

WHEN RECORDED MAIL TO:

Denver Economic Development & Opportunity
Attention: Loan Administration
101 W. Colfax Ave., Suite 850
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

SECOND AMENDMENT AND MODIFICATION AGREEMENT

THIS SECOND AMENDMENT AND MODIFICATION AGREEMENT ("Second Amendment") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **THE HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER**, a public body corporate and politic under the laws of the State of Colorado (the "Grantee" or "Contractor"), whose address is 1035 Osage St., Denver, CO 80204.

WITNESSETH:

WHEREAS, the Parties entered into that certain Agreement – PF&I Program, dated June 28, 2019, and that certain Amendatory Agreement dated September 29, 2020, relating to a loan of \$750,000 for the development and construction of a food market (the "Agreement"); and

WHEREAS, Grantee executed that certain deed of trust (the "Deed of Trust") for the benefit of the City, dated July 29, 2020, and recorded on September 10, 2020, at Reception No. 2020145847, of the records of City and County of Denver, State of Colorado, and encumbering the following described property:

The following real estate located in the City and County of Denver, Colorado:

THAT PART OF SUN VALLEY HOMES 2ND FLG S OF S LI W 10TH AVE W OF W LI
DECATUR N OF ALY & E OF E LI OF L21 B15 S FAIR-VIEW & N 1/2 VAC ALY ADJ
EXC E 6FT N 5.5FT TO CITY

also known and numbered as 995 N. Decatur St., Denver, Colorado; and

WHEREAS, the Deed of Trust secures the repayment of the indebtedness evidenced by that certain Promissory Note dated July 28, 2020 (the "Note"); and

WHEREAS, the Agreement expired on March 31, 2021;

WHEREAS, the Parties wish to revive and reinstate all of the terms and conditions of the Agreement, the Note, the Deed of Trust, and any other documents evidencing or securing the City's loan (together, the "Loan Documents"), and modify the Loan Documents, as follows.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the adequacy of which is acknowledged, the Parties hereby revive the Loan Documents and modify the Loan Documents as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Agreement.

2. Section 2 of the Agreement, entitled “**TERM:**” is hereby amended to read as follows:

“This Agreement shall begin on February 1, 2019, and end on October 31, 2021, unless such time is extended by written agreement of the parties, executed in the same manner as this Agreement. Notwithstanding expiration of the term of this Agreement, the parties expressly agree that the obligations described in Paragraph 10 shall survive expiration of this Agreement and bind the parties in accordance with Paragraph 10.”

3. In Section 10 of the Agreement, entitled “**TIME OF PERFORMANCE; RESTRICTIONS ON USE OF PROPERTY:**”, Subsection A. is amended to read as follows:

“Grantee agrees to continue to use the Property as a non-profit community facility for a period of five (5) years from the expiration of this Agreement. For value received, the Grantee shall pay to the City the principal sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00), or the amount actually disbursed by the City, whichever is less, if and only if the Property ceases to be used as a non-profit community facility during such five-year period. The Grantee agrees to execute a promissory note (the “Promissory Note”) and deed of trust, containing terms and conditions satisfactory to the City, evidencing and securing such obligation.”

4. In Section 10 of the Agreement, entitled “**TIME OF PERFORMANCE; RESTRICTIONS ON USE OF PROPERTY:**”, Subsection B. is amended to read as follows:

“On November 1, 2026, presuming compliance by Grantee with its obligations hereunder, the Promissory Note will be cancelled, and the deed of trust will be released by the City (at Grantee’s expense). The Director of DEDO, or the Director’s designee, may execute documents necessary to subordinate the lien of its deed of trust, so long as: (i) Grantee is not then in default of its obligations hereunder; (ii) such documents are in a form satisfactory to the City Attorney’s Office; and (iii) said Director concludes, in her sole discretion, that the City’s interests remain adequately protected.”

5. All references to "**Exhibit A-1**" shall be amended to read: "**Exhibit A-2**". Exhibit A-1 of the Agreement is deleted and replaced by **Exhibit A-2**, Second Amended Scope of Services, attached to this Second Amendment and Modification Agreement.

