proprietary Data"); (2) confidential information pertaining to persons receiving services from the Agency ("Client Data"), or (3) confidential proprietary information owned by third parties ("Third Party Proprietary Data"). For purposes of this Agreement, City Proprietary Data, Client Data, and Third Party Proprietary Data shall be referred to collectively as "Confidential Information". The Contractor agrees that all Confidential Information provided or otherwise disclosed by the City to the Contractor or as otherwise acquired by the Contractor during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall limit access to any and all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. The Contractor shall exercise the same standard of care to protect any and all Confidential Information as a reasonably prudent contractor or Contractor would to protect its own proprietary or confidential data. Contractor acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time Contractor's access to electronic Confidential Information to "read-only" access or "limited" access as such terms are designated by the Manager.

The Contractor agrees to comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all Client Data that include protected medical records or protected information. The Contractor shall establish and submit to the City, within fifteen (15) days of the City's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of any protected medical records or protected information to which the Contractor has access. In the event that the Contractor is required to access Client Data that include protected medical records from a third party provider or is required to provide Client Data, including protected medical records to the City for purposes of monitoring and evaluating the Contractor's performance under this Agreement, then the Contractor agrees to fully coordinate with OED-WD personnel and the client in order to obtain any necessary consent forms, authorization forms, or release forms.

(1) Use of Confidential Information: Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing access to Confidential Information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Manager.

(2) City Methods: The Contractor agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Contractor or provided by the City in connection with this Agreement shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to Confidential Information, that: (a) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Manager; (b) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (c) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(3) Employees and Subcontractors: The requirements of this provision shall be binding on the Contractor's employees, agents, officers and assigns. The Contractor warrants that all of its employees, agents, and officers who designated to provide services under this Agreement will be advised of this provision. All requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement.

(4) Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Contractor acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

B. Open Records: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. (2012), and that in the event of a request to

the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify, reimburse, and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

C. Data Bases the Property of the City: Notwithstanding any other term or condition of this Agreement, all documents, reports, plans, electronic databases and electronic files or other written products created for the use of the City under this Agreement shall be the exclusive property of the City for all purposes and shall be readily accessible by or provided to City for municipal purposes in such manner and format as reasonably designated by the Director.

27. INTELLECTUAL PROPERTY RIGHTS:

A. Copyrights Unless otherwise prohibited by Federal Law, the City and Contractor tend that all property rights to any and all records, case files, databases, materials, information, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, studies, reports, negatives, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, "Materials"), shall be the sole and exclusive property of the City. The Contractor shall disclose all such items to the City upon completion, termination, or cancellation of this Agreement. The Contractor shall not use, willingly allow another to use, or cause such items to be used for any purpose other than for the performance of the Contractor's duties and obligations under this Contract without the prior, express written consent of the City. To the extent permitted by the U.S. Copyright Act, 17 U.S.C. §101, *et seq*., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all rights, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

B. Patent Rights. If any improvement, or discovery of the Contractor, or any of its third party contractors, is conceived or first actually reduced to practice during the term or course of this Contract, and if such is patentable, then the Contractor

shall immediately notify the City in writing of such invention, improvement, or discovery and provide the City with a complete written report on that invention, improvement or discovery. The rights and responsibilities of the Contractor, third party contractors of the Contractor, and the City with respect to such invention, improvement, or discovery shall be determined in accordance with all applicable Federal Laws, regulations, policies or waivers thereof. The Contractor shall include the requirements of this paragraph in its third party contracts, if any, for the performance of work under this Agreement.

C. 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 copyright owner. The Contractor shall 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 it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of services. None of the above in this subparagraph applies if the Contractor uses patented devices, materials or processes specified by the City.

D. Contractor acknowledges that pursuant to Federal Law, the Federal Government reserves a royalty-free, non-exclusive 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.

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

29. 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 the Agreement or any provisions thereof were prepared by a particular party.

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

limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

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

32. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement and any Order, time is of the essence.

33. CITY EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

34. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: This Agreement consists of Articles 1 through 36, which precede the signature page and the following attachments which are incorporated herein and made a part hereof by reference:

A. Work Statement – Exhibit A;
B. Budget – Exhibit B;
C. General Terms and Conditions – Exhibit C:
D. Proof of Insurance – Exhibit D

In the event of an irreconcilable conflict between a provision contained in Articles 1 through 36, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Articles 1 through 36 (Agreement)
Exhibit C (unless the City specifically notifies the Contractor in writing that a provision of Exhibit A prevails over this Agreement)
Exhibit A – Work Statement
Exhibit B – Budget
Exhibit D – Proof of Insurance

35. COUNTERPARTS OF THIS AGREEMENT: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

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

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

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Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By_____

_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By_____

By_____

By_____

Contract Control Number: OEDEV-201313723-00

Contractor Name: HR RESOURCING, LLC

By: _____

Name: John D Smith
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

STATEMENT OF WORK
HR RESOURCING, LLC
COMPREHENSIVE PAYROLL SERVICES FOR
OFFICE OF ECONOMIC DEVELOPMENT

1.0 SERVICES

1.1 This Agreement will provide payroll/stipend services and administrative support as set forth by the Office of Economic Development (OED)**. HR Resources, LLC** (hereinafter referred to as "The Contractor") shall provide the identified services for the City and County of Denver under the auspices of the Office of Economic Development - Workforce Development (OED-WD). The Contractor is authorized to act as the employer-of-record and provide payroll/stipend services to participants of OED-WD employment and training programs.

2.0 OBJECTIVES

2.1 The Contractor will provide employer-of-record services for all participants in programs funded through the OED-WD Employment and Training Programs.

2.2 The Contractor will provide payroll/stipend services to participants in Programs funded through the OED-WD/Program Employment Program.

2.3 The Contractor shall keep in full force and effect during the term of the agreement Workers' Compensation insurance covering each and every participant who receives services under this Agreement in accordance with the Workers' Compensation Act of Colorado, Articles 40-47 of Title 8 of the Colorado Revised Statutes, as may be amended from time to time. In particular, and not by way of limitation, the Contractor is hereby notified of, and agrees to comply with, the requirements contained in C.R.S. § 8-40-202 (a) (IV) – (VI). A copy of C.R.S. §8-40-202 (a) (IV) – (VI) is attached to this Exhibit A beginning on page 10.

2.4 The OED-WD acknowledges that all participants who will receive stipends under this Agreement will be working in a classroom training environment at all times.

2.5 The Contractor assumes full responsibility for the payment of wages and payroll taxes and the collection, withholding, reporting, and submission of applicable taxes for every participant enrolled in OED-WD Employment and Training Program.

2.6 Contractor assumes full responsibility for payment of stipends to participants designated by OED. Stipends will be provided in lieu of wages for these participants. Stipends will be set amounts, as designated by OED, and provided for completion of classroom training.

Stipends will be paid in fixed amounts over a defined period of time. Stipends will not exceed applicable Colorado minimum wage rate and will be considered taxable income to all participants who receive services under this Agreement. .

Notwithstanding any other term to the contrary contained in this Statement of Work, participants designated to receive stipends will be considered trainees and will not be considered as employees. The preceding sentence does not, and will not, relieve the Contractor of its obligations under the Agreement or this Statement of Work, including but not limited to all obligations to provide Workers' Compensation Insurance for all participants receiving services under this Agreement.

2.7 The Contractor assumes full responsibility for providing Workers' Compensation coverage based on participant job duties and, is subject to the terms and limitations of Contractor's Workers' Compensation coverage contained in the Agreement and the Workers' Compensation Act of Colorado, Articles 40-47 of Title 8 of the Colorado Revised Statues.

2.8 The Contractor will be reimbursed for all actual costs of obtaining and maintaining Workers' Compensation coverage for all participants not to exceed the budgeted line item amount specified on Exhibit C to this Agreement. Contractor understands and agrees that all costs and expenses incurred by the Contractor in obtaining Workers' Compensation coverage for participants receiving services under this Agreement are included in the Maximum Contract Amount set forth in the Agreement.

2.9 Contractor will provide monthly Workers' Compensation insurance costs reports ("Monthly Workers' Compensation Cost Report"), to OED/FMU setting forth the name, position, wage, and actual cost incurred for Workers' Compensation coverage for each participant. The Monthly Workers' Compensation Cost Report will include sufficient backup documentation such as payroll records, stipend payment journals, and other documentation necessary to support each report, as well as any other related information reasonably requested in writing by the City. Each Monthly Workers' Compensation Cost Report will be submitted with Contractor's periodic invoice.

2.10 The Contractor will submit to OED/FMU, within thirty (30) days of the date of expiration or earlier termination of this Agreement, a detailed reconciliation report setting forth in detail all costs and expenses incurred by the Contractor to obtain Workers' Compensation Insurance for each job and training activity and the amount of variance from Contractor's preliminary report of costs and expenses ("Workers' Compensation Reconciliation Report"). The Workers' Compensation Reconciliation Report will include any other information reasonably requested by OED.

2.11 If the Contractor's Workers' Compensation Cost Reconciliation Report shows, or if the City otherwise determines that Contractor's actual costs for Workers' Compensation Insurance coverage are less than the amount of funds previously provided to the Contractor based on Contractor's Monthly Workers' Compensation Cost Report, then the Contractor will return any and all identified overpayments to the City within thirty (30) days of the date of the City's written notice to the Contractor. Payment will be made payable to the Manager of Finance and delivered to the attention of OED/FMU.

2.12 If the Contractor's Workers' Compensation Cost Reconciliation report, shows, or if the City otherwise determines that the Contractor's actual costs for Workers' Compensation Insurance coverage are more than the amount of funds previously provided to the Contractor based on Contractor's Monthly Workers' Compensation Cost Report, then OED will provide payment for the difference owed to the Contractor.

3.0 OPERATIONAL REQUIREMENTS

3.1 <u>Payroll/Stipend/I-9 Timelines</u>

3.1.1 Contractor will ensure all program participants complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) in accordance with OMB No. 1615-0047.

3.1.2 A Payroll/Stipend Schedule will be developed jointly between the Contractor and OED-WD Employment and Training Program staff prior to the first payroll.

3.1.3 The Payroll/Stipend Schedule shall include pay dates, the submission dates that OED-WD will transmit payroll/stipend data to the Contractor, and all payroll/stipend start and end dates.

3.1.4 Upon receipt of payroll/stipend information provided by OED-WD, the Contractor will timely verify wages/stipend compensation earned, process and issue payroll/stipend checks, determine, withhold, report, and submit all applicable local, state, and federal payroll taxes, and any other payroll-related payments connected to the employment of each participant.

