

**A G R E E M E N T**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "CITY", and **MILE HIGH MONTESSORI EARLY LEARNING CENTERS, formerly known as MILE HIGH CHILD CARE ASSOCIATION**, a nonprofit corporation, whose address is 1780 Marion Street, Denver, Colorado 80218 (the "Contractor").

**RECITALS**

1. The City owns certain real property and improvements, including the structure known as or formerly known as "Building 670" (the "Building"), located on the property formerly known as Lowry Air Force Base, with a street address of 957 Ulster Way, Denver, CO (the "Site").

2. The Mayor's Office for Education and Children (MOEC) and the Division of Real Estate (the "Real Estate Division", respectively), desire to use the Building to provide, without interruption, an early childhood education center.

3. The City also administers Head Start programs in the Lowry neighborhood and further desires to provide Head Start services in the Building for families living near the Site.

4. The Contractor is a licensed and qualified child care provider as well as a delegate agency to the City providing Head Start programs to families living near the Site, and is ready, willing and able to provide Head Start programs and child care services in the Building as provided in this Agreement.

5. The Contractor has used the Building to provide Head Start programs and child care services in the Building since October 2002, approximately, by a written Agreement with the City dated May 16, 2003. This Agreement expired on June 30, 2010, and the Contractor has continued to use the premises and maintain services.

6. The recommending and approving signatories appearing below hereby certify that the services are obtainable, for practical purposes, from only one single source and/or that the preference for the services of this Contractor is based upon professional advice.

**AGREEMENTS:**

In consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

N  
C  
I  
-  
C  
6  
W  
T

**SECTION 1. DEFINITIONS:**

A. "Premises" shall mean the Building and certain exterior space as described and shown in more detail on Exhibit A attached to this Agreement. The legal description contained in Exhibit A shall be reconciled with the final description of the Premises as determined by a subsequent, completed survey.

B. "Services" shall mean the provision of Head Start programs, early childhood education programs and other child care services to be provided by the Contractor on the Premises. For purposes of this Agreement, Services shall also include hosting or facilitating meetings concerning community matters, program development, resource development, and/or staff development.

C. "Personal Property" shall mean the personal property and/or equipment located on the Premises and belonging to either the City which property is described in more detail on Exhibit B attached to this Agreement.

**SECTION 2. DOCUMENTS CONSTITUTING THIS AGREEMENT:** This Agreement shall include the following exhibits, which are attached hereto and incorporated herein by reference:

- Exhibit A: Legal Description and Area map of Site and Premises.
- Exhibit B: Inventory of Personal Property.
- Exhibit C: Certificate of Insurance

In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

**SECTION 3. SERVICES TO BE PROVIDED.**

A. **General Use.** The City shall provide to the Contractor the use of the Premises to provide the Services. The City reserves the right to use the Premises for municipal purposes involving the MOEC upon prior written notice to the Contractor and without unreasonable disruption to the Contractor's use of the Premises. It is acknowledged that this reservation of rights is separate and independent from the City's right of entry to the Premises for maintenance and repairs.

The Contractor will provide the Services, at all times by way of properly trained, competent, and properly supervised personnel, and, with particular respect to Head Start programs, in accordance with its obligations to the City under that certain Agreement dated June 22, 2010, (the "Contractor's Head Start Delegate Agreement"). The Premises are to be used and occupied by the Contractor

solely for the purpose of providing the Services. The Contractor will use the Premises in a careful, safe, and proper manner; and shall not use or permit the Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver. The Contractor will not commit or suffer to be committed any waste or damage upon the Premises or any nuisance to be created or maintained thereon. The Contractor will also keep the Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, and agents.

B. **Standard of Services.** The Contractor will provide the Services and conduct all child care activities at the Site in accordance with this Agreement, the Contractor's Head Start Delegate Agreement, and in full compliance with the rules and regulations regarding child care, adopted by the Colorado Department of Human Services, which are in effect as of the date of such child care.

C. **Recipients of Services.** It is intended that the Contractor shall provide childcare services for children and/or families eligible to participate in public assistance child care programs (such as, but not limited to, Colorado Preschool Program and Child Care Assistance Program). Such eligible children and/or families shall receive priority consideration to receive services over children and/or families that are not eligible for said public assistance programs. It is acknowledged, however, the Contractor may serve children that are not eligible for public assistance programs.