6. All references to "**Exhibit B**" shall be amended to read: "**Exhibit B-2**". Exhibit B of the Agreement is deleted and replaced by **Exhibit B-2**, Financial Administration, attached to this Second Amendment and Modification Agreement.

7. Part II of the Agreement is deleted and replaced by Part II, Supplementary General Conditions (CDBG), attached to this Second Amendment and Modification Agreement.

8. The Loan Documents are amended to reflect the amended terms herein.

9. Grantee consents to the use of electronic signatures by the City. This Second Amendment and Modification 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 Second Amendment and Modification 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 Second Amendment and Modification 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.

10. Except as herein amended, the Loan Documents are revived, affirmed and ratified in each and every particular.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:
Contractor Name:

OEDEV-202158449-02 [201843292-02]
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER

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:

Attorney for the City and County of Denver

By: _____

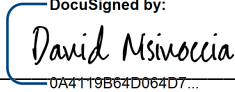
REGISTERED AND COUNTERSIGNED:

By: _____

By:

Contract Control Number:
Contractor Name:

OEDEV-202158449-02 [201843292-02]
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER

By:  _____
0A4119B64D064D7...

Name: David Nisivoccia
(please print)
Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A-2

SECOND AMENDED SCOPE OF SERVICES

**OFFICE OF ECONOMIC DEVELOPMENT
NEIGHBORHOOD EQUITY
2019 NEIGHBORHOOD FACILITIES & IMPROVEMENTS (CPS No. 17)
Housing Authority City and County of Denver
Grow Market**

Federal Award ID (FAIN) #: B-19-MC-08-0005
Federal Award Date: Anticipated June 2019
Federal Awarding Agency: U.S. Housing and Urban Development (HUD)
Pass-Through Entity: City and County of Denver
Awarding Official: Dept. of Housing and Urban Development (HUD)
 Community Planning and Development
 Region VIII
 1670 Broadway Street
 Denver CO 80202-4801

I. INTRODUCTION

Period of Performance Start and End Dates: February 1, 2019 – August 31, 2020

AMENDED Period of Performance Start and End Dates: February 1, 2019 – March 31, 2021

SECOND AMENDED Period of Performance Start and End Dates: February 1 2019– October 31, 2021

Federal Project Description:

The purpose of this contract agreement is to provide a Community Development Block Grant for \$750,000 through the Office of Economic Development's Division of Neighborhood Equity. These funds will be provided to the **Housing Authority City and County of Denver** to be utilized to pay contractors, other consultants, development and construction of a food market, called the GROW Market, which will provide the benefits of a quick, accessible grocer and basic goods store, but will also focus on workforce training and development through DHA's Work Force Development and Community Initiatives Department within the Sun Valley Neighborhood.

SECOND AMENDED Federal Project Description:

The purpose of this contract agreement is to provide a Community Development Block Grant for \$750,000 through the **Denver Economic Development and Opportunity (DEDO) Division of Neighborhood Equity and Stabilization Team (NEST)**. These funds will be provided to the **Housing Authority City and County of Denver (DHA)** to be utilized to pay contractors, other consultants, development and construction of a food market, called the GROW Market, which will provide the benefits of a quick, accessible grocer and basic goods store, but will also focus on workforce training and development through DHA's Work Force Development and Community Initiatives Department within the Sun Valley Neighborhood.

Funding Source: ☒ CDBG **Amount:** \$ 750,000 **CFDA # and Name:** 14.218

CDBG Matrix Code: 03

CDBG Eligible Activity: 24 CFR 570.201(c): *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and

EXHIBIT A-2

improvements, except as provided in §570.207(a), carried out by the recipient or other public or private nonprofit entities.

Accomplishment Type: 11 Public Facilities
Proposed Number of outcomes: 1

CDBG HUD National Objective: LMA – Low/Mod Area Benefit
 24 CFR 570.208 (a)(1) Area *benefit activities*. (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate-income persons.