3.1.5 Contractor will ensure all participant payroll earnings are issued per payment method identified, including check, direct deposit or Visa Pay Card.

3.1.6 The Visa Pay Card issued to participants will offer usage as a Visa Credit card without fees assessed. The Visa Check Card will be offered to participants without fees with the exception of Lost/Replacement and ATM usage outside of ATM identified network. Contractor will provide OED with a list of the available ATM sites.

3.2 **Data Collection and Payroll/Stipend Processing**

3.2.1 Data collection and payroll/stipend processing procedures will be developed jointly between the Contractor and OED-WD Employment and Training Program staff.

3.2.2 In the event that the Contractor's payroll/stipend applications are not available, the Contractor will provide for an alternative process that will eliminate any possibility of disruption in payroll/stipend services. The Contractor will provide OED-WD/Program Services with the timecard data entry.

3.2.3 No individual will be added to the payroll/stipend register by the Contractor until the Contractor receives the OED-WD approved employment documentation.

3.3 **Reports**

3.3.1 OED-WD will require access to or require the Contractor to submit to OED-WD the following payroll reports:

- Monthly and Cumulative Payroll Balance Sheets
- Monthly and Cumulative Payroll Register/Journal
- Monthly and Cumulative Stipend Balance Sheets

3.3.2 All reports must be categorized by Program (in-school and out-of-school, etc.,), Project and Case Manager.

3.3.3 Pay registers categorized by program will be submitted to OED-WD with the Contractor payroll/stipend invoice.

3.4 **Documentation**

3.4.1 The Contractor shall maintain complete employment files in accordance with all applicable federal, state, or local laws, which at a minimum will contain a completed I-9 and copies of back-up documentation, and a completed W-4 for every assigned participant.

3.5 **W2's and Taxes**

3.5.1 The Contractor shall be responsible for withholding all applicable Federal, state and local taxes for every participant. The Contractor shall be timely in making all tax payments to the appropriate federal, state, and local agency.

- FICA Individual Withholding
- FICA Employer Share
- FUTA and SUTA Withholding
- Federal and State Withholdings
- Local Occupational Privilege Tax

3.5.2 Occupational Privilege Tax (Head Tax) is applicable only for worksites located in the City and County of Denver. This tax shall be collected by the Contractor, if applicable, at a rate of $5.75 per month per participant and remitted to the City and County of Denver at the end of the year. This tax applies to participants who earn $500 or more in each month. This tax will apply to all participants who work in the City and County of Denver and will include participants who are exempt from federal and state withholdings.

3.5.3 The Contractor will be responsible for processing and mailing W2s timely to every participant OED-WD Employment and Training Program participant.

3.5.4 The Contractor shall keep in full force and effect during the term of the agreement workers' compensation insurance covering the participant enrolled in the program.

3.5.5 The Contractor will correct, within forty-eight (48) hours, any tax withholding, reporting, or payment errors, payroll computation errors, and any other identified errors.

3.5.6 The Contractor guarantees that sufficient funds remain or credit will be available in its Payroll/Stipend Account in order to ensure that sufficient funds will be available to make payment for all paychecks, wages, stipends and benefits. Contractor further guarantees that no check issued under this Agreement will bounce or be denied payment due to insufficient funds in the payroll Account referenced in Section 5.D of the attached contract. In the event any such check bounces or is denied payment due to insufficient funds in the Payroll/Stipend Account, the Contractor will, as its sole cost and expense, within forty-eight (48) hours notice from OED-WD and a check payee (that the check bounced or was dishonored), either: i) notify OED-WD and the payee in writing that sufficient funds are available for representment of the check; or, ii) issue a replacement check with good and sufficient funds from the Payroll/Stipend Account. Contractor will further be responsible for any and bank fees charged to payees for dishonored checks.

3.6 **Lost or Stolen Checks / Special Checks**

3.6.1 The Contractor will cancel any reported lost or stolen check within twenty-four (24) hours. These requests will be made in writing via e-mail from OED-WD to the Contractor. Contractor will issue replacement checks within one week of the date of check cancellation.

3.6.2 Special check requests will be made in writing by OED-WD and must be sent within one week of the request.

3.7 **Program Coordination and Linkages**

3.7.1 The Contractor shall communicate with OED-WD Employment and Training program partners to ensure appropriate, consistent, prompt and efficient provision of services coordination and reporting.

3.7.2 When requested by OED-WD, the Contractor shall actively participate in any forums, meetings and/or planning sessions either in person or by conference call.

3.7.3 The Contractor shall provide OED-WD with written guidance on all data entry requirements. In addition, the Contractor will provide

training to OED-WD staff, in person or via conference call, in order to ensure that OED-WD has the information necessary to effectively utilize all of Contractor's payroll systems.

3.7.4 OED-WD will provide forty-eight (48) hours advance written notice to the Contractor regarding any employee that has terminated employment prior to completion of program.

4.0 WORKPLACE GUIDELINES

Contractor will comply with the Colorado Department of Labor and Employment (CDLE); PGL - WIA–Guidelines for Work Experience Opportunities and Participant Incentives. Contractor acknowledges receipt of a copy of the PGL-WIA Guidelines. Contractor consents and agrees to the following:

4.1 Fair Labor Standards Act (FLSA)

4.1.1 The provisions of the FLSA apply to all participants engaged in subsidized employment, including all Federal/State hourly minimum wage laws.

4.2 Non-Discrimination and Equal Opportunity

4.2.1 Federal and state requirements prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. An organization that accepts a participant should be aware of this requirement, and must ensure that agency services are provided to all individuals that are eligible, and not discriminate based on circumstances that might limit the population served. For example, a faith-based organization that operates an emergency food distribution center must serve all individuals that are eligible to receive those services and not discriminate based on a religious preference.

4.3 Workers' Compensation.

4.3.1 Contractor will ensure that all program participants/work experience participants are covered by Workers' Compensation.

4.4 Displacement of Employees

4.4.1 Participants engaged in subsidized employment through the program should not unfavorably impact current employees in the workplace. Contractor will carefully consider the working

environment and impacts of placing a participant in a position where a layoff or displacement may potentially occur (or has already occurred), particularly in seasonal positions. More specifically, participants will not be allowed to be placed in a subsidized employment position when:

- A regular employee is on layoff from the same or any substantially equivalent job; or the employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with a program participant; or the job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers.

- The placement results in a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits, of any currently employed employee (as of the date of the participation).

- The placement impairs existing contracts for services or collective bargaining agreements. When a program or activity authorized under funded program would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

4.5 Sectarian Placements

4.5.1 Participants in a paid work experience must not be employed to carry out the construction, operation, or maintenance of any part of a facility that is intended for sectarian instruction or as a place for religious worship. Work experience placements are allowable in faith-based community organizations, as long as the participant does not engage in inherently religious activities, such as religious worship, instruction, or proselytizing.

4.5.2 Participants should only be placed in faith-based organizations that do not discriminate against a person seeking help who is eligible for services. For example, a religious organization that runs an emergency shelter must not serve only persons of that faith and turn away others.

5.0 ADMINISTRATIVE REQUIREMENTS

5.1 Compensation and Methods of Payment

5.1.2 The Contractor shall submit an invoice and payroll/stipend reports, categorized by program, as back-up documentation with the reimbursement request.

5.1.3 The Contractor shall submit the final invoice for services within **15 days** after the end of the contract.

5.1.4 In the event that the Contractor is provided a cash advance, the remaining balance from advance funding, will be returned to OED-WD by the Contractor **fifteen (15) days** after the end of the contract.

6.0 Close-Out

The Contractor shall prepare and submit the required OED-WD contract closeout reports within **sixty (60)** days of the expiration date of this contract (or such other period designated by the City if this Agreement is terminated sooner). OED-WD reserves the right to automatically closeout the contract after sixty (60) days, if there are no disallowed cost pending. Once the contract close-out procedure has been completed, no further reimbursements will be allowed. Any outstanding checks in the Contractor's possession or control will be returned to OED-WD at the time Contractor submits closeout reports.

7.0 Records Retention

The Contractor shall provide employment documentation to OED-WD if requested. If OED-WD does not request the employment documentation from the Contractor, the Contractor must retain employment files for **six (6) years** after the contract end date or until resolution of any pending audit and shall permit access thereto at no cost to the City. In the event that the Contractor cannot continue to maintain and store this documentation, original employment files will be submitted to OED-WD in accordance with OED-WD Policy Series.

8.0 Cultural Competency

The Contractor shall implement mechanisms to foster and demonstrate its commitment to diversity and inclusion of people from different

backgrounds. Contractor may demonstrate this “inclusiveness” through representation of board members, staff, mentors and/or volunteers.

9.0 Background Checks

Contractor must have a written Background Check Policy that will be available to OED for review upon request. Contractor shall be responsible for conducting National Background Investigations on all new and current staff employed by Contractor who has direct contact with youth or the possibility of direct contact with youth. A copy of the background check must be kept in the employee’s personnel file and available to OED for review during the monitoring process. Contractor must inform OED of any changes in employee background information related to any arrests or charges since the employees hire date. Contractor shall conduct subsequent National Background Investigations on a yearly basis. The following convictions/pending charges will automatically preclude any such employee’s salary from being reimbursed by OED funding:

- Any type of Felony conviction.
- Misdemeanor convictions related to crimes against a child including, but not limited to child abuse or sex abuse.
- Drug convictions within the last three (3) years.
- Any type of Violent Offenses.”

C.R.S. 8-40-202

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 8. LABOR AND INDUSTRY
LABOR II - WORKERS' COMPENSATION AND RELATED PROVISIONS
ARTICLE 40.GENERAL PROVISIONS
PART 2. DEFINITIONS

C.R.S. 8-40-202 (2013)

8-40-202. Employee

(1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or a designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of the cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for service rendered as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option

is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firefighters or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 47 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any person who, as part of a rehabilitation program of the social services department of any county or city and county, is placed with a private employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of such private employer. Any person who receives a work experience assignment to a position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any private for profit or any nonprofit agency pursuant to the provisions of part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, private for profit or nonprofit agency, or school district to which said person is assigned or, if so negotiated between the county and the entity to which the person is assigned, of the county arranging the work experience assignment. Any person who receives a work experience assignment to a position in any federal office or agency pursuant to part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the county arranging the work experience assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents shall be based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-40-301 (3) and section 8-40-302 (7) (a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial school or college sponsoring such training or rehabilitation program unless the following conditions are met, in which case the placed person shall be deemed an employee of the employer with whom he or she is placed:

(A) The sponsoring entity and the employer agree that the employer shall cover the placed person under the employer's workers' compensation insurance;

(B) The employer does in fact insure and keep insured its liability for workers' compensation as

provided in articles 40 to 47 of this title and does in fact cover the placed person under such insurance; and

(C) With respect to agreements between sponsoring entities and employers entered into after April 1, 1991, the employer has been provided with notice of the provisions of this subparagraph (IV) and of subparagraphs (V) and (VI) of this paragraph (a).

