

LOAN AGREEMENT

PART I

THIS LOAN AGREEMENT ("Loan Agreement") is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado ("City"), and **CHESTNUT & 18TH, L.P.**, a Georgia limited partnership, whose address is 191 Peachtree Street, N.E., Suite 4100, Atlanta, Georgia ("Borrower").

WITNESSETH:

WHEREAS, the City is making available certain monies to ensure the development of affordable housing near the Denver Union Station project (the "Project"); and

WHEREAS, the Borrower is developing affordable housing at the Property near Denver Union Station.

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

1. LOAN TO BORROWER: The City agrees to lend Borrower the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in accordance with the terms and conditions of this Loan Agreement (the "Loan"). In addition to the Loan Agreement, the City and Borrower will enter into a promissory note in form satisfactory to the City and Borrower evidencing this Loan (the "Promissory Note"), and a covenant securing the Property for use as affordable housing as required by Section 5 hereof (the "Covenant"). The Loan shall mature and be due and payable on the fiftieth anniversary of the date hereof ("Maturity Date") if not sooner paid. The outstanding principal balance of the Loan shall bear simple interest at a rate of one-quarter of one percent (0.25%) per annum until paid in full or forgiven in accordance with the terms hereof. Repayment shall be forgiven by the City on the Maturity Date so long as Borrower is in compliance with the terms and conditions of this Loan Agreement and the Covenant.

2. SECURITY: Repayment of the Promissory Note shall be secured by a Deed of Trust (the "Deed of Trust"), in form satisfactory to City and Borrower, granted by Borrower and encumbering the real property known and numbered as 1975 18th Street, Denver, Colorado 80202 (the "Property") subject to prior encumbrances not exceeding Twenty-two Million Dollars (\$22,000,000.00) in principal amount, which prior encumbrances amount may be increased with

the written permission of the Director of the City's Office of Economic Development ("OED") or permitted designee (the "Director").

3. SUBORDINATION: The Director is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust so long as (i) such subordination documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$22,000,000.00, as such amount may be increased pursuant to Section 2 above; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deed of Trust; and (iv) all additional financing for the Project is committed.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance costs associated with development of the Property for use as a mixed-income, multifamily housing community with affordable units, in accordance with **Exhibit A**, attached hereto and incorporated herein. The Borrower shall submit to the City requisitions with documentation of incurred costs on OED approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Acquisition funds shall be disbursed at a scheduled closing, and the City's warrant shall be payable jointly to Borrower and the title company. The City's disbursement of funds is subject to availability of funds and the appropriation of such funds for this purpose. These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Construction on the Project shall commence within thirty months of the closing (the "Project Commencement Date"). Failure to begin construction on the Project by the Project Commencement Date shall be an event of default.

5. RESTRICTIONS ON USE OF PROPERTY:

A. **Affordability limitations.** Thirty-four (34) of the units at the Property (the "City Units") shall have rents not exceeding a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Thirty-four (34) of the units at the Property (the "Low City Units") shall have rents 30% of the annual income of a family whose income equals 50% of the median income for the area, as published by CHFA, with adjustments for smaller and larger families. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current rent guidelines from the OED. It shall be Borrower's

responsibility to obtain updated guidelines from OED or CHFA to confirm the annual calculation of the maximum rents for the Denver area. "CHFA" means Colorado Housing and Finance Authority.

The City shall determine maximum monthly allowances for utilities and services using the CHFA model and will update this allowance annually. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

The City shall review rents for compliance within ninety (90) days after OED requests rent information from the Borrower.

B. Occupancy/Income Limitations. The City Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA. The Low City Units shall be occupied by tenants whose incomes are at or below 50% of the median income for the Denver area as published by CHFA. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current income guidelines from OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA to confirm the annual calculation of the median income for the Denver area.