Organization: Housing Authority of the City & County of Denver

EIN#: 84-6002414
DUNS#: 039141353
SAM Expiration Date: 12/30/2018
AMENDED EXP DATE: 09/10/2021
Address: 1035 Osage St, Denver CO 80204
Contact Person: Chris Jedd
Phone: 720-932-3155
Email: cjedd@denverhousing.org

Organization Type:

☐ Non-Profit ☐ For-Profit ☐ Individual ☐ Partnership ☐ Corporation ☐ Publicly Owned ☒ Other

CDBG Contractor Relationship:

☒ Unit of Government ☐ Public Agency ☐ Sub-awardee/Subrecipient ☐ Vendor ☐ Beneficiary
☐ Community Based Development Organization (CBDO)

Council District(s): 3 **Neighborhood(s):** Sun Valley **Census Block(s):** 8
 (only required for Low Mod Area)

Project/activity located in a Target Area: ☒ Yes ☐ No
 If yes, indicate type: ☒ Local Target Area ☐ Strategy Area (NRSA) ☐ CDFI ☐ Other

The Federal Funding Accountability and Transparency Act (FFATA)

1. In the business or organization's preceding completed fiscal year, the business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) received: (1) 80 percent or more of annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements:

X Yes ☐ No

If YES, continue to statement 2.

2. The public has access to information about the compensation of the executives in the business or organization (the legal entity to which this specific CCR record, represented by a DUNS number, belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986:

X Yes ☐ No

If YES, stop here. If NO, continue to statement 3.

3. Provide the names and amounts of the five most highly compensated officers or executives:
 Ismael Guerrero \$266,765.37, Ryan Tobin \$215,779.69, Christopher Parr \$212,159.96, Joshua Crawley \$207,215.65, Nichole Ford \$205,507.93

EXHIBIT A-2

Program income (of any type, e.g., fees) will be generated by this activity.
 Contract will be funding architectural, engineering or other project soft cost.
 If yes, final project be completed within 24 months.

☐ Yes ☒ No
☒ Yes ☒ No
☒ Yes ☐ No

Purpose of this activity is to:

Help prevent homelessness
 Help the homeless
 Help those with HIV/AIDS
 Primarily help persons with disabilities

☐ Yes ☒ No
☐ Yes ☒ No
☐ Yes ☒ No
☐ Yes ☒ No

II. ACTIVITY DESCRIPTION

1. **Description of Activity:** The GROW Market will be located within first floor commercial space at Sun Valley's Phase 2 affordable housing development. Phase 2, or Gateway, is located at the intersection of 10th Avenue and Decatur Street, the two main existing through streets in Sun Valley today. Decatur Street provides a direct connection to the light rail station to the north, and 10th Avenue will directly connect to the new riverfront park. The Phase 2 site is a highly visible corner and key gateway into Sun Valley. This phase will set the tone for future ground floor uses and activation of the neighborhood. Additionally, the high vehicular, bicycle and pedestrian traffic at this location will further support the Grow Market. In addition to selling fresh produce from the GROW Garden, the GROW Market will also mirror a convenient store by selling items such as additional groceries, grab and go foods, drinks, toiletries, and print media. Operating hours are anticipated to be 7:00 AM to 8:00 PM seven days per week. Furthermore, the GROW Market will partner with DHA's Section 3 department, DHA's Resident Services Department, and YEA to offer robust workforce development and training opportunities as well as create employment opportunities within the GROW Market.
2. **Funds will be used to pay contractors, other consultants, development and construction of a food market for the Sun Valley Neighborhood.**
3. **Implementation Plan and Timeline**
 The following table outlines the implementation plan and timelines for this contract.