(V) In the event a person placed with an employer is deemed an employee of the employer pursuant to subparagraph (IV) of this paragraph (a), the sponsoring entity shall not be subject to any liability for or on account of the death of or personal injury to the person so placed. In the event such person is deemed an employee of the sponsoring entity pursuant to the said subparagraph (IV), the employer shall not be subject to any liability for or on account of the death of or personal injury to the person and shall not be required to carry workers' compensation insurance or to pay premiums for workers' compensation insurance with respect to the person.

(VI) The rate of compensation for a person placed pursuant to subparagraph (IV) of this paragraph (a) if accidentally injured or, if killed, for dependents of such person shall be based upon the wages normally paid in the community in which such person resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which the person is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or death.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 47 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance of their respective duties.

(2) (a) Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation.

(b) (I) To prove that an individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the

individual and the person for whom services are performed may show by a preponderance of the evidence that the conditions set forth in paragraph (a) of this subsection (2) have been satisfied. The parties may also prove independence through a written document.

(II) To prove independence it must be shown that the person for whom services are performed does not:

(A) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;

(B) Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(C) Pay a salary or at an hourly rate instead of at a fixed or contract rate;

(D) Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(E) Provide more than minimal training for the individual;

(F) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(G) Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;

(H) Pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and

(I) Combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. The existence of any one of these factors is not conclusive evidence that the individual is an employee.

(IV) If the parties use a written document pursuant to this paragraph (b), such document must be signed by both parties and may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

(V) If the parties use a written document pursuant to this paragraph (b) and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(c) Nothing in this section shall be construed to conflict with section 8-40-301 or to relieve any

obligations imposed pursuant thereto.

(d) Nothing in this section shall be construed to remove the claimant's burden of proving the existence of an employer-employee relationship for purposes of receiving benefits pursuant to articles 40 to 47 of this title.

(e) (I) Notwithstanding any other provision of this section, a written agreement between a nonprofit youth sports organization and a coach, specifying that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and otherwise satisfying the requirements of this paragraph (e), shall be conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is an independent contractor relationship rather than an employment relationship and that the nonprofit youth sports organization is not obligated to secure compensation for the coach in accordance with the "Workers' Compensation Act of Colorado".

(II) The written agreement shall contain a disclosure, in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties by signature, initials, or other means demonstrating that the parties have read and understand the disclosure, indicating that the coach:

(A) Is an independent contractor and not an employee of the nonprofit youth sports organization;

(B) Is not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(C) Is obligated to pay federal and state income tax on any moneys paid pursuant to the contract for coaching services and that the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(III) A written agreement between a nonprofit youth sports organization and a coach in accordance with this paragraph (e) shall not be conclusive evidence of an independent contractor relationship for purposes of any civil action instituted by a third party.

(IV) As used in this paragraph (e), "nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(3) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

HISTORY: Source: L. 90: Entire article R&RE, p. 470, § 1, effective July 1.L. 91: (1)(a)(IV) amended, p. 1364, § 1, effective April 20; (1)(a)(III) amended, p. 1870, § 23, effective July 1.L. 93: (2) added, p. 356, § 2, effective April 12.L. 94: (1)(a)(III) amended, p. 452, § 2, effective March 29.L. 95: IP(2)(b)(II), (2)(b)(III), and (2)(b)(IV) amended, pp. 343, 344, § 2, effective July 1.L. 97: (1)(a)(I)(A) amended, p. 170, § 3, effective March 28; (1)(a)(III) amended, p. 1239, § 35, effective July 1; (1)(a)(I)(A) and (1)(a)(II) amended, p. 1005, § 2, effective August 6.L. 2010: (2)(e) added, (HB 10-1108), ch. 119, p. 400, § 2, effective April 15; (3) added, (HB 10-1076), ch. 162, p. 566, § 1, effective August 11.

Editor's note: (1) This section is similar to former § 8-41-106 as it existed prior to 1990.

(2) Amendments to subsection (1)(a)(I)(A) by House Bill 97-1220 and Senate Bill 97-166 were harmonized.

Cross references: (1) For the scope of the term "employee", see § 8-40-301.

(2) For the legislative declaration in the 2010 act adding subsection (2)(e), see section 1 of chapter 119, Session Laws of Colorado 2010.

ANNOTATION

I. General Consideration.
II. Employee or Independent Contractor.
III. Contract for Hire.
IV. Public Employees.
V. Private Employees.
A. In General.
B. Casual Employment.

I.GENERAL CONSIDERATION.

Law reviews. For article, "Independent Contractors and the Colorado Workers' Compensation Act -- Parts I and II", see 22 Colo. Law. 545 and 1281 (1993). For article, "Independent Contractors in Colorado", see 34 Colo. Law. 53 (Dec. 2005).

Annotator's note. (1) Since § 8-40-202 is similar to § 8-41-106 as it existed prior to the 1990 repeal and reenactment of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, relevant cases construing that provision have been included in the annotations to this section. For additional cases, see the annotations under former § 8-41-106 in the 1986 replacement volume.

(2) Cases included in the annotations to this section which refer to the industrial commission were decided prior to the enactment of 1986 Senate Bill No. 12 which abolished said commission and transferred some of its powers, duties, and functions under the act to the industrial claim appeals office.

A governing body of the county or municipality must provide worker's compensation to a voluntary peace officer. The statutory language granting a county or municipality the option to not provide such coverage was repealed by implication by § 16-2.5-110, which requires the reserve peace officers to be provided with worker's compensation benefits. City of Florence v. Pepper, 145 P.3d 654 (Colo. 2006).

Proper characterization of the employer-employee relationship depends on the facts of each case and is for the commission to determine. Melnick v. Indus. Comm'n, 656 P.2d 1318 (Colo. App. 1982).

To reap the benefits under the workmen's compensation act, a person must in fact first be an employee under the statutory definition. Denver Truck Exch. v. Perryman, 134 Colo. 586, 307 P.2d 805 (1957).

The definition of employee is broad and obviously was so intended by the general assembly. Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Doyle v. Missouri Valley Constructors, Inc., 288 F. Supp. 121 (D. Colo. 1968).

The compensation act emphasizes the objective of protection of employees and in carrying out this objective gives a broad interpretation to the term "employee". Finnerman v. McCormick, 499 F.2d 212 (10th Cir.), cert. denied, 419 U.S. 1049, 95 S. Ct. 624, 42 L. Ed. 2d 644 (1974).

And even though the purpose of the workmen's compensation act is to protect all workmen, save those specifically excluded. Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953).

The definition of an employee entitled to coverage under this act includes "aliens" without

distinguishing between legal and illegal aliens and therefore does not preclude, as a matter of law, an illegal alien from proving an entitlement to benefits. Champion Auto Body v. Indus. Claim Appeals Office, 950 P.2d 671 (Colo. App. 1997).

General contractor remains statutory employer of subcontractor's employee and is entitled to a corresponding immunity from suit, despite the fact that the subcontractor is an independent contractor of the general contractor. Frank M. Hall Co. v. Newsom, 125 P.3d 444 (Colo. 2005).

One cannot be his own employee. Indus. Comm'n v. Bracken, 83 Colo. 72, 262 P. 521 (1927).

"Employee" does not include one injured during pre-employment testing. Applicant who was not under contract as an employee at the time of the accident is not an employee. Younger v. City and County of Denver, 796 P.2d 38 (Colo. App. 1990); Younger v. City and County of Denver, 810 P.2d 647 (Colo. 1991).

"Appointment", as used in the definition of employee set forth in subsection (1) (a) requires that the person making the designation be vested with authority and the designation be for the purpose of discharging the duty of some office or trust. A volunteer pitching coach permitted by a head baseball coach to work with the high school baseball team is not an employee subjecting the school district to workers' compensation liability since school district, and not head coach, is authorized to create additional coaching positions and a volunteer pitching coach position is not an office. Mesa County Valley Sch. D. 51 v. Goletz, 821 P.2d 785 (Colo. 1991).

Three requirements are set forth, any two of which when met can qualify an employee, as the term is used in the statutes, as coming under the workmen's compensation act. They are: (1) A contract of employment created in the state; (2) employment in the state under a contract created outside the state; and (3) substantial employment in the state. If any two of these conditions are met it makes no difference that the employee is not a resident of the state or is killed outside the state provided other statutory time limits on out-of-state employment are met. Platt v. Reynolds, 86 Colo. 397, 282 P. 264 (1929); Tripp v. Indus. Comm'n, 89 Colo. 512, 4 P.2d 917 (1931); Denver Truck Exch. v. Perryman, 134 Colo. 586, 307 P.2d 805 (1957).

"Employee" entitled to workers' compensation benefits is a worker who performs a substantial portion of his work in this state and who is either injured in an accident in this state or has a contract in this state. Loffland Bros. Co. v. Indus. Comm'n, 714 P.2d 509 (Colo. App. 1985).

In determining whether or not a claimant is an employee, the measure of his compensation is not a controlling factor. De Beque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928).

For in the statutory definition of employee there is no requirement that a salary be paid for the service rendered. Lyttle v. State Comp. Ins. Fund, 137 Colo. 212, 322 P.2d 1049 (1958).

An unpaid student intern must be deemed a "person placed pursuant to" subparagraph (1)(a)(IV) and is thus entitled to an imputed wage under subparagraph (1)(a)(VI) for purposes of calculating medical impairment benefits, notwithstanding the exception in subparagraph (1)(A)(IV), which exception relates only to who shall be deemed the employer, not whether an employee is entitled to an imputed wage. Kinder v. Indus. Claim Appeals Office, 976 P.2d 295 (Colo. App. 1998).

Whether an injured workman is an employee is a question of fact. New Jersey Fid. Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929); Sch. Dist. No. 60 v. Indus. Comm'n, 43 Colo. App. 38, 601 P.2d 651 (1979).

Determination of type of employee deemed question of law. Where the facts are undisputed, the question of whether an individual is an employee as defined by this section, or a constructive employee to whom work has been contracted out as defined by § 8-48-101 (1), is a question of law, not a question of fact. Univ. of Colo. Med. Center v. Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

And the finding on conflicting evidence is conclusive on review. De Beque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928); New Jersey Fid. Plate Glass Ins. Co. v. Patterson, 86 Colo. 580, 284 P. 334 (1929).