D. **License; Insurance.** The Contractor will, at all times during the term of this Agreement, maintain in good standing its state license as a child care provider, and shall immediately notify the City if any investigation is commenced, or any action is taken, by any state agency in respect of such license, including without limitation, the suspension or revocation thereof. The Contractor will, at all times during the term of this Agreement, maintain the insurance coverage specified in Section 11 below.

E. **Observation of Child Care Activities.** The Contractor will allow the City's authorized representatives to visit and observe the provision of Services on the Premises at all times. Such representatives shall sign the visitors log and identify themselves as City representatives.

F. **Security.** The Contractor shall be responsible for securing the Premises and maintaining security systems and procedures.

#### **SECTION 4. REPAIRS/UTILITIES:**

A. Maintenance and Repairs by City: The City, through the Facilities Management Unit of the Department of General Services shall be responsible for the maintenance and repair of the basic structure of the Building, including the foundation, roof, exterior walls, parking lots and playground, but excluding exterior lights and glass doors and windows. Such structural maintenance would include any structural change or addition required by federal, state or City laws, or by zoning, building, health or safety regulations. This responsibility includes asbestos removal and the replacement of asbestos-containing materials, if necessary. The City shall be responsible for ensuring that power is provided to the Building; however, the Contractor shall be responsible to ensure that the load placed on the electrical system does not exceed the capacity of the system. The City shall be responsible for all maintenance and repair of the heating, ventilating and air-conditioning system. The City shall be responsible for all other major repairs, which are defined as those plumbing, electrical, carpentry and other repairs that individually cost over \$1,500.00. The Contractor acknowledges and understands that the City may provide said maintenance and repair services directly or it may cause such services to be provided through the use of independent contractors or other cooperative agreements. The Contractor shall notify the City of any major repairs of which Contractor becomes aware. Notwithstanding any provision to the contrary contained in this Agreement, the City reserves the right to determine in its sole discretion whether to commence said major repair. If the City determines to commence said major repair, it shall use its best efforts to commence the provision of said repairs promptly. If the repairs cannot be completed promptly, the Director of Real Estate or the Director's designee shall provide Contractor with an estimate of the timeframe in which the City expects the requested repairs to be completed.

B. Repairs and Maintenance by Contractor: The Contractor shall be responsible for the maintenance and repair of exterior lights, glass doors and windows, and all interior decorations, including carpet, floor tile and window coverings, regardless of cost. The Contractor shall be responsible for any electrical system upgrades which are required as a result of the load its operation places upon the electrical system. The Contractor will be responsible for all minor electrical, plumbing, carpentry and other repairs that individually cost less than \$1,500.00.

C. Standard Utilities/Operating Expenses: All costs and expenses and disbursements in connection with or relating to the use, maintenance, and operation of the Premises,

excluding the costs of reasonable utility services, shall be borne and paid for by the Contractor. The Contractor shall at its own cost and expense provide all necessary janitorial, grounds maintenance and snow removal services. The City shall pay for all utilities other than telephone, reasonably necessary to serve the Premises during normal business hours. The City reserves the right to install at its expense meters to measure the electricity and domestic water actually used by the Contractor in the Premises.

D. Extra Utility Services. If the City shall from time to time reasonably determine that the use of electricity or any other utility or service in the Premises is disproportionate to a reasonable use of the Premises, then the City may separately charge the Contractor for the excess costs at reasonable rates attributable to such disproportionate use together with the costs, if any, incurred by the City in determining that Contractor's use is disproportional (said charges being referred to herein as the "Excess Utility Charges"). The Contractor shall have up to thirty (30) days to review and dispute the Excess Utility Charges. If the Contractor disputes the imposition of Excess Utility Charges, in whole or in part, it shall notify the Director of Real Estate in writing within thirty (30) days of the date of the City's notice of Excess Utility Charges and provide its reasons for the dispute (the "Contractor's Notice of Dispute"). Said dispute shall be resolved by an informal review and an administrative hearings procedures as authorized below in Section 38 of this Agreement.

E. Additional Services. If from time to time requested in writing by Contractor, and to the extent that it is reasonably able to do so, the City shall provide or cause to be provided in the Premises additional services such as, by way of example but not in limitation, heat, ventilation and cooling during times other than normal business hours, provided that Contractor shall within thirty (30) days of receipt of any invoice for any such additional service pay the City therefore at reasonable rates as the City may from time to time establish.