C. Designation of Units. All of the City Units and Low City Units are floating, and are designated as follows:

BEDROOMS	City Units	Low City Units
1 Bedroom	26	26
2 Bedroom	8	8
3 Bedroom	0	0
4 Bedroom	0	0
TOTAL	34	34

D. Covenant Running with the Land. At closing, Borrower shall execute the Covenant in form satisfactory to the City and Borrower secured by a Deed of Trust, setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period equal to sixty (60) years from the date of the filing of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

6. PROHIBITED LEASE TERMS: Leases or other instruments pursuant to which City Units are occupied may not contain any of the following provisions:

A. Agreement to Be Sued. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

B. Treatment of Property. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out, in accordance with Colorado law.

C. Excusing Owner from Responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

D. Waiver of Notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

E. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of Jury Trial. Agreement by the tenant to waive any right to a trial by jury.

G. Waiver of Right to Appeal. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.

H. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

7. PROHIBITION OF CERTAIN FEES: Borrower is prohibited from charging fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that Borrower may charge the following; reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood, and; fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

8. TERMINATION OF TENANCY: Borrower may not terminate the tenancy of a tenant of any of the City Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good

cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

9. MAINTENANCE AND REPLACEMENT: Borrower shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed housing must meet applicable requirements referenced at 24 C.F.R. 92.251.

10. TENANT SELECTION: Borrower must adopt written tenant selection policies and criteria that:

A. Are consistent with the purpose of providing housing for very low-income and low-income families;

B. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

C. Give reasonable consideration to the housing needs of families that would have a preference under federal selection preferences for admission to public housing;

D. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, with prompt written notification to any rejected applicant of the grounds for any rejection.

11. LEAD-BASED PAINT HAZARDS: The housing funded, in part, by the funds provided through this Loan Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), and is therefore subject to 24 C.F.R. Part 35; the Borrower shall comply with these provisions in the construction of the Project.

12. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351; through this Loan Agreement, 24 CFR 92.351 shall apply. Except Borrower may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR 92.253(d).

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

reasonable loan closing costs, including the costs of title insurance or guarantee as determined by City.

14. EXAMINATION OF RECORDS/ANNUAL MONITORING: The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in the section above entitled "**RESTRICTIONS ON USE OF PROPERTY,**" have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. Borrower shall fully cooperate with City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a City Unit or Low City Unit, and (ii) a copy of the lease pursuant to which each City Unit is occupied.

Borrower shall submit to the City the following reports: (1) Annual report on rents and occupancy of City Units and Low City Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) For floating units, information on unit substitution and filling vacancies to ensure that the project maintains the required unit mix.

15. CONDITIONS:

A. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement and paid into the City treasury.

B. This Loan Agreement is also subject to the provisions of the City Charter and Revised Municipal Code as the same may be amended from time.

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

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

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

B. Workers' Compensation/Employer's Liability Insurance: The Borrower herein shall not be required to carry Workers' Compensation Insurance under this Loan Agreement. The parties recognize and agree that the Borrower is engaged in an independent trade, occupation, profession or business and is free from control and direction in the performance of the services contracted for herein inconsistent with that mandated by C.R.S. 8-40-202(2)(a). It is understood and agreed by the parties that the City does not: (a) require the Borrower to work exclusively for the City; provided that the Borrower may have elected to work exclusively for the City for the period of time specified in the term of this Loan Agreement; (b) establish a quality standard for the Borrower; the parties agree that while the City may provide plans and specifications regarding its expectancy of the work to be performed by the Borrower, the City will not oversee the actual work of the Borrower or instruct the Borrower as to how the work will be performed; (c) pay a salary to the Borrower instead of the fixed contract rate stated herein; (d) terminate the work of the Borrower during the term of this Loan Agreement unless the Borrower violates the terms of the Loan Agreement or fails to produce a work product or result that meets the specifications provided in this Loan Agreement; (e) provide any training for the Borrower other than minimal orientation to the site or other parameters of the consulting activity; (f) provide tools or benefits to the Borrower; except that materials and equipment may be supplied; (g) dictate the time of performance; except that this Loan Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay the Borrower personally instead of making City warrants payable to the trade or business name of the Borrower, except that in this Loan Agreement the Borrower is an individual and a sole proprietor; and (i) combine the regular operations of the City in any

way with the business operations of the Borrower instead of maintaining office operations of the Borrower separately and distinctly.