Moreover, where various findings are made, the last finding is conclusive. In a workmen's compensation case, although the commission and its referee made three different findings of fact, this did not nullify the rule that the last finding is conclusive. Indus. Comm'n v. Aetna Life Ins. Co., 88 Colo. 82, 292 P. 229 (1930).

So also fact findings sufficiently supported by the evidence will not be disturbed on review. State Comp. Ins. Fund v. Indus. Comm'n, 95 Colo. 309, 35 P.2d 849 (1934); London Guarantee Accident Co. v. Indus. Comm'n, 95 Colo. 306, 35 P.2d 1010 (1934).

And a court exceeds its jurisdiction in a workmen's compensation case if it attempts to pass upon the weight of the evidence introduced before the director. Indus. Comm'n v. Aetna Life Ins. Co., 88 Colo. 82, 292 P. 229 (1930).

One may be employee by virtue of the statute and not by common-law definition. An obligation to pay workmen's compensation may, in proper cases, be imposed against an owner where the common-law relationship of employer and employee does not exist, in that one may be an employee by virtue of the statute, for the purpose of workmen's compensation, when in fact he is not an employee by common-law definition. Finnerman v. McCormick, 499 F.2d 212 (10th Cir.), cert. denied, 419 U.S. 1049, 95 S. Ct. 624, 42 L. Ed. 2d 644 (1974).

Award of benefits of regular employee controlled by section. Where nurse claiming benefits was a regular employee of the University of Colorado Medical Center, subsection (1)(a)(I) controlled the award of benefits as opposed to § 8-48-101 (1). Univ. of Colo. Medical Center v. Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

Award based upon erroneous interpretation of law sustained if award proper absent misinterpretation. Even though a court may determine that the industrial commission erroneously interpreted the law, if the commission's award would have been correct had the law been properly interpreted, that award will be sustained. Univ. of Colo. Med. Center v. Indus. Comm'n, 622 P.2d 596 (Colo. App. 1980).

Applied in Kalmon v. Indus. Comm'n, 41 Colo. App. 259, 583 P.2d 946 (1978); Ellis v. Rocky Mt. Empire Sports, Inc., 43 Colo. App. 166, 602 P.2d 895 (1979); Peterson v. Trailways, Inc., 555 F. Supp. 827 (D. Colo. 1983); AGS Mach. Co. v. Indus. Comm'n, 670 P.2d 816 (Colo. App. 1983).

II.EMPLOYEE OR INDEPENDENT CONTRACTOR.

Subsection (1)(b) contemplates contractual and quasi-contractual relationships created by estoppel, and should be interpreted broadly to protect workers. Olsen v. Indus. Claim Appeals Office, 819 P.2d 544 (Colo. App. 1991).

"Contractor" is not necessarily outside of the category of "employee". The term "employee" has both a narrow, specific, and a wider generic meaning. Indus. Comm'n v. Cont'l Inv. Co., 78 Colo. 399, 242 P. 49 (1925).

But factors to be considered in determining whether one performing labor for another is a servant or a contractor are: Does the workman give all or only a part of his time to the work; does the contract contemplate labor on the job, or completion; has the laborer or the employee control of the details; which may employ, control, and discharge assistants; which furnishes the necessary tools and equipment; may either terminate the employment without liability to the others; is compensation measured by time, by piece, or by lump sum? Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963).

There are two tests for determining whether a worker is an actual employee or an independent contractor: the "control" test and the "relative nature of the work" test, and if either test is satisfied the worker is an employee. Stampados v. Colo. D & S Enters., 833 P.2d 815 (Colo. App. 1992).

The definition of an "independent contractor" in § 40-11.5-102 was intended to apply to the Workers' Compensation Act. Frank C. Klein Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993).

A servant is one whose employer has the order and control of work done by him and who directs or may direct the means as well as the end. Arnold v. Lawrence, 72 Colo. 528, 213 P. 129 (1923); Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Jacobson v. Doan, 136 Colo. 496, 319 P.2d 975 (1957).

And it is the power of control, not the fact of control, that is the principal factor in distinguishing a servant from a contractor. Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934); Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Faith Realty Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

The right immediately to discharge involves the right of control. Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956).

Thus the most important point in determining the question of contractor or employee is the right to terminate the relation without liability. Indus. Comm'n v. Hammond, 77 Colo. 414, 236 P. 1006 (1925); Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963); Faith Realty Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

For the absolute right to terminate the relationship without liability is inconsistent with the concept of independent contractor. Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956).

Where compensation is based upon time or piece the workman is usually a servant and where it is based upon a lump sum for the task he is usually a contractor. Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963).

A person may be determined to be an independent contractor even if all nine criteria outlined in subsection (2)(b)(II) are not established. Nelson v. Indus. Claim Appeals Office, 981 P.2d 210 (Colo. App. 1998).

Presumption of independent contractor status recognized in subsection (5) may be overcome by clear and convincing evidence of control over the means and methods of performance that are wholly unrelated to the achievement of the end contracted for. Frank C. Klein Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993).

Ski patrol worker who negotiated for a ski pass in lieu of salary in exchange for services was not a "volunteer" for purpose of exclusion from coverage under this article. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

If the facts are undisputed as to whether a workman is an employee or a contractor, the question is one of law. Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925).

And may be reviewed by the supreme court. Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963).

But if the question of whether workman was employee or independent contractor is one of fact,

to be determined from conflicting evidence, it is for the commission. Whitney v. Mountain States Motors Co., 106 Colo. 184, 102 P.2d 743 (1940); Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963).

Claimant's relationship with newspaper publisher was an employment relationship where the newspaper exercised control over claimant by directing the time and place of newspaper delivery and delivery of newspapers was not a separate enterprise from the business of the newspaper. Contract which characterized claimant as an independent contractor was not controlling. Olsen v. Indus. Claim Appeals Office, 819 P.2d 544 (Colo. App. 1991).

Acceptance of premiums by insurance fund for employee made fund liable for claim. Actions of the state compensation insurance fund, which accepted workmen's compensation premium payments from employer based on employee status of carpenter constructing employer's private residence and which did not give employer notice that premium payment was accepted subject to appeal of determination that carpenter was employer's employee for workmen's compensation purposes, constituted conduct which would convey impression that the fund intended to cover carpenter's workmen's compensation claim; therefore, the fund was liable for workmen's compensation benefits awarded carpenter. Drake v. Ins. Co. of North Am., 736 P.2d 1244 (Colo. App. 1986).

Instances of employees. Indus. Comm'n v. Globe Indem. Co., 77 Colo. 251, 235 P. 576 (1925); Indus. Comm'n v. Bonfils, 78 Colo. 306, 241 P. 735 (1925); De Beque Producers' Ass'n v. Indus. Comm'n, 83 Colo. 158, 262 P. 1019 (1928); State Comp. Ins. Fund v. Indus. Comm'n, 95 Colo. 309, 35 P.2d 849 (1934); Indus. Comm'n v. Sontarelli, 109 Colo. 84, 122 P.2d 239 (1942); Kampt v. Disney, 110 Colo. 518, 135 P.2d 1019 (1943); Neely-Towner Motor Co. v. Indus. Comm'n, 123 Colo. 472, 230 P.2d 993 (1951); Indus. Comm'n v. Valley Chip Supply Co., 133 Colo. 258, 293 P.2d 972 (1956); Faith Realty Dev. Co. v. Indus. Comm'n, 170 Colo. 215, 460 P.2d 228 (1969).

Instances of independent contractor. Indus. Comm'n v. Cont'l Inv. Co., 78 Colo. 399, 242 P. 49 (1925); London Guarantee Accident Co. v. Indus. Comm'n, 95 Colo. 306, 35 P.2d 1010 (1934); Whitney v. Mountain States Motors Co., 106 Colo. 184, 102 P.2d 743 (1940); Warner v. Messick, 108 Colo. 342, 117 P.2d 482 (1941); Wilkowski v. Indus. Comm'n, 113 Colo. 46, 154 P.2d 615 (1944); Brush Hay Milling Co. v. Small, 154 Colo. 11, 388 P.2d 84 (1963); Sands v. Indus. Comm'n, 160 Colo. 42, 413 P.2d 702 (1966).

Subsection (2) cited in Frank C. Klein Co. v. Colo. Comp. Ins. Auth., 859 P.2d 323 (Colo. App. 1993).

III.CONTRACT FOR HIRE.

The requirement of contract of hire was written into the workmen's compensation act for two reasons: First, the necessity for a "contract" was felt to insure than an employee did not give up legal rights against an employer without receiving value in return; and second, the contract had to be one "of hire" because, absent the expectation of remuneration at some rate, there was no way to compute benefits. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

And § 8-41-105 and this section speak of "any contract of hire, express or implied", indicating that several "contracts of hire" may exist in a given situation and recovery had upon "any". Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

Thus, both an express and implied "contract of hire" could exist between the same parties but covering different employment or covering the same employment but with differing parties. Rocky Mt. Dairy Prods. v. Pease, 161 Colo. 216, 422 P.2d 630 (1966).

When a claim is filed under the workmen's compensation act, the burden of proof is upon the claimant to prove that he was an employee by showing the existence of a contract of hire. Hall v. State Comp. Ins. Fund, 154 Colo. 47, 387 P.2d 899 (1963).

And where the evidence does not disclose any contractual obligation, then the employer-employee relationship does not exist and there is no contract which would support a claim for compensation under the act. State Comp. Ins. Fund v. Indus. Comm'n, 135 Colo. 570, 314 P.2d 288 (1957); Hall v. State Comp. Ins. Fund, 154 Colo. 47, 387 P.2d 899 (1963).

Claimant who received a ski pass for use by another person was an employee since the pass is a benefit comprising compensation. The lack of any wages as defined in § 8-40-201 (19) does not mean that no "contract of hire" exists under subsection (1)(b). Aspen Highlands Skiing Corp. v. Apostolou, 854 P.2d 1357 (Colo. App. 1992).

A contract of hire may be formed as long as the fundamental elements of contract formation are present even though not every formality attending commercial contractual arrangements is observed. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

Contract of hire found to exist where claimant was part-time ski patrol worker who agreed to work only in exchange for the benefit of daily ski pass in lieu of salary and who worked under the direction of the employer. Aspen Highlands Skiing Corp. v. Apostolou, 866 P.2d 1384 (Colo. 1994).

IV.PUBLIC EMPLOYEES.

The statutory definition of "employees" includes employees of the state. Myers v. State, 162 Colo. 435, 428 P.2d 83 (1967).