F. Temperature maintenance. Contractor shall not without the City's written consent install or operate in the Premises equipment (including telephone equipment or lighting) which generates sufficient heat to adversely affect the temperature otherwise maintained in the Premises by the air conditioning system as normally operated. The City may install or cause to be installed supplementary air conditioning units, facilities or services in the Premises, or modify its air conditioning system, as may in the City's reasonable opinion be required to maintain proper temperature levels

G. Premises vacant except for certain Personal Property. The parties acknowledge that the Premises are vacant except for the Personal Property described on Exhibit B. The Contractor shall not sell, transfer, donate or otherwise dispose of the Personal Property. The Contractor shall not remove any of the Personal Property for use elsewhere without the City's prior written consent. The Contractor shall provide all furniture, equipment (including kitchen equipment) and supplies necessary for the proper and adequate performance of the Contractor's duties under this Agreement and the Contractor's Head Start Delegate Agency Agreement. The Contractor agrees that it shall be responsible to maintain the Personal Property and all such equipment and furniture belonging to the Contractor in good and safe condition, including repair and/or replacement thereof when necessary, without reimbursement from the City. If the City determines to provide to the Contractor any other personal property (such as, but not limited to, furniture, equipment, movable fixtures, chairs, desks, file cabinets, toys, play sets, etc.) then any and all such additional property shall be considered Personal Property of the City. The Director of Real Estate shall modify Exhibit B accordingly.

H. Return of Premises. At the expiration or earlier termination of this Agreement, the Contractor shall deliver up the Premises to City in as good a condition as on the date the Contractor begins services thereon, ordinary wear and tear excepted; and Contractor shall remove all of Contractor's movable furniture and other effects. All moveable furniture and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by City without notice to Contractor or any other person, and without obligation to account therefor, and Contractor shall pay City all expenses incurred in connection with such property. Contractor's obligation to observe or perform this covenant shall survive the termination of this Agreement.

**SECTION 5. COORDINATION AND LIAISON:**

A. The Contractor agrees that during the term of this Agreement it shall fully coordinate all services hereunder with the City. The City's Director of the Mayor's Office for Education and Children ("MOEC Director") or her designee is the City's representative under this Agreement through whom child care and early childhood education services performed under this Agreement shall be coordinated. The Director of the Real Estate Division (the "Director of Real Estate") is the City's representative under this Agreement through whom all Building maintenance

and repair obligations shall be coordinated to the extent required under this Agreement.

B. The Contractor also agrees to allow the City to review any of the procedures used by it in performing the services hereunder, and to make available for inspection relevant files or other documents used or prepared by the Contractor to provide the Services or to use the Premises in order for the City to coordinate with the Contractor the performance of Services.

**SECTION 6. ENTRY BY CITY:** Contractor will permit the City to enter into and upon the Premises to inspect the same and make any repairs deemed necessary by City. No such entry shall constitute a termination of this Agreement or otherwise relieve Contractor of any of its obligations. To avoid unreasonable interruption of services to children, the City will make reasonable efforts to conduct inspections and provide maintenance and/or repairs in such a manner that does not unreasonably disrupt classroom activities.

**SECTION 7. CONSIDERATION; APPROPRIATION REQUIRED:** In consideration of the Services to be provided by the Contractor, including but not limited to child care services for children and families eligible to participate in public assistance child care programs, and the performance of other obligations under this Agreement, the City will provide the Premises at an annual cost of One Dollar and Zero Cents for each year of the Term beginning on July 1, 2010. The City is not obligated to execute an Agreement or any amendments for any further services performed by Contractor beyond that specifically described in the Agreement. Any services performed or expenses incurred beyond those contained in the Agreement are performed at Contractor's risk and without authorization under the Agreement. Payment for any obligations of the City under the Agreement, whether direct or contingent, extends only to funds 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.

**SECTION 8. TERM:** The term of the Agreement will commence on July 1, 2010, and shall expire on June 30, 2012 (the "Term").

**SECTION 9. TERMINATION.**

A. By the City.

(1) The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the City.

(2) 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.

(3) Upon termination of the Agreement, 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.

(4) 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".