Task	Projected Beginning & End Dates
Design & Permitting	2/1/2019 to 12/31/19
Foundations & Core (excavation, forms, rebar, concrete,	4/1/2019 to 8/1/2019
Slab on Grade – level 1 (rough in plumbing, rebar, concrete)	8/15/19 to 9/15/19
Core (masonry and concrete, stairs, etc.)	11/1/19 to 2/1/2020 3/31/2021
Shell (exterior framing, sheathing, rough ins)	1/1/2020 to 3/1/2020 3/31/2021
Tenant Improvements (framing, rough ins, dry wall, finishes)	4/1/2020 to 7/1/2020 3/31/2021 10/31/2021
Certificate of Occupancy (Final Sign off by Building Inspector)	8/1/2020 3/31/2021 10/31/2021

4. Objective & Outcome and Indicators

Objective

- ☒ Enhance Suitable Living Environment
☐ Create Decent Housing
☐ Promote Economic Activity

Outcomes

EXHIBIT A-2

- ☒ Availability/Accessibility
☐ Affordability
☐ Sustainability

Indicators

The following indicators will be used to measure the success of the contract/activity.

Indicators – must be measurable
HUD Indicators:
Money Leveraged \$512,642 Number of proposed outcomes 1 – Food Market Income Levels of people/family N/A Race and Ethnicity- N/A
Specific Indicators: Specific to this particular scope of work
Construction of a food market for the Sun Valley Neighborhood.
NEST Outcomes (To be reported on the Outcome and Performance Measurement Report OPMR):
<ul style="list-style-type: none"> Monthly Construction updates Completion of a food market.

III. Budget

Please refer to the Cost Allocation Plan and budget narrative for a detailed estimated description and allocation of funds. Organization receives income from operations. ☐ Yes ☒ No If Yes, describe:
 Non-personnel costs are being funded. ☒ Yes ☐ No

IV. Reporting

Data collection is required and must be completed demonstrating income eligibility and progress toward meeting the indicators contained in this Scope of Services. Disbursement of funds is contingent based on the ability to collect the required information.

Regardless of when the executed contract was received by the Contractor, Contractor is responsible for submitting a report from the start date of the contract; **even if no activity was conducted or expensed. Contractor should report “No Activity” or outline those activities reimbursed with grant funds. If the Contractor completes the project and all money is drawn, a final report will be submitted indicating “final report” and no further reports are required.**

Contractor will email the following report to the Program Specialist, and copy the Contract Administrator:

☒ Outcome Performance Measurement Report

Frequency:

☒ Monthly by the 15th day ☐ Quarterly: 15 days after the end of the quarter ☐ Other: _____

☐ Program Income Report

Frequency:

☐ Monthly by the 15th day ☐ Quarterly: 15days after the end of the quarter

IDIS Coordinator will provide the format of the performance report to the Contractor. The information reported must include progress on the indicators included in this Scope of Services. The report includes current and

EXHIBIT A-2

cumulative (year-to-date) indicator information. Information on the overall progress of the program and/or project should be reported in the narrative section of the report. If the project is not being performed in a timely manner, an explanation must be included in the narrative section of the report.

Income and Demographic Reporting Requirements

For programs that must fulfill the limited clientele activities, income data must be collected to verify that at least 51 percent of program participants are low- or moderate-income persons. The income limitations are set by HUD annually and DEDO's Contracts & Performance Management (CPM) will provide the income limitations.

Second Amended Income and Demographic Reporting Requirements

For programs that must fulfill the limited clientele activities, income data must be collected to verify that at least 51 percent of program participants are low- or moderate-income persons. The income limitations are set by HUD annually and DEDO staff will provide the income limitations.

Select the method of income verification used to demonstrate income compliance:

☐ Self-Certification ☐ Verification with supporting income documentation ☒ Census block verified

CPM has a form entitled "STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS" that may be used to collect income and demographic information. Contractor's intake form may be used if it collects the same information required in the "STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS" form, including signature of the client or applicant. This information must be retained and made available to CPM staff or designee when on-site file reviews are conducted to determine client eligibility.

DEDO has a form entitled "STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS" that may be used to collect income and demographic information. Contractor's intake form may be used if it collects the same information required in the "STATEMENT OF HOUSEHOLD INCOME/DEMOGRAPHICS" form, including signature of the client or applicant. This information must be retained and made available to DEDO staff or designee when on-site file reviews are conducted to determine client eligibility.