And if working for a public employer must be a "public employee". Under the statutory classification of employer and employee, before a claimant can fix liability on a public employer, under the workmen's compensation act, for compensation for accidental injuries, he must be within the designation of "public employee". Indus. Comm'n v. State Comp. Ins. Fund, 94 Colo. 194, 29 P.2d 372 (1934).

All workers in service of the state are treated as state "employees", not as employees of separate entities, for purposes of workers' compensation benefits. Rodriguez v. Bd. of Dirs., 917 P.2d 358 (Colo. App. 1996).

Public employees. No intent can be found in the general assembly through the pertinent provisions of the workmen's compensation law to make any distinction in the classification of public employees between those who are engaged in governmental functions and those who are engaged in the proprietary branch of a political subdivision. The basic distinction of the act is between public employees and private employees. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

A governmental entity cannot be a constructive employer pursuant to § 8-48-101 (1). Antal v. Delta County Mosquito Control Dist. No. 1, 644 P.2d 87 (Colo. App. 1982).

Inmates are not employees of state or county. Orr v. Indus. Comm'n, 691 P.2d 1145 (Colo. App. 1984), att'd, 716 P.2d 1106 (Colo. 1986).

City as employer. State Comp. Ins. Fund v. Alishio, 125 Colo. 242, 250 P.2d 1015 (1952).

An unsalaried member of a state board or commission is an employee of the state, and within the coverage of the workmen's compensation law, and had the general assembly intended to exclude such persons from coverage, language other than the words actually used would have been employed. Lyttle v. State Comp. Ins. Fund, 137 Colo. 212, 322 P.2d 1049 (1958).

Furthermore, it is evident that the intent of the general assembly was to provide that the employees and appointees of the county, as specified therein, together with all nonsalaried employees, should be paid at the maximum rate of compensation. State Comp. Ins. Fund v. Keane, 160 Colo. 292, 417 P.2d 8 (1966).

The status of a juror is not that of an employee serving under this section, by "appointment or contract of hire, express or implied". The legislative branch of the government has not said that a juror is an employee of the county, and it does not lie with the judicial branch to belittle the functions of his great office by so declaring. Bd. of Comm'rs v. Evans, 99 Colo. 83, 60 P.2d 225 (1936).

Employer of student teachers. Section 22-62-105 (2) deems a school district the employer of a student teacher whereas the general provision of subsection (1)(a)(IV) of this section designates the sponsoring institution as the employer of its job trainees. Section 22-62-105 (2) merely shifts workmen's compensation liability for injury to student teachers to a different institution; where applicable, it is a legally enforceable specific exception to the general rule prescribed by subsection (1)(a)(IV). Sch. Dist. No. 60 v. Indus. Comm'n, 43 Colo. App. 38, 601 P.2d 651 (1979).

Claimant was participating as a volunteer fireman, and not merely as a patriotic citizen, at the time of his injury, while participating in a public patriotic celebration. Northwest Conejos Fire Prot. Dist. v. Indus. Comm'n, 39 Colo. App. 367, 566 P.2d 717 (1977).

The rate of compensation for persons accidentally injured while serving as volunteer firefighters shall be at the maximum rate provided by the Workers' Compensation Act. Subsection (1)(a)(II) creates an exception to the usual measure of calculating disability benefits. To the extent that subsection (1)(a)(II) gives injured volunteer firefighters a windfall, such a result has been mandated by the general assembly. Parker Fire Prot. Dist. v. Poage, 843 P.2d 108 (Colo. App. 1992).

Volunteer member of civil air patrol traveling on duty to attend organized training when injured suffers an injury which arises out of and in the course of his employment. Colo. Civil Air Patrol v. Hagans, 662 P.2d 194 (Colo. App. 1983).

National Guard training is not "active service" for purposes of the receipt of workers' compensation benefits. A member of the National Guard may not be considered to be on "active service" and hence qualified for workers' compensation benefits unless he or she has been ordered by the governor to provide full-time service in response to an emergency confronting the state. Sullivan v. Indus. Claim Appeals Office, 22 P.3d 535 (Colo. App. 2000).

V.PRIVATE EMPLOYEES.

A. In General.

Attorney regularly employed by a corporation is an "employee". An attorney at law who is employed by a corporation regularly, and whose time and services are subject to the call of the employer under the terms of the employment, is an "employee" as that word is used in this section. Indus. Comm'n v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934).

For in none of the provisions of the act is there language which expressly excludes members of the professions, attorney or other, if otherwise within the statute, from the enjoyment of its protecting purpose. Indus. Comm'n v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934).

Workmen's compensation acts are being extended even to employees of charitable institutions. Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953).

Student paid by university for particular service is employee subject to act. Where a stipulated monthly amount is paid by a university for a particular service rendered by one who is also a student, it cannot be said that the university is merely "assisting" the student to obtain an education, and that the student, if injured in the course of his employment, cannot have the benefits of the compensation law. Univ. of Denver v. Nemeth, 127 Colo. 385, 257 P.2d 423 (1953).

Student employee status in job training program. To be an "employee" of the school district one must, at the time of injury, be receiving training under a work or job training program sponsored by the school district and one must have been placed by the school district with an employer for the purpose of training or learning trades or occupations. Further, the trainee is deemed an "employee" only "while so engaged" in such programs. Denver Pub. Sch. v. De Avila, 190 Colo. 184, 544 P.2d 627 (1976).

A critical requirement of the statute is that in order for the claimant to become an "employee" it was necessary that she be "placed" with the hospital for the purpose of training. The evidence discloses that at the time of her injury the claimant was not so "placed" where it is explicit that at the time of her injury the claimant was attending classes conducted exclusively by instructors employed by the school district. Under such circumstances, claimant does not come within the definition of "employee" and the school district is not liable for the injury sustained as the result of her mishap. Denver Pub. Sch. v. De Avila, 190 Colo. 184, 544 P.2d 627 (1976).

Discharged employee is thereafter a mere volunteer not subject to the act. The employee having been discharged, he was a mere volunteer, wrongfully engaged in driving the car of his former employer at the time of the accident; neither the doctrine of ratification nor estoppel had the slightest application to the case, even though the employer subsequently received the regular fare for the trip from the claimants, and upon no possible theory could the claimants recover compensation at the hands of the employer. Burke v. Indus. Comm'n, 70 Colo. 394, 201 P. 891 (1921).

B. Casual Employment.

Law reviews. For comment on Heckman v. Warren appearing below, see 24 Rocky Mt. L. Rev. 396 (1952).

For subsection (1)(b) exclusion to apply, casualness and course of business must exist. Brogger v. Kezer, 626 P.2d 700 (Colo. App. 1980).

Exclusion inapplicable where home deemed necessary facet of business. The maintenance of a home which serves as a company office and is used for entertaining customers is a necessary facet of the employer's business, and, thus, the exclusion of subsection (1)(b) is not applicable. Brogger v. Kezer, 626 P.2d 700 (Colo. App. 1980).

Casual is an antonym of regular. Lackey v. Indus. Comm'n, 80 Colo. 112, 249 P. 662 (1926); Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951).

Casual employment is that which is occasional, incidental, temporary, emergent or haphazard. An employment, therefore, is casual within the meaning and intent of the workmen's compensation act when it is not regular, periodic or certain in nature. Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951).

But the fact that the employment is casual is not enough to exclude an employee from the count in determining whether employer had four employees. Lackey v. Indus. Comm'n, 80 Colo. 112, 249 P. 662 (1926); Hoshiko v. Indus. Comm'n, 83 Colo. 556, 226 P. 1114 (1928); Comerford v. Carr, 86 Colo. 590, 284 P. 121 (1930); Kamp v. Disney, 110 Colo. 518, 135 P.2d 1019 (1943); Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951); Denver Truck Exch. v. Perryman, 134 Colo. 586, 307 P.2d 805 (1957).

For the employment must also not be in the usual course of trade, business, or occupation of employer. Lackey v. Indus. Comm'n, 80 Colo. 112, 249 P. 662 (1926); Hoshiko v. Indus. Comm'n, 83 Colo. 556, 266 P. 1114 (1928); Comerford v. Carr, 86 Colo. 590, 284 P. 121 (1930); Kamp v. Disney, 110 Colo. 518 135 P.2d 1019 (1943); Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951); Denver Truck Exch. v. Perryman, 134 Colo. 586, 307 P.2d 805 (1957).

And one is employed in the usual course of trade, business, profession or occupation of his

employer when he is engaged in work of the kind required in the business of the employer, and such work is in conformity with the established scheme or system of the business. If it is work of the kind required in the employer's business and in conformity with his established scheme or system of doing business, then it is in the usual course thereof. The term "usual course of business" has reference to the normal operations constituting the regular business of the employer. Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951).

Thus the workmen's compensation act is inapplicable if, at the time of an employee's injuries, his employment was casual "and not in the usual course of trade, business, profession or occupation of his employer". Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951).

But the fact that the servant is not employed for any specified time does not render his employment casual. Indus. Comm'n v. Funk, 68 Colo. 467, 191 P. 125 (1920).

So that casual employment in usual course of employer's business is sufficient. Even where the employment is casual, if at the time of the accident the employee was engaged in the usual course of the employer's business, he still is an employee within the terms of this title. Lackey v. Indus. Comm'n, 80 Colo. 112, 249 P. 662 (1926); Hoshiko v. Indus. Comm'n, 83 Colo. 556, 226 P. 1114 (1928); Royal Indem. Co. v. Indus. Comm'n, 105 Colo. 25, 94 P.2d 697 (1927).

Employment not casual. Claimant who was employed on an hourly basis to perform part of the work of constructing a small office building on a used car lot was not a casual employee of the operator of the lot, and his employment was in the usual course of the operator's business. Neely-Towner Motor Co. v. Indus. Comm'n, 123 Colo. 472, 230 P.2d 993 (1951).

"Usual course of trade or business" does not apply to a single act of building by a farmer in a neighboring town. Lackey v. Indus. Comm'n, 80 Colo. 112, 249 P. 662 (1926).

Emergency employee not active in usual course of business. Heckman v. Warren, 124 Colo. 497, 238 P.2d 854 (1951).

An attorney at law regularly employed by a corporation is not a casual employee and his employment is in the usual course of a company's business. Indus. Comm'n v. Moynihan, 94 Colo. 438, 32 P.2d 802 (1934).