B. **Termination by Contractor.** If an event of default by the City occurs, the Contractor shall give written notice to the City and shall afford the City a reasonable opportunity to cure any such default. If the City fails to cure any such default within sixty (60) days, then the Contractor may terminate this Agreement; provided, however, that if the default cannot be cured within sixty (60) days and the City is diligently attempting to cure the default, it shall provide written notice to the Contractor of the date, which shall not exceed ninety days (90) from the date that it receives the Contractor's notice, that it will have fully cured such default. If notice of termination is



so given, the City and the Contractor shall not be relieved of any obligations to be performed up to the date of termination.

**SECTION 10. EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

**SECTION 11. INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement 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. 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.

B. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as

**Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

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

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

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

G. **Commercial General Liability:** Contractor shall maintain a Commercial

General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. **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

I. **Professional Liability:** Contractor shall maintain professional liability limits of \$1,000,000.00 per claim and \$1,000,000.00 aggregate policy limit.

J. **Additional Provisions:**

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

- (a) That this Agreement is an Insured Contract under the policy;
- (b) Defense costs in excess of policy limits;
- (c) A severability of interests, separation of insureds or cross liability provision; and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (e) No exclusion for sexual abuse or molestation.

(2) For claims-made coverage:

- (a) 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.

(3) 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.

**SECTION 12. DEFENSE AND INDEMNIFICATION**

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities,

claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the Services performed under this Agreement or the Contractor's use or occupancy of the

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

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the 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.

**SECTION 13. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A 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.

**SECTION 14.        ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the prior written consent of the Director of Real Estate. 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 of Real Estate 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.

**SECTION 15.        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.

**SECTION 16.        WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

**SECTION 17.        GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

**SECTION 18.        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.

**SECTION 19. CONTRACTOR NOT AN EMPLOYEE:** 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.

**SECTION 20. TAXES, CHARGES AND PENALTIES:** 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 will promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement including without limitation all Federal or State withholding tax, social security tax, unemployment tax, or any other personnel or employment taxes from payments made to the Contractor under this Agreement. The Contractor will not allow any lien, mortgage, judgment or execution to be filed against City property. 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.

Contractor shall not be responsible for the payment of any real property taxes or assessments which may be levied against the Premises.

**SECTION 21. 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 of it 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.

**SECTION 22. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101,

*et seq.*

**SECTION 23. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**SECTION 24. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**SECTION 25. 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 or she 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.

**SECTION 26. TOBACCO PRODUCTS:** Contractor and its officers, agents, and employees will cooperate and comply with the provisions of D.R.M.C. §24-304 prohibiting smoking in City owned and controlled buildings and facilities, and Denver Executive Order No. 13 dated October 19, 1995, prohibiting the sale or advertising of tobacco products in or on premises or in facilities owned or operated or controlled by the City and County of Denver. Contractor will prohibit smoking by its employees and agents in the Premises and will not sell or advertise tobacco products. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

**SECTION 27.        SIGNAGE:** The Contractor will not install any additional signs or banners on the interior or exterior of the Building without the prior written consent of the Director of Real Estate or the designated representative of said Director, which may be withheld in the City's sole but reasonable discretion.

**SECTION 28.        LOSS OR DAMAGE:** City will not be liable or responsible to Contractor for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Premises, Contractor will immediately give notice thereof to City in accordance with Section 31 below.

**SECTION 29.        HAZARDOUS SUBSTANCES:** Contractor will not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Contractor, Contractor's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the Contractor, Contractor will indemnify, reimburse, and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the term of this Agreement and arising as a result of those actions or inactions by Contractor. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Contractor causes or permits the presence of any Hazardous Substance on the Premises and that results in contamination, Contractor will promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the Premises. Contractor will first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state,



federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

**SECTION 30. CITY EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

**SECTION 31. ACCIDENTS/BUILDING DEFECTS/EMERGENCIES.**

A. Accidents/Building defects. The Contractor will respond to all accidents, defects and emergencies in the Premises of which it becomes aware and shall promptly notify the Director of Real Estate of the occurrence of any such accidents or defects of which the Contractor has become aware. In no event will the Contractor directly retain, on behalf of the City, any services of contractors as a result of an accident, defect, or emergency. The Contractor will, if requested, assist the City or any entity retained by the City to manage the Building in developing a manual setting forth specific emergency and responsive procedures for the Building. In addition, the Contractor will provide the City with prompt notification of any matter or condition which may cause injury or damage to the Building to any person or property therein.