Annual Verification

Upon completion of the project, the Contractor will be required to respond to an annual request for verification that it is still operating as a nonprofit organization serving at least 51 percent or more of low to moderate income people. This verification will be required annually for the duration of the promissory note of 5 years. Upon completion of the final annual verification the Promissory Note and/or Deed of Trust will be released to the organization.

V. Program Requirements and Responsibilities

1. Architectural/Engineering Services ☒ Yes ☐ No

- A. Design Services. Community Development Block Grant funds will be used for architectural/engineering services on this project. If required based on the scope of work to be completed, the Contractor will have a licensed architect for this project responsible for design, construction documents, bidding and general administration of construction.
- B. Construction Financing. In the event that the construction cost estimates or the construction bids exceed the project budget, the Contractor must submit evidence that is satisfactory to DEDO within 30 days that either all additional financing has been secured or a viable plan is in place to secure additional financing to complete construction of the project.

2. Construction Management Services ☐ Yes ☒ No

- A. CDBG funds will be used for construction management services.

3. Construction Services ☒ Yes ☐ No

EXHIBIT A-2

- A. Upon completion of design and written approval by the DEDO, the Contractor may proceed with construction bidding. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals should be excluded from competing for such procurement. Procurement must be conducted in accordance with 2 CFR 200.317-326.

The Contractor must advertise for bids as follows:

1. All Invitations for Bid (bid documents) must include the Davis-Bacon wage rates, form HUD-4010 "Federal Labor Standards Provisions", dates on which pre-bid conference and bid opening will be held, and the technical specifications for the project.
2. The Contractor is required to hold a pre-bid conference to explain all federal, state and local requirements. The date of the pre-bid conference must be arranged with DEDO at least ten working days prior to the advertisement. The Contractor must maintain written minutes and sign-in sheets of the pre-bid conference. Attendance by the DEDO staff is mandatory.
3. The Contractor must formally advertise for bids in at least one newspaper of general circulation, e.g., The Denver Post or the Daily Journal. The advertisement must include verbiage stating that federal wage rates and conditions apply to this project. Bid advertisement must appear three consecutive working days, the first of which must appear at least two weeks before bid opening.
4. Bids are to be opened at a public meeting. The Contractor must maintain copies of all bids received. The contract is to be awarded to the lowest responsive and responsible bidder. Attendance by the DEDO staff is mandatory.
5. All construction contracts must specify a fixed price for completion of the work. Under no circumstances may a cost-plus-a-percentage-of-cost contract be executed.
6. Projects to be bid by the Contractor estimated to be less than \$100,000 will use the procurement process as follows (Small Procurement Process, Purchases and Services less than \$100,000):
 - i. Bids and Justification of Services and Supplier Selection
Competition is sought through oral or written price quotations. The Contractor will obtain bids from at least three vendors or suppliers and maintain the bids in the file. If a written bid is unavailable, notes from a phone call in at least as much detail as the other bids is acceptable. The Contractor will provide a brief written analysis of how each bid was obtained and provide written justification of selection of winning service provided and supplier.
The following should be considered in the Contractor's justification:
 - Price
 - Warranty
 - Quality
 - Reliability of product
 - Reliability & quality of service provided by vendor
 - Compatibility with other products used
 - Maintenance agreement
 - Conservation of natural resources and protection of the environment, where practical and economically feasible
 - Vendor is a small business, minority-owned firm, women-owned firm
 References from other customers and vendor's banker should be included if applicable. After purchase is complete, bid notes should be filed in the Accounts payable file with the all invoices.

EXHIBIT A-2

ii. Sole Source Purchases

Sole source purchases are made only when items or services are unique and possess specific characteristics that can be filled by only one source. Factors to be considered in sole source purchases include the following:

- Whether the vendor possesses exclusive and/or predominant capabilities or the items contained a patented feature providing superior utility not obtainable from similar products
- Whether the product or service is unique and easily established as one of a kind
- Whether the program requirements can be modified so that competitive products or services may be used
- Whether the product is available from only one source and not merchandised through wholesalers, jobbers and retailers.
Whether items must be interchangeable or compatible with in-place items
- Sole source purchases require the approval of the CEO/ Director of the Contractor.