C. All risk property insurance policy satisfactory to the City in the amount of the value of the property subject to the Deed of Trust, with the City named as loss payee.

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

18. DEFENSE & INDEMNIFICATION:

A. Borrower agrees to defend, indemnify, 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 Loan Agreement ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Borrower or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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

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

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

19. DEFAULT AND ACCELERATION: Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute a default. In addition, any default on the loan agreement, promissory note, deed of trust, or covenant related to the loan of \$950,000.00 from the City to the Borrower for the same project at the Property shall also constitute a default of this Loan Agreement and may be enforced as if a default hereunder has occurred. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum.

The City may also suspend or terminate this Loan Agreement, in whole or in part, if Borrower materially fails to comply with any term of this Loan Agreement, including if Borrower becomes delinquent to the City on loan, contractual, or tax obligation as due, or with any rule, regulations, or provisions referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Loan Agreement terms, and only after the City provides a 30 day notice to cure that remains uncured by Borrower, the City may withhold up to one hundred (100) percent of said Loan Agreement funds until such time as the Borrower is found to

be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

20. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Loan Agreement except upon prior written consent of the City.

21. ACKNOWLEDGEMENT OF FUNDING. Borrower will provide and install at the Property signs, in a form mutually agreeable to the Director and the Borrower, acknowledging the participation of the City and the City funding for the Project.

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

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

24. DURATION/BINDING EFFECT: This Loan Agreement shall remain in effect for the period of affordability specified in Section 5(D) above, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

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

26. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Borrower consents to the use of electronic signatures by the City. This Loan Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Loan Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Loan Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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-201313697-00

Contractor Name: CHESTNUT & 18TH L P

By: Eric L. Pinckney

Name: Eric L. Pinckney
(please print)

Title: Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



IN WITNESS WHEREOF, the parties have entered into this Loan Agreement as of November
____, 2013.

BORROWER:

CHESTNUT & 18TH, L.P.,
a Georgia limited partnership

By: Integral Chestnut GP, LLC
Its: General Partner

By: *Gi Z. Pambouk*
Its: *Vice President*



IN WITNESS WHEREOF, the parties have entered into this Loan Agreement as of November
____, 2013.

BORROWER:

CHESTNUT & 18TH, L.P.,
a Georgia limited partnership

By: Integral Chestnut GP, LLC
Its: General Partner

By: _____

Its: _____

Exhibit A

Chestnut is a 108 unit mixed-income, transit oriented development that will be in the heart of the Denver Union Station development area. It will serve a critical role as the primary affordable workforce housing option in this highly anticipated development. It is within steps of the major transit hub, Denver Union Station, and will connect its residents to the entire Denver metro area as served by transit. It will also provide critical affordable housing within walking distance to downtown jobs. The building will incorporate significant energy efficiency measures including renewable. All aspects of Chestnut are planned to be sustainable. Through true multi-modal transportation options, access to jobs, healthy food access through planned food outlets, universal design, energy savings, and various other measures, this affordable housing development is intended to be an aggressive and cutting edge example of how Denver embraces affordable housing in all that it does. This development will ensure that Denver is fulfilling its fundamental role of providing true workforce housing in the middle of where jobs are being created. This development represents a unique and limited opportunity to accomplish this goal.

The four-story building with structured parking will include 82 one-bedroom/one bath units with approximately 680 square feet each and 26 two-bedroom/one bath units with approximately 940 square feet each. Residential units will include all E Star appliances including dishwashers, stoves, refrigerators, washer and dryer units, patios or balconies and ample storage space. The units will have internet and cable connections and will be individually metered for utilities (gas and electricity).

The community amenities will include a community room, fitness room, business center, surveillance cameras with controlled access entry and a reception desk, B-Cycle station, car share program, and electric car charging station and a controlled access structured parking. Each unit will come with one parking space and an additional space can be leased for \$30 per month. The goal is to connect people with transportation to minimize the use of a car for its residents but also to provide enough parking availability so that the property is still highly marketable.