B. Emergencies. In the event of an emergency (an unforeseen event that in Contractor's reasonable determination, endangers the health or safety of children enrolled in Contractor's programs), the Contractor may cease program operations for a limited period of time provided, however, that Contractor immediately takes all necessary and appropriate measures to ensure that the Services are reinstated as soon as is reasonably possible for any and all children enrolled in Contractor's programs that may be displaced as a result of an emergency. In the event that Contractor ceases program operations as a result of an emergency, the Contractor shall notify the MOEC Director and the Director of Real Estate of the cessation in program operations, the actions taken by Contractor in response to the emergency, and Contractor's estimate as to when services will be reestablished on the Premises, by telephone within two (2) hours on the same day of cessation. The City reserves the right to require Contractor to cease or suspend program operations at any time if the City reasonably determines that a danger exists to the health, safety or well-being to the children enrolled in or participating in programs on the Premises.

**SECTION 32. PROTECTION OF PROPERTY:** The Contractor will use due care for the protection of all public and private property, structures, water mains, sewers, and utilities,

both above and below ground, at or near the Site and the Premises or which are in any manner affected by the Contractor's provision of services or the transportation of personnel or materials in connection therewith. The Contractor will give reasonable written notice in advance to the department or the agency having charge of any property or utilities owned by the City and to other owner or owners of public or private property or utilities when they will be affected by the services to be performed under this Agreement.

**SECTION 33. TIME IS OF THE ESSENCE:** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement by the parties, time is of the essence.

**SECTION 34. COMPLIANCE WITH APPLICABLE LAWS:** 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, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**SECTION 35. DISPUTES:** All disputes between the City and Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be either of the two City representatives identified in Section 5.A above.

**SECTION 36. INTELLECTUAL PROPERTY RIGHTS:** The parties acknowledge that the Services may from time to time be marketed or publicized through the cooperative efforts of the Contractor and the City and the use of each party's intellectual property may be desired to promote and facilitate the delivery of the Services. The parties shall not use, reproduce, copy, distribute, transmit, alter, modify, register, or incorporate any registered or unregistered trademark or servicemark, logo, seal, flag, official insignia, name, icon, copyright, patent, or domain name (including any domain name that includes any portion of any registered or unregistered trademark or servicemark) of the other party or any third party without written permission. Any misuse of each party's any proprietary or intellectual property or of a third party is strictly prohibited. The parties shall report any known instances of unauthorized use of any proprietary or intellectual property. A copy of any such notice to the City shall also be sent to the Denver City Attorney, Attn: Victoria Ortega, Assistant City Attorney, Municipal Operations, 201 West Colfax Avenue, Dept. 1207,

Denver, Colorado 80202.

**SECTION 37. 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. 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.

**SECTION 38. COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.

**SECTION 39. 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 sub-consultant 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 either the E-Verify Program.

(4) It is prohibited from using either 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 sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant 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 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**ATTEST:**

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

**CITY AND COUNTY OF DENVER:**

By: \_\_\_\_\_  
MAYOR

**RECOMMENDED AND APPROVED:**

By: \_\_\_\_\_  
Director, Mayor's Office for Education and Children

By: \_\_\_\_\_  
Director, Head Start Office

**RECOMMENDED AND APPROVED:**

By: \_\_\_\_\_  
Director, Facilities Management and Planning Unit

By: \_\_\_\_\_  
Director, Real Estate Division

**APPROVED AS TO FORM:**  
DAVID R. FINE,  
Attorney for the City and County of Denver

By: \_\_\_\_\_  
Assistant City Attorney

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No. RC05008

By: \_\_\_\_\_  
Auditor

"CITY"

**MILE HIGH MONTESSORI EARLY LEARNING CENTERS**

Taxpayer (IRS) Identification  
No. 84-0617972

By: \_\_\_\_\_  
Pamela Harris

Title: \_\_\_\_\_  
President & CEO

**ATTEST:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**"CONTRACTOR"**

- EXHIBIT A – Description and Area map of Site and Premises
- EXHIBIT B – Inventory of Personal Property
- EXHIBIT C – Certificate of Insurance