PAYROLL CONTRACT

Contractor/Project: **HR RESOURCING, LLC**
Contract Dates: 1/1/14 - 12/31/18
Title Code: PAYROLL SERVICES
Date Prepared: 11/05/13
Program Year: 2014-2018

PROGRAM OPERATION	Original Budget	Modification	Total
INITIAL TERM 1/1/14 - 12/31/14			
WAGES,FICA, WC, and			
PAYROLL ADMIN FEE			
TOTAL	$1,000,000		
TERM #1 1/1/15 - 12/31/15			
WAGES,FICA, WC, and			
PAYROLL ADMIN FEE			
TOTAL	$1,000,000		
TERM #2 1/1/16 - 12/31/16			
WAGES,FICA, WC, and			
PAYROLL ADMIN FEE			
TOTAL	$1,000,000		
TERM #3 1/1/17 - 12/31/17			
WAGES,FICA, WC, and			
PAYROLL ADMIN FEE			
TOTAL	$1,000,000		
TERM #4 1/1/18 - 12/31/18			
WAGES,FICA, WC, and			
PAYROLL ADMIN FEE			
TOTAL	$1,000,000		
GRANT TOTAL:	**$5,000,000**		

EXHIBIT C - GENERAL CONDITIONS
ARTICLE 1
PROGRAM ADMINISTRATION

SEC. 101. Records Maintenance, Performance Monitoring and Audits.

A. The Contractor shall maintain a complete file of all records, notes, reports, communications, documents and other materials ("Program Records") that pertain to the operation of the program/project or the delivery of services under this Agreement. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. Program Records shall be maintained according to generally accepted account principles and shall be easily separable from other Contractor records. These records shall also be maintained in accordance with requirements prescribed by the Federal or State Government or the City with respect to all matters covered by the Contract.

B. Except for disclosures to the City as required in this Agreement and to the extent such disclosures are permitted by applicable law, the Contractor shall maintain the confidentiality of any and all confidential information acquired or maintained by the Contractor under this Agreement. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its employees and agents, if any, that they are subject to these confidentiality requirements or as may be required by applicable law.

C. The Contractor shall obtain on behalf of the City, the State Government or the Federal Government, any all necessary consent forms from participants receiving services under this Agreement authorizing the release of any and all Program Records to said entities for contract and performance monitoring purposes only. The City shall protect the confidentiality of Program Records received from the Contractor.

D. The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time to assure compliance with the state or federal government's laws, regulations, rules, requirements and conditions governing this Agreement and to monitor and/or evaluate all activities of the Contractor under this Agreement. Monitoring and/or evaluation may consist of internal evaluation procedures, reexamination of program data, special analysis, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant by the City. All such monitoring shall be performed in a manner that will not unduly interfere with the Contractor's work under this Agreement. Any amounts improperly paid to the Contractor shall be immediately return to the City or may be recovered in accordance with other remedies.

SEC. 102. Reports and Information. At such times and in such forms as the Federal, or the State Government or the City may require, the Contractor shall furnish to the Federal, or the State Government or the City, such statements, records, reports, data and information, as the Federal or the State Government or the City may request pertaining to matters covered by the Agreement, or related to implementation of the Agreement.

SEC. 103. Federal Governments Requirements. Unearned payments under the Contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by the Federal Government at any time; or if any entitlement to the City under Federal Law is suspended or terminated.

SEC. 104. Accounting.

A. Records shall provide accurate, separate, and complete disclosure of fund status. Supportive documentation shall be provided for all disbursements. The Contractor will maintain auditable records - i.e., records must be current and traceable to the source documentation of unit transactions.

B. All accounting functions for the contract must be performed in the Metropolitan Denver Area as defined by the boundaries of the Standard Metropolitan Statistical Area, unless waived by the Office of Economic Development's Director of Workforce Development, (the Director).

C. Disbursements shall be processed through the City and County of Denver Controller's Office by the OED Financial Management Unit.

D. The Contractors shall maintain separate accountability for OED funds.

E. Proper reporting to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld shall be adhered to. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

F. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

G. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official 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 the Agreement shall be clearly identified and readily accessible.

SEC. 105. Vouchering Requirements.

A. In order to meet the Federal Government and/or State of Colorado requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.

1. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.

2. The second exception will be that costs cannot be reimbursed until they total a minimum of $15 unless it is a final payment voucher or the final voucher for the fiscal year (ending December 1)

B. No more than four (4) vouchers may be submitted per contract per month.

C. Agreements that start in one fiscal year and end in the subsequent fiscal year, are required to have all vouchers for the fiscal year be submitted correctly, within forty five (45) days of the Agreement end date, in order to be paid.

D. City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

SEC. 106. Bonding. Every agency or employee who receives or deposits Federal Government and/or State of Colorado funds into program accounts or issues financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss. The amount of coverage shall be the highest advance received through check or drawdown during the contract period.

SEC. 107. Personnel.

A. The Contractor shall submit to OED their written agency personnel (including complaint and grievance procedures) and Equal Employment Opportunity (EEO) policies as required in OED's Policy Series and have such policies approved within thirty (30) days of the Agreement start date or the Agreement may be terminated.

B. The Contractor shall submit to the OED Contract Specialist a copy of the agency written personnel policies and procedures within thirty (30) days of the Agreement start date. The Contractor is responsible for providing OED with any written revisions to the personnel policy during the term of this Agreement.

SEC. 108. Contract Monitoring & Compliance With Applicable Audit Requirements.

A. The Contractor's performance may be reviewed monthly, or more often, by the appropriate operational unit at OED which has program management responsibility.

B. All reports submitted by the Contractor shall be utilized as part of the determination of Agreement success.

C. All reviews shall be conducted in accordance with internal OED procedures. Procedures will be available to the Contractor prior to any review.

D. The Contractor is subject to final program audit. The City Auditor reserves the right to select the audit firm. The Contractors shall provide all appropriate records to the auditing personnel. The Audit Guide will be the basis of the performance of the audit. The Contractor agrees to abide by the administrative procedures of OED regarding the resolution of audit exceptions.

E. The Contractor shall ensure that it, and its subrecipients(s), if any, comply with all provisions of the Single Audit Act Amendments of 1996 (Public Law 104-156) and, revised OMB Circular A-133. If the Contractor expends $500,000 or more of federal awards in the Contractor's fiscal year, then the Contractor shall submit an audit report, made in accordance with the Single Audit Act Amendments of 1996 (Public Law 104-156) and revised OMB Circular A-133, to the City within the earlier of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited. The Contractor shall engage an audit committee that engages an independent auditor, determines the services to be performed, reviews the progress of the audit and the final audit findings, and intervenes in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its lower tier subrecipients that comply with these audit provisions.

SEC. 109. OED Equipment.

A. Contractors will be held accountable for all City property in their possession until relieved of that responsibility in accordance with terms established by

OED's Financial Management Unit. Contractors shall be held responsible for reasonable care and control of all property in its possession, which shall include:

1. Marking with departmental decals or stencils all government property obtained through any government Employment and Training Administration grant, which includes all funds provided by OED;
2. Maintaining appropriate maintenance contracts for equipment;
3. Maintaining reasonable safeguards against theft; and
4. Contractors shall reimburse OED for the value of missing property in accordance with the OED Policy Series.

B. OED will conduct an annual property inventory which will involve a comparison and reconciliation of the latest OED inventory records with the actual physical property that exists (or is missing) at each contractor site.

SEC. 110. Advertisement and Public Notices. Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other methods to attract Participants or employers into an OED funded activity shall first notify the appropriate OED Contract Specialist prior to release or publication of this information. In any event, all announcements, etc., must include the following statement: "The funding source for this activity is the City and County of Denver, Office of Economic Development."

SEC. 111. Assurances. The Contractor, in operating programs funded under the Grant, further assures that it will administer its program under the Act in full compliance with safeguards against fraud and abuse as set forth in the Federal regulations; that no portion of its program will in any way discriminate against, deny benefits to, deny employment to or exclude from participation any persons on the grounds of race, color, national origin, religion, age, sex, handicap, or political affiliation or belief; that it will provide employment and training services to those most in need of them, including but not limited to low-income persons, handicapped individuals, persons facing barriers to employment commonly experienced by, for example, older workers, and persons of limited-English speaking ability, the eligible disabled and veterans.

SEC. 112. Charging of Fees.

A. Contractors may not charge participants a fee for the placement of that Participant into an OED training or employment program.

B. Contractors may not charge participants a fee for job referral or placement.

SEC. 113. Theft or embezzlement from employment and training funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions.

A. Under the law, a contracting agency and any member of its staff is criminally libel if s/he:

1. Knowingly hires an ineligible individual;
2. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

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

4. Willfully obstructs or impedes an investigation or inquiry under Colorado Works Program Act (CWPA);

5. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by CWPA 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;

6. 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 2
DISBURSEMENTS AND ACCOUNTING

SEC. 201. <u>Charges Against Project Account</u>.

A. Payments under Reimbursement Contracts shall be made on actual costs incurred and supported by all necessary and appropriate documentation. Fee-for-Service contracts shall be reimbursed for documented services performed based on the negotiated rate.

B. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget; PROVIDED, HOWEVER, that said budget may be revised for more efficient and effective use of monies available under the Contract upon written request by the Contractor to the City and written approval thereof by the City.

C. At any time or times prior to final payment under this Contract, the City may have the invoices and statements of cost audited. Each payment theretofore shall be subject to reduction for amounts included in the related invoice or voucher which are found by the City on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for over-payment, or increased for under-payments, on preceding invoices or vouchers.

D. After the City has accepted the services actually performed under the Contract, it may require the Contractor to prepare a summary of services and the value thereof, together with such other records, reports and data as the City may require. All prior approvals and payments shall be subject to correction in the final summary and payment; but in the absence of effort or manifest mistake, it shall be understood that all payments, when approved, shall be evidence of the services performed; PROVIDED, HOWEVER, that all payments made by the City to the Contractor shall be made subject to correction in accordance with the audit findings of the City or the Federal Government of the Contractor's books and records relating to its costs and contributed services for the preparation or completion of the services and work under the Contract, and the Contractor shall promptly repay the City the amount that such payments exceed the total amount payable to the Contractor in accordance with the provisions of the Contract and as determined on the basis of such audit and inspection. From the total amount of the final payment, there shall be deducted first all previous payments made

to the Contractor under the Contract; and second, all damages, ineligible costs under the Contract, and other charges properly chargeable to the Contractor and the balance, if any, shall be paid to the Contractor; PROVIDED, HOWEVER, that prior to the payment to the Contractor of the 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 the services have been properly paid and settled.

E. Prior to final payment under this Contract, the Contractor and each assignee under the Contract whose assignment is in effect at the time of the final payment under the Contract shall, within such time as the City may designate not to exceed sixty (60) days from the termination of the Contract for any reason whatsoever, execute and deliver as required by the City:

1. An assignment to the City in form and substance satisfactory to the City of refunds, rebates, credits and other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the City under the Contract; and

2. A release in such form as the City may prescribe, discharging the City, its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Contract.