References from other customers and vendor's banker should be included if applicable. (After purchase is complete, bid notes should be filed in the Accounts payable file with the all invoices.)

If the Contractor can demonstrate that a fair and open selection process has previously been followed to select a construction contractor, the preceding procedures may be waived. This waiver is at the sole discretion of the DEDO.

- B. Section 3 Employment Opportunities. The Contractor agrees to comply with Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations there under, as more fully described in part II of the contract documents.
- C. Construction Contract Documents. The construction contract documents must be provided as indicated in the sample format provided by DEDO. The final documents must be approved by DEDO prior to advertisement for bid.
- D. Federal Labor Standards Requirements. This project is subject to the requirements of the Davis-Bacon Act, the Copeland "Anti-Kickback Act", the Contract Work Hours and Safety Standards Act, and Executive Order 11246, as amended by Executive Order 11375. To comply with these requirements, Contractor must accomplish the following:
1. Ten days prior to bid advertising, the Contractor, must request Davis-Bacon prevailing wage rates from DEDO. DEDO will transmit a copy of the project wage determination to the Contractor.
 2. Immediately prior to bid opening, the Contractor must verify with DEDO to ensure that no modifications to the project wage determination have been issued. Any modifications must be provided to all bidders and must be included in all contract documents.
 3. DEDO is responsible for enforcing Federal Labor Standards requirements. These enforcement responsibilities include, but are not limited to, participating in pre-bid and pre-construction conferences, obtaining and reviewing the weekly payrolls which must be submitted by all contractors and subcontractors, conducting on-site interviews with laborers working on the project and resolving wage disputes. The Contractor will guarantee access to the job site and will comply with all requests for information by DEDO.
 4. The Contractor is required to hold a pre-construction conference prior to the start of construction with the general contractor and all subcontractors to explain the federal labor

EXHIBIT A-2

standards requirements. The date of the pre-construction conference must be arranged with DEDO at least ten working days prior to the anticipated meeting date. Attendance by the DEDO staff is mandatory.

- E. Notice to Proceed. The Contractor must obtain a written Notice to Proceed for construction from the DEDO. The Notice to Proceed will not be issued until the Contractor has provided DEDO with the following:
1. One copy of its fully executed construction contract and subcontracts including all addenda and attachments
 2. Copies of the contractor's performance and payment bonds in 100 percent of the construction contract amount (if the total project contract amount exceeds \$100,000)
 3. Copies of all necessary permits and insurance certificates
 4. Evidence that the pre-construction conference has been held.
- F. Change Orders. All Change Orders must receive prior written approval from the DEDO. The Change Order form must be signed by the Contractor, the General Contractor and the Project Architect. (If Applicable)
- G. Budget and Method of Payment for Construction Services.
1. All construction payment requests must be submitted with appropriate documentation of costs incurred on an "Application and Certificate for Payment" (AIA Document G702 and G703), or, when applicable, acceptable 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. Checks written by the contractor, even if cancelled, are not adequate documentation for reimbursement (checks do not verify the goods or services provided). An allocation of an invoice to the contract must be documented. Service Period and Closeout: All reimbursed expenses must be incurred for the time period within the contract. The final payment request must be received by DEDO within 45 days after the end of the service period stated in the contract.
 2. The construction budget for the project will be that which is attached to the executed construction contract. All payment requests must conform to that budget.
 3. The DEDO will withhold 5 percent retainage from all construction payment requests. Release of retainage will occur when the project has been completed, and lien waivers and warranties have been received by the Contractor.
 4. The DEDO will process a payment request upon receipt of all required and approved documents (as explained at the pre-construction conference).

4. Project Management

- A. Project management requires that the following conditions be met:
1. No costs incurred prior to the date of this contract will be paid or reimbursed by DEDO.
 2. No funds may be obligated or expended until the Contractor has received written clearance from DEDO that the environmental review process is complete. Any special environmental or historic resource-related mitigation imposed by DEDO must be incorporated into the design and construction of the facility.