DEPARTMENT OF THE AIR FORCE

LEASE NO. USAF-BCA-LOW-12-00-0802

EXHIBIT A  
DESCRIPTION OF LEASED PREMISES

For the purposes of this Lease, the Leased Premises are defined as the Property known as Parcel LL located at the former Lowry Air Force Base, Colorado, specifically in parts of Section 4, Township 4 South, Range 67 West, 6<sup>th</sup> Principal Meridan, City and County of Denver. BEGINNING at a point at the Southwest corner of Eighth Avenue and Tamarac Street proceeding Southeast for approximately 319 feet to Uinta Way; THENCE Southwest for approximately 375 feet to Ulster Way; THENCE Northwest along Ulster Way for approximately 331 feet to Tamarac Street; THENCE Northeast for approximately 368 feet along Tamarac Street back to the point of BEGINNING. Included in this Lease is Building 670 consisting of 13,586 square feet and approximately two and one half (2.5) acres of related land located in Parcel LL.

DEPARTMENT OF THE AIR FORCE

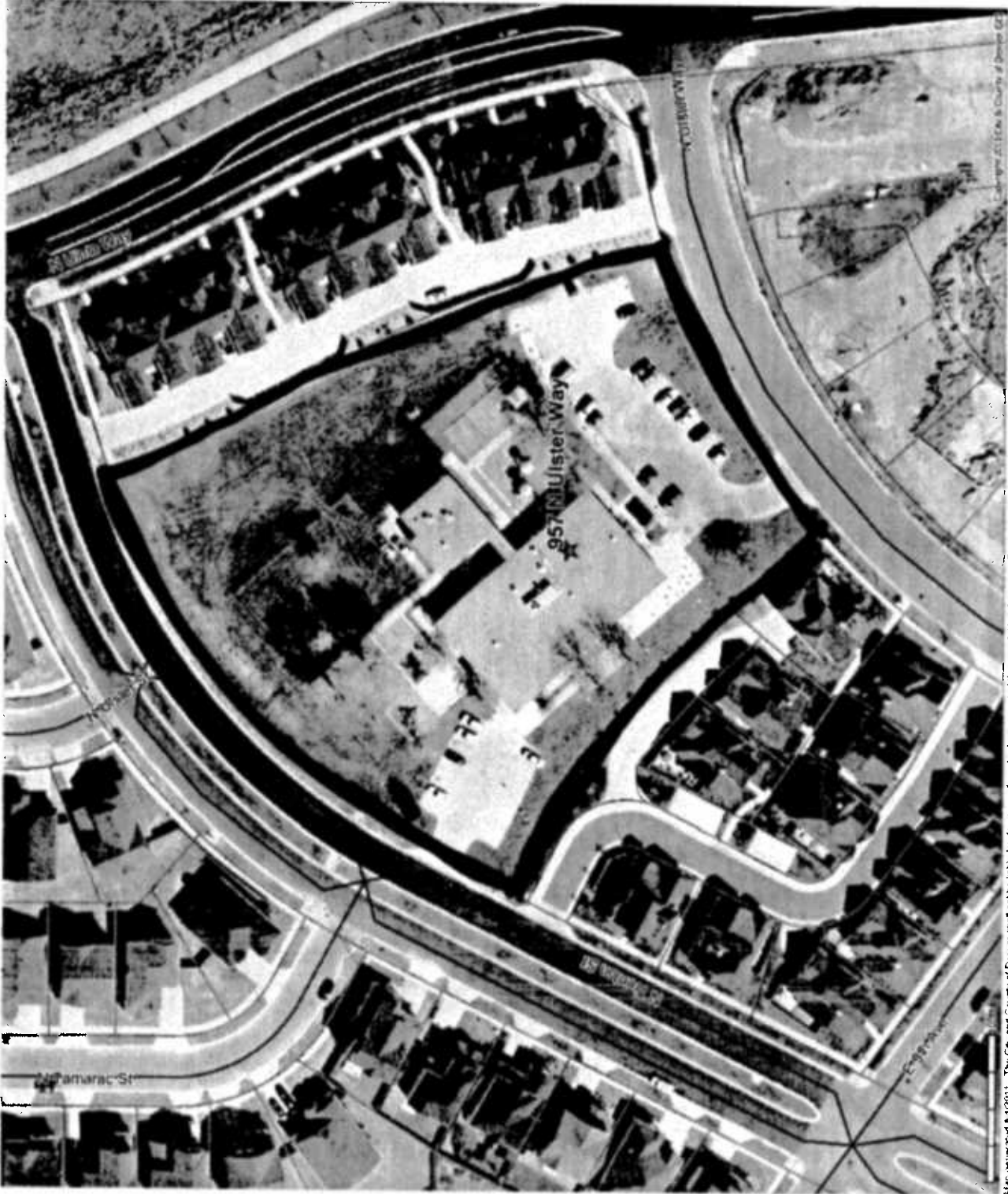
LEASE NO. USAF-BCA-LOW-12-00-0802

EXHIBIT B

MAP OF THE LEASED PREMISES

Exhibit   A    
Page   2   of   3

# Lowry Montessori



- Denver County (Boundary)
- Street Centerline
- Interstate
- US Highway
- Other
- Parcels
- 2008 Denver
- Denver County (Shaded)
- Denver County
- Adams County
- Arapahoe County
- Jefferson County

Map generated 8/2/2011. The City and County of Denver shall not be liable for damages of any kind arising out of the use of this information. The information provided "as is" without warranty of any kind, express or implied, including but not limited to the fitness for a particular use. This is not a legal document.



EXHIBIT B – Inventory of Personal Property

1. 1 Refrig 65 cu ft
2. 4 cabinet/file drawers (LTR, 5 DWR)
3. 2 Food Carts
4. Misc. Pots and Pans
5. Misc. Kitchen Utensils
6. 1 Mixer, Food 20QT
7. 1 Dishwasher



# CERTIFICATE OF LIABILITY INSURANCE

OP ID: **BD**

DATE (MM/DD/YYYY)

07/18/11

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).

<b>PRODUCER</b> Cherry Creek Ins. Agency, Inc. Suite 500 6660 Greenwood Plaza Blvd. Greenwood Village, CO 80111 Cherry Creek Insurance Agcy		303-799-0110  303-799-0156	<b>CONTACT</b> (A/C No. Ext): E-MAIL ADDRESS: PRODUCER CUSTOMER ID # <b>MILEH-0</b>	FAX (A/C No.):