The building will be a mix of steel and concrete and wood frame construction. The design will be a contributing presence to the impressive new construction underway or planned in the Union Station. Units will have high ceilings and balconies to provide a spacious feeling. Chestnut will be based on a Universal Design approach and the building will be designed to encourage health in all aspects of how it functions and how its residents move throughout the space. This includes how stairs are designed as grand staircases in prominent locations and constant messaging and technology are used to encourage health choices. Extensive mapping and connectivity communications will be incorporated into the building to constantly reinforce walking or biking options for residents to connect to the surrounding services. Design materials will be varied with thoughtfulness towards being cost effective while complying with the standards of the local design review committee.

Chestnut will be a certified Energy Star-rated development and will achieve a Leadership in Energy and Environmental Design (LEED) certification. The building will include high efficiency heating and cooling equipment delivered by Aquatherm pumps, EnergyStar appliances, low-E vinyl thermal pane windows, high R-value wall and attic insulation. The development will promote sustainable building techniques through the use of low- and no-VOC

paints, carpeting, padding and adhesives and formaldehyde-free particle board and will promote water conservation with low-flow fixtures. Additionally, the building will have an efficient flat roof and will use recycled building materials. Solar photovoltaic will be installed for common building energy management. Alternatives for steam energy are being explored with Xcel Energy which neighbors the site.

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the BHS Financial Management Unit and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by BHS shall be in accordance with established Financial Management Unit (FMU) procedures for line-item reimbursements. The Contractor must submit expenses and accruals to BHS on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with BHS policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to BHS in order to be paid.
 - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
 - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from BHS.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with the OMB cost principles applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
 - a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to BHS prior to the draw request. The standardized BHS "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll—1) the amount of time worked by the employee for this pay period; and 2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, workmen's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

1.5 General Reimbursement Requirements:

- a. Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- b. Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- c. Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- d. Administration and Overhead cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by BHS.
- e. Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received

by BHS within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income:

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. **ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.**
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except **AS APPROVED IN WRITING BY BHS, INCLUDING** those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by BHS.

3.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc. 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 transactions.
- 3.1.7 The Contractor shall maintain separate accountability for BHS funds as referenced in 24 C.F.R. 85.20 and OMB Circular A-110.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in BHS provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

- 4.1.1 If the Contractor expends five hundred thousand dollars (\$500,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."
- 4.1.2 A copy of the final audit report must be submitted to the BHS Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to BHS along with the reporting package prepared in accordance with the Single Audit Act Amendments and OMB Circular A-133. If the management letter is not received by the sub recipient at the same time as the Reporting Package, the Management Letter is also due to BHS within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period,

whichever is earlier. If the Management Letter has matters related to BHS funding, the Contactor shall prepare and submit a Corrective Action Plan to BHS in accordance with 24 C.F.R. Part 45 for each applicable management letter matter.

- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc. shall be submitted to **BHS Financial Management Unit**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to BHS with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by BHS. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to BHS prior to the last Quarter of the Contract Period, unless waived in writing by the BHS Director.

6.1 Procurement:

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

- 7.1.1 BHS may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required BHS contract close-out forms and submitting these forms to their appropriate BHS Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by BHS in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by BHS within sixty (60) days prior to end of contract.
- 9.1.3 BHS will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, BHS reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

10.1 Collection of amounts due:

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, BHS may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.

EXHIBIT C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the HOME Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the “equal housing opportunity” slogan and logo. The City will also publicize its HOME programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the “equal housing opportunity” slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the HOME Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City’s HOME programs on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
- (2) require compliance with all applicable fair housing and equal opportunity laws, and
- (3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City’s Housing Loan Program, the objective of the Affirmative Marketing Program and a project’s Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project’s tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity.

In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner’s actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner’s records and these records must be made available to

the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity.

The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. These actions will include notifying the City or its designee in writing of the vacancy. The owner will provide the date the unit will be available, the number of bedrooms; the rent, the location of the unit, and the name, address, and telephone number of the property manager or rental agent. The City will circulate this notice to specific community and other organizations serving those racial/ethnic groups identified in the project's plan as least likely to apply for housing in that particular project without special outreach. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.