EXHIBIT A-2

3. The Contractor may request and DEDO may require that the warrant be made payable jointly to the Contractor and its vendor(s). Otherwise, the warrant will be made payable directly to the Contractor.
4. The Contractor must maintain in its files all payrolls, invoices, billings, contracts, lien waivers, canceled checks and correspondence pertaining to this project for three years after the expiration of this contract (including any amendments or attachments).
5. The Contractor must obtain guarantees and warranties on all materials, workmanship, and lien waivers before final payment can be made. Lien waivers should be supplied by the general contractor, all subcontractors and suppliers on the project.
6. Construction meetings will be held to review project status. The meetings will be scheduled at a regular time most convenient for all parties. All principals involved in the project are expected to attend (including, but not limited to, DEDO staff member, the Contractor representative (if applicable, project architect and general contractor).

5. Prohibitions Against the Use of Federally Debarred and Suspended Parties

Financial assistance exceeding \$25,000 shall not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subcontractor during any period of debarment, suspension, or placement in ineligibility status. The Contractor is responsible for searching the Internet at <https://www.sam.gov> to determine that all first-tier contractors are not currently debarred, suspended or otherwise ineligible. Written documentation must be maintained in the contractor's files.

Estimated Project Budget Summary

Contractor Name: The Housing Authority of the City and County of
Project Title: Denver Grow Market
Activity Name: TBD
Contract Dates: 2/1/2019 10/31/2021

Budget Category	Project Total (all funding sources)	OED FUNDING ONLY				Other Federal Funding (Non-City Funding) (HUD CNI/CCI Funding)				Other Non-Federal		Project Total *CHECK*	
		Grow Market Funding (specify CDBG)	Total Project Costs requested from OED		Grow Garden (CNI)	Grow Market (CNI)	Total Project Costs Other Federal Funding						
		Amount	%	Subtotal	%	Amount	Amount	Subtotal	%	Amount	%	Amount	%
ACQUISITION COSTS	Amount	Amount	%	Subtotal	%	Amount	Amount	Subtotal	%	Amount	%	Amount	%
N/A	-	-	#DIV/0!	-	#DIV/0!	-	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!
Total Acquisition Costs	-	-	#DIV/0!	-	#DIV/0!	-	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!
GENERAL DEVELOPMENT COSTS	Amount	Amount	%	Subtotal	%	Amount	Amount	Subtotal	%	Amount	%	Amount	%
Site Work Civil- Grow Garden	106,901	-	0%	-	0%	57,598	-	57,598	53.88%	49,303	46%	106,901	100%
Site Work Landscape- Grow Garden	82,656	-	0%	-	0%	82,656	-	82,656	100.00%	-	0%	82,656	100%
Site Work Furnishings- Grow Garden	74,850	-	0%	-	0%	74,850	-	74,850	100.00%	-	0%	74,850	100%
Core and Shell Construction- Grow Market	204,525	204,525	100%	204,525	100%	-	-	-	0.00%	-	0%	204,525	100%
Green House - Grow Garden	176,667	-	0%	-	0%	-	-	-	0.00%	176,667	100%	176,667	100%
Tenant Improvements - Grow Market	163,620	163,620	100%	163,620	100%	-	-	-	0.00%	-	0%	163,620	100%
General Conditions - Grow Market	86,094	39,168	45%	39,168	45%	46,927	-	46,927	54.51%	-	0%	86,095	100%
Contractor Profit & Overhead - Grow Market	44,894	20,424	45%	20,424	45%	24,470	-	24,470	54.51%	-	0%	44,894	100%
Contingency- Garden and Market	191,829	87,271	45%	87,271	45%	104,559	-	104,559	54.51%	-	0%	191,830	100%
Total Development Costs	1,132,036	515,008	45%	515,008	45%	391,060	-	391,060	34.54%	225,970	20%	1,132,038	100%
OTHER COSTS	Amount	Amount	%	Subtotal	%	Amount	Amount	Subtotal	%	Amount	%	Amount	%
A&E Design Fees	208,807	80,447	39%	80,447	39%	-	26,860	26,860	12.86%	101,500	49%	208,807	100%
GL Insurance / P&P Bonds	18,940	8,614	45%	8,614	45%	10,324	-	10,324	54.51%	-	0%	18,938	100%
Legal	5,000	-	0%	-	0%	-	5,000	5,000	100.00%	-	0%	5,000	100%
Construction Interim Costs / Financing	21,054	-	0%	-	0%	-	-	-	0.00%	21,054	100%	21,054	100%
Tap Fees	14,670	-	0%	-	0%	-	-	-	0.00%	14,670	100%	14,670	100%
Perm Financing	6,804	-	0%	-	0%	-	-	-	0.00%	6,804	100%	6,804	100%
Studies (GeoTech/soil/ESA)	6,000	-	0%	-	0%	-	-	-	0.00%	6,000	100%	6,000	100%
Developer Fee	143,806	62,548	43%	62,548	43%	81,258	-	81,258	56.51%	-	0%	143,806	100%
Project Reserves	134,883	83,383	62%	83,383	62%	30,000	-	30,000	22.24%	21,500	16%	134,883	100%
Total Other Costs	559,964	234,992	42%	234,992	42%	121,582	31,860	153,442	27.40%	171,528	31%	559,962	100%
Estimated Grand Total	1,692,000	750,000	44%	750,000	44%	512,642	31,860	544,502	32.18%	397,498	23.49%	1,692,000	100%

Submitted by: _____ Title: _____

\$ 1,692,000.00

750,000

-

The Housing Authority of the City and County of Denver Grow Market

Core and Shell Construction - Grow Market

- Total estimated costs: \$204,525.00
- 100%
- This line item will be used to pay DHA's contractor labor and material for the construction of the core and shell of the grow market including slab on grade, roof, walls, doors, window, and general building infrastructure.

Amount requested from OED: \$204,525.00

Tenant Improvements - Grow Market

- Total estimated costs: \$163,620
 - 100%
- This line item will be used to pay DHA's contractor labor and material for the construction of the tenant improvements of the grow market including flooring, light fixtures, refrigeration, ceilings, signage, food display items, furniture, refrigeration, computers/IT, and other fixtures commonly seen in a food store.

Amount requested from OED: \$163,620

General Conditions - Grow Market

- Total estimated costs: \$86,094.00
 - 45%
- This line item will be used to pay DHA's contractor general conditions that are commonly seen in construction contracts including: supervision, dumpsters, labor, clean up, mileage, etc.

Amount requested from OED: \$39,168.00

Contractor Profit and Overhead - Grow Market

- Total estimated costs: \$44,894.00
 - 45%
- This line item will be used to pay DHA's contractor the industry standard profit and overhead for taking risk and funding overhead costs such as central office, accounting, etc.

Amount requested from OED: \$20,424.00

Project Contingency - Grow Market

- Total estimated costs: \$191,829.00
 - 45%
- This line item will be used for unforeseen conditions during the design, development, and construction phase of the project

Amount requested from OED: \$87,271.00

**The Housing Authority of the City and County of Denver
Grow Market**

Architecture and Engineering Design Fees - Grow Market

- Total estimated costs: \$208,807.00
- 39%

This line item will be used for to pay DHA's Architects and Engineers for the entitlement, design, and development process including activities such as site development plans, building plans, civil plans, permits, interior design, structural, and construction oversight.

Amount requested from OED: \$80,447.00

General Liability Insurance and Payment and Performance Bonds

- Total estimated costs: \$18,940.00
- 45%

This line item will be used for to pay DHA's contractors required insurance and bonds as required by DHA, HUD, and other funding sources.

Amount requested from OED: \$8,614.00

Legal - Grow Market

- Total estimated costs: \$5,000.00
- 0%

This line item will be paid to DHA's council around reviewing and drafting documents around the grow market legal documents including leases, MOUs, and other items which may arise.