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

SEC. 202. Method of Payment and Disbursements.

A. On a regular basis in the due course of conducting its business during the term of this Contract, based upon certain reports and records required by the City of the Contract, the City will approve the dollar value of services under the Contract completed by the Contractor during the preceding performance period. After approval by the City, these reports and records will serve as a basis for a partial payment by the City to the Contractor. The City may withhold the final ten percent (10%) of the money made available under the Contract pending the making of final settlement and final payment as set forth herein.

B. The Contractor shall request payment of the monies available under the Contract on such basis and in such amounts and at such times and under or subject to such conditions as the City may specify. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner.

SEC. 203. Accounting Controls.

A. The Contractor shall assist the City, as necessary, in making an evaluation of the Contractor's internal control system, fidelity bonding coverage, accounting and report systems prior to any payment being made under this Contract. The Contractor shall assist the City as necessary in documenting the adequacy or inadequacy of said systems and in continual monitoring for accuracy of such systems, allowing the City and the Federal Government free and ready access to the plants or offices of the Contractor at reasonable times for on-site inspection and audit.

B. Accounting System. The Contractor will establish and maintain on a current basis for accounting of funds available under the Contract an accounting system in accordance with generally accepted accounting principles and standards.

C. Designation of Depository. The Contractor shall designate to the City a commercial bank which is a member of the Federal Deposit Insurance Corporation, acceptable to the City, to be the depository for the receipt of funds under the terms of the Contract. After the City has satisfied itself as to the propriety of the account, it may deposit funds made available hereunder into said account. The commercial bank selected must fully insure and secure against loss continuously all funds on deposit in excess of the amount insured by a Federal or State Agency.

SEC. 204. Advance Payments. Monies available under the Contract in the budget may be advanced by the City to the Contractor according to OED policy, approval of the OED director and upon approval by the Auditor of the City of each individual request therefore. Approved advanced payments are subject to the terms and conditions of the City's policy.

ARTICLE 3
MISCELLANEOUS

SEC. 301. Personnel.

A. The Contractor represents that it has, or will secure with funds available for same under this Agreement, all personnel required in performing its services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

B. All of the services required hereunder 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 shall be authorized or permitted under State and local law to perform such services.

SEC. 302. **Sales and Use Taxes**. Nothing herein shall be deemed to exempt the Contractor or any subcontractor from payment of the Sales Tax or the Use Tax of the City. In accordance with applicable State and Local law, the Contractor will pay, and require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired in pursuance of the Contract. Any and all refunds claimed and received by the city shall not affect any bid price or contract price under the Contract.

SEC. 303. Extension of Time. The Contractor shall be considered as having taken into account all hindrances and delays incidental to such services, and will not be granted an extension of time on account thereof.

SEC. 304. Singular and Plural. Wherever in the Agreement or any Exhibit thereto the singular or plural form of a noun is used, the meaning may be taken to be either plural or singular, unless the intent taken in the context of the sentence would be changed.

ARTICLE 4
PREVAILING WAGE REQUIREMENTS

SEC. 401. Labor Standards and Wage Rates.

A. The City, the Contractor and any subcontractor in the performance of work on any construction contract (project), twenty-five percent (25%) or more of the costs of which are paid from contract entitlement funds: (1) will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a--276a-7); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 C.F.R., Parts 1, 3, 5, and 7.

B. In situations in which the Davis-Bacon Act (40 U.S. C. 276a to 276a-7 as supplemented by Department of Labor regulations 29 CFR Part 5) standards are applicable, (generally construction contacts in excess of $2,000), the Contractor or any subcontractor shall comply with all requirements and must file with the regional office of the United States Department of Labor a Standard Form 308 requesting a wage determination for each intended project at least thirty (30) days before the invitation for bids, and must ascertain that the wage determination issued and the contract clauses required by 29 C.F.R. 5.5 are incorporated in any subcontract specifications. The City, the Contractor and any Subcontractor must also satisfy itself that the successful bidder is made aware of its labor standards responsibilities under the Davis-Bacon Act.

C. In the event that the Davis-Bacon Act is deemed not to apply to this Agreement, but yet the Services to be provided hereunder nonetheless require construction or constructions services, then Section 20-76 of the Den. Rev. Mun. Code pertaining to Payment of Prevailing Wages shall apply.

D. If any subcontract involving subcontractors other than State agencies shall involve the construction or maintenance of a public work as set forth in Section 20-76 of the Revised Municipal Code of the City, the following provisions shall apply:

1. Any person or company other than a State agency entering into a subcontract with the State for the construction of any public building or the prosecution or completion of any public work or for repairs upon any public building or public work, shall be required before commencing work, to execute, in addition to all bonds that may now or hereafter be required of them, a penal bond, with good and sufficient surety or sureties, to be approved by the Manager of Public Works of the City, conditioned that such contractors shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing him or it, or his or its subcontractors with labor or materials, or with labor and materials used or performed in the prosecution of the work provided for in such contract, and will indemnify the City to the extent of any and all payments in connection with the carrying out of any such contracts with said City may be required to make under the law.

2. Every worker, mechanic or other laborer employed by any Contractor or subcontractor in the work of drainage or of construction, alteration, improvement, repair, maintenance or demolition of any public building or public work by or in behalf of the City, or for any department of the City, or financed in whole or in part by the City or any department of the City, or engaged in the work of a doorkeeper, caretaker, cleaner,

window washer, porter, keeper, janitor or in similar custodial or janitorial work in connection with the operation of any such public building or the prosecution of any such public work by or in behalf of the City, or for any department of the City, or financed in whole or in part by the City, or any department of the City, shall be paid not less than the wages prevailing for the same class and kind of work in the City as determined by the Career Service Board of the City under Section D hereof.

3. For every subcontract in excess of $2,000.00 which requires the performance of work involving drainage or involving construction, alteration, improvements, repairs, maintenance or demolition of any public building or public work, or which requires the performance of the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar custodial or janitorial work in connection with the operation of any such public building, or the prosecution of any such public work, the minimum wages to be paid for every class of labor, mechanics or work shall be not less than the scale of wages from time to time determined by said Career Service Board to be the prevailing wages under Section (D) hereof; no increase or increases in such minimum wages shall result in any increased liability on the part of the City, and the possibility and risk of any such increase or increases is assumed by the Contractor.

4. It shall be duty of said Career Service Board to determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of the Subcontract, which determination shall be made periodically at least every six months, and as frequently as may be considered necessary by said Career Service Board in order that the determination which is currently in effect shall accurately represent the current prevailing rates of wages. Prior to making such determination, said Career Service Board shall give reasonable public notice of the time and place of the hearing concerning such proposal determination and shall afford to all interested parties the right to appear before it and to present evidence. "Prevailing Wages" shall mean, for each class of work, (a) the rate of pay currently and most commonly paid to laborers, mechanics and workers performing such classes of work in the City, and (b) the overtime and other benefits currently and most commonly granted to such workers, mechanics, and laborers in the City; except that where the work involved is that of construction, alteration, improvement, repair, maintenance or demolition of any public building or public work, "Prevailing Wages" shall mean, for each class of work, the rate of pay currently and most commonly paid and the overtime and other benefits currently and most commonly granted to such workers, mechanics and laborers in the construction industry of the City.

5. The Contractor and every Subcontractor under the Contract shall pay every worker, mechanic and laborer employed under the Contract, not less than the scale of wages as determined by said Career Service Board under Section D hereof to be the prevailing rate. The Contractor and its subcontractors shall pay all workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications. Further, the Contractor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the Contractor and all Subcontractors working under it. In the event the Contractor or any Subcontractor shall

fail to pay such wages as are required by the Contract, the Auditor of the City shall not approve any warrant or demand for payment to the Contractor until the Contractor furnishes the Auditor of the City evidence satisfactory to him that such wages so required by the Contract have been paid. Further, the Contractor shall furnish to the Auditor of the City each week during which work is in progress under the Contract, a true and correct copy of the payroll records of all workers, laborers and mechanics employed under the Contract, either by the Contractor or Subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the Contract, the hourly pay of each such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll. Said copy of the payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all mechanics, laborers and other workers working under the Contract either for the Contractor or Subcontractors, that payments were made to the workers, laborers, and mechanics as set forth in said payroll records, that no deductions were made other than those set forth in said records, and that all workers, mechanics and other laborers employed on work under the Contract, either by the Contractor or Subcontractor, have been paid the prevailing wages. In the event that any laborer, worker or mechanic employed by the Contractor or Subcontractor under the Contract has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid as aforesaid, the City may, by notice to the Contractor or Subcontractor, suspend or terminate its right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and in the event of termination, may prosecute the work to completion by contract or otherwise, and the Contractor and its sureties shall be liable to the State or City for any excess costs occasioned the City thereby.

6. No warrant or demand for payment to the Contractor or Subcontractor shall be drawn or allowed by the Auditor of the City unless the Contractor or Subcontractor shall have filed with said Auditor the reports and statements required by Section E hereof nor while any such Contractor or Subcontractor under it shall be in default in the payment of such wages as are required by the Contract.

7. The Provisions of Sections B through G hereof, inclusive, shall constitute a part of every contract of employment between the Contractor and any subcontractor not a State agency and his or its employee performing work covered by the provisions of said sections.

SEC. 402. <u>Use of Property</u>. Whenever Contract funds available for use in whole or in part for the purchase or construction (including rehabilitation) of property (other than office equipment, supplies, materials and other personal property used for the administration of the program), a title to said property shall not be transferred for a period of five (5) years from the date of purchase or completion of construction without the approval of the City. Should it be desirable to sell the property or otherwise transfer the ownership before expiration of the five-year period, a request must be submitted to the City for prior approval.

ARTICLE 5
PERSONAL PROPERTY

SEC. 501. Purchases and City Property.

A. The Contractor agrees to use its best efforts to obtain all supplies and equipment for use in the performance of this Contract at the lowest practicable cost, in a way not inconsistent with Section 20-61 through 20-67 of the Revised Municipal Code. Any public Contractor may procure its supplies from State or local government sources without regard to any other provision of the Contract to the extent required by State or local law. The City will assist the Contractor and its subcontractors in the following procedures for procurement of supplies and equipment.

B. Title to all non-expendable personal property furnished by the City, if any, shall remain in the City. Title to all such property acquired by the Contractor including acquisition through lease-purchase agreement, for the cost of which the Contractor is to be reimbursed in whole or in part as direct item of cost under the Contract, shall immediately vest in the City upon delivery of such property by the vendor. Title to other such property, the cost of which is to be reimbursed to the Contractor under this Contract, shall immediately vest in the City upon (i) issuance for use of such property in the performance of the Contract; or (ii) commencement of processing or use of such property in the performance of the Contract; or (iii) reimbursement of the cost thereof by the City, whichever first occurs. Title to the City property shall not be affected by the incorporation or attachment thereof if any part thereof be or become a fixture or lose its identity as personality by reason of affixation to any realty. All City-furnished property, and all property acquired by the Contractor, title to which vests in the City under this paragraph, are subject to the provisions of this clause and are herein collectively referred to as "City Property".

C. The Contractor agrees to accept as correct the records of the City relating to the identification and marking, segregation and co-mingling and taking of inventories of City property. The Contractor shall maintain and administer in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of City property so as to assure its full availability and usefulness for the performance of the Contract. The Contractor shall take reasonable steps to comply with all appropriate directions or instructions which the City may prescribe as reasonably necessary for the protection of the City property including the removal and shipping of City property, where the City deems that the interest of the City requires the removal of such property.

D. The City property shall be used only for the performance of this Contract and its use by the Contractor is understood and agreed to be part of the consideration for which services are provided.

E. The Contractor shall not be liable for any loss of or damage to the City property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any loss or damage (including expenses incidental thereto):

1. Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of its managers, superintendents or other equivalent representatives;

2. Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of its directors, officers or other representatives mentioned in (1) above to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of City property as required by Paragraph (D) hereof, or to take all reasonable steps to comply with any appropriate written directions of the City under Paragraph (D) hereof;

3. For which the Contractor is otherwise responsible under the express terms of the Contract;

4. Which results from a risk required to be insured under the Contract; or

5. Which results from a risk which is, in fact, covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the City property, except to the extent that the City may have required the Contractor to carry such insurance under any provisions of the Contract.

F. If the Contractor transfers City property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth in Paragraph (F) hereof. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontractor, with the prior approval of the City, provides for the relief of the Contractor from such liability. In the absence of such approval, the subcontractor shall maintain appropriate provisions requiring the return of all City property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the Contract.

G. In the event the Contractor is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the City property, it shall use the proceeds to repair, renovate or replace the City property involved, or shall credit such proceeds against the cost of the work covered by the Contract or shall otherwise reimburse the City, as directed by the City. The Contractor shall do nothing to prejudice the City's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the City, shall, at the City's expense, furnish to the City all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the City) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to City property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the City property for the benefit of the City.

H. Upon the completion of the Contract, or at such earlier date as may be fixed by the City, the Contractor shall submit to the City in a form acceptable to it, inventory schedules covering either all items of City property, or all items of City property not theretofore delivered to the City, and shall deliver or make such other

disposal of such City property as may be directed or authorized by the City. The net proceeds of any such disposal shall be credited to the cost of the work covered by the Contract or shall be paid in such manner as the City may direct.

I. Unless otherwise provided herein, the City:

1. May abandon any City property in place, and thereupon all obligations of the City regarding such abandoned property shall cease; and

2. Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or offices or any portion thereof which is affected by the abandonment or removal of any City property.

J. All communications issued pursuant to this Section shall be in writing.

ARTICLE 6
FIDELITY BOND

SEC. 601. **Fidelity Bonding Assurance**. Prior to the initial disbursement of funds to the Contractor, the City may request that fidelity bonding be obtained from the surety of the Contractor evidencing that all persons handling funds received or disbursed under the program are covered by fidelity insurance in an amount and manner consistent with the coverage of comparable City employees and consistent with sound fiscal practice. If the bond of any employee of the Contractor is cancelled or coverage is substantially reduced, the Contractor shall notify the City and shall not disburse any funds thereafter until the City receives and acknowledges assurance from the Contractor that adequate insurance coverage has been obtained.

ARTICLE 7
REQUIRED CONTRACT CLAUSES FOR ETA GRANTS

SEC. 701. **Executive Order 11246**. The Contractor must be in compliance with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 DFR chapter 60).

SEC. 702. **Copeland “Anti-Kickback” Act** If this agreement involves construction or repair work, it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 847) as supplemented in Department of Labor regulations (29 CFR Part 3).

SEC. 703. **Contract Work Hours and Safety Standards Act** The Contractor shall comply with all Federal, State, and Municipal Act, laws, ordinances, rules and regulations relating to minimum wages and maximum hours of work, including Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

SEC. 704. **Clean Air Act** Notwithstanding any other provision, the Contractor agrees to comply with the Clean Air Act, as amended, (42 U.S.C. 1857 et seq.), the Clean Water Act, as amended (33 U.S.C. 466 et seq.), and the standards issued pursuant

thereto, in facilities which are involved in the activities receiving assistance. All subcontracts will include provisions required by regulations issued by the Department of Labor with respect to the Clean Air Act of 1970 and the Federal Water Pollution Control Act.

SEC. 705. Energy Policy and Conservation Act The Contractor shall comply with all applicable standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Public law 94-163, 89 Stat. 871.

SEC.706. Lobbying Certification

A. None of the funds provided under this Agreement shall be used to influence or attempt to influence any elected or public official to support or defeat any legislation or rules and regulations pending before the Council of the City or the General Assembly of the State of Colorado.

B. Contractor assures and certifies compliance with applicable federal law 45 C.F.R. Part 93 for TANF; 29 C.F.R. Part 93 for WIA; and 45 C.F.R. Part 93 for the Refugee Act.

SEC. 707. Federal Debarment This Agreement is subject to the prohibitions on contracting with a debarred organization set out in U.S. Executive Order 12549, Debarment and Suspension implemented at 45 C.F.R. Part 76. By its signature below, the Contractor assures and certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor shall provide immediate written notice to the Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this Article 34, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this Article 34, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor.

SEC. 708. Nepotism

A. No subrecipient or employing agency may hire a person in an administrative capacity, staff position, public-service employment position or on-the-job training position funded under the Act, if a member of that person's immediate family is engaged in an administrative capacity for the recipient or program agent from which the subrecipient or employing agency obtains its funds. To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such state or local requirement shall be followed.

B. For purposes of this section:

1. The term "immediate family" means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

2. The term "person in an administrative capacity" includes those persons who have overall administrative responsibility for a program, for the obtaining of and/or approval of any grant funded under the Act, as well as other officials who have influence or control over the administration of the program, such as the project director, deputy director and unit chiefs, and persons who have selection, hiring, placement or supervisory responsibilities for public service employment or OJT participants.

3. The term "staff position" includes all CWPA staff positions funded under the Act, such as instructors, counselors and other staff involved in administrative training or service activities.

SEC. 709. <u>Prohibited Political Activity and Political Patronage</u> None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.

A. No program under the Act may involve political activities.

B. No participant may engage in partisan or non-partisan political activities during work hours.

C. No participant may be employed or out-stationed in the office of a member of Congress or a state or local legislator or on any staff of a legislative committee.

D. No participant may be employed or out-stationed in the immediate office of any chief elected executive official (such as the Mayor).

E. No participant may be employed or out-stationed in positions involving political activities in the offices of other elected executive officials (such as a City Council Officer).

F. Contractor staff and participants must comply with the provisions of the Hatch Act.

G. A Contractor may not select or promote a participant based on that individual's political affiliation or belief.

H. A Contractor may not select or advance an employee as a reward for political services or as a form of political patronage whether or not the political services or patronage is partisan in nature.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/04/2013

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

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

PRODUCER	CONTACT NAME: Heather Cantrall	
Berkley Risk Services of Colorado 2000 S Colorado Blvd Annex Building, Ste 410 Denver CO 80222	PHONE A/C, No, Ext): 303 357 2600 877 502 0100	FAX A/C, No): 866 699 1559
	E-MAIL ADDRESS: denver@berkleyrisk.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hartford	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

INSURED
HR Resourcing LLC 10303 E. Dry Creek Road, Suite 400 Englewood, CO 80112

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PROJECT [ ] LOC			SBAPI4723	09/15/2013	09/15/2014	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $2,000,000 $ $300,000 $ $10,000 $ $2,000,000 $ $4,000,000 $ $4,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS [X] HIRED AUTOS SCHEDULED AUTOS [X] NON-OWNED AUTOS			SBAPI4723	09/15/2013	09/15/2014	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
	UMBRELLA LIAB [ ] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $						EACH OCCURRENCE AGGREGATE	$ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
A	Employee Dishonesty			SBAPI4723	09/15/2013	09/15/2014	$25,000 1st Party Coverage	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured as their interests may appear on the policy. A Waiver of Subrogation is added to the policy in favor of the City and County of Denver.

Exhibit D

Page 1 of 3

CERTIFICATE HOLDER	CANCELLATION
City and County of Denver 201 West Colfax Ave Dept 304 Denver, CO 80202	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Heather Cantrall Heather Cantrall

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/20/2013

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

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

PRODUCER Berkley Risk Services of Colorado 2000 S Colorado Blvd Annex Building, Ste 410 Denver CO 80222	CONTACT NAME: T. Casserly PHONE A/C, No, Ext): 303 357 2600 877 502 0100 FAX A/C, No): 866 699 1559 E-MAIL ADDRESS: denver@berkleyrisk.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Travelers Casualty and Surety Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
H.R. Resourcing, LLC
10303 E Dry Creek , Suite 400
Englewood, CO 80112

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY PROJECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						WC STATU-TORY LIMITS / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Crime coverage			108022548	11-20-13	11-20-14	$1,000,000 Limit of Insurance	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Exhibit D
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CERTIFICATE HOLDER

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
T Casserly

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/04/2013

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

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

PRODUCER 1-303-534-4567 IMA, Inc. - Colorado Division 1550 17th Street Suite 600 Denver, CO 80202	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: denpam@imacorp.com
INSURED HR Resourcing LLC 10303 E. Dry Creek Road, Suite 400 Englewood, CO 80112	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: PINNACOL ASSUR — 41190 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES **CERTIFICATE NUMBER:** 36782654 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	CLAIMS-MADE OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	POLICY PRO-JECT LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		4136482	01/01/13	01/01/14	X WC STATU-TORY LIMITS / OTH-ER	
							E.L. EACH ACCIDENT	$ 100,000
							E.L. DISEASE - EA EMPLOYEE	$ 100,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000
	WC-If Yes Company Owner (s)							

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Exhibit D

Page 3 of 3

CERTIFICATE HOLDER

City and County of Denver

201 West Colfax Ave, Dept 304

Denver, CO 80202

USA

CANCELLATION

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

AUTHORIZED REPRESENTATIVE