<b>INSURED</b> Mile High Montessori ELC Debra Houdelette 1780 Marion Street Denver, CO 80218		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b> 41190
		<b>INSURER A:</b> Pinnacol Assurance		
		<b>INSURER B:</b> Philadelphia Insurance Company		
		<b>INSURER C:</b>		
		<b>INSURER D:</b>		
		<b>INSURER E:</b>		

**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	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	GENERAL LIABILITY	X	PHPK743000	06/30/11	06/30/12	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 20,000
	<input checked="" type="checkbox"/> Abuse/Molestation					PERSONAL & ADV INJURY \$ 1,000,000
B	<input checked="" type="checkbox"/> Professional		PHPK743000	06/30/11	08/30/12	GENERAL AGGREGATE \$ 3,000,000
B	<input checked="" type="checkbox"/> Professional		PHPK743000	06/30/11	08/30/12	PRODUCTS - COMP/OP AGG \$ 3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER						
<input type="checkbox"/>	POLICY	<input type="checkbox"/>	PRO-JECT	<input type="checkbox"/>	LOC	\$
B	AUTOMOBILE LIABILITY	X	PHPK743000	06/30/11	06/30/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/>	HIRED AUTOS					\$
<input checked="" type="checkbox"/>	NON-OWNED AUTOS					\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB	X	PHUB351710	06/30/11	06/30/12	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB					AGGREGATE \$
	<input type="checkbox"/> CLAIMS-MADE					\$
	DEDUCTIBLE					\$
	<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	0875922	01/01/11	01/01/12	WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					OTH-ER
	<input type="checkbox"/> N/A					E.L. EACH ACCIDENT \$ 500,000
	<input type="checkbox"/> if yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 500,000
						E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
**The City & County of Denver, its elected and appointed officials, employees and volunteers are included as Additional Insured. Waiver of subrogation applies.**

**\*10 days notice of cancellation for non-payment of premium.**

<b>CERTIFICATE HOLDER</b>  City and County of Denver Denver Risk Mgmt 201 W Colfax Ave Dept 1105 Denver, CO 80202	<b>CANCELLATION</b>  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 <i>Becky Dorn</i> Exhibit Page <u>  C  </u> of <u>  1  </u>
----------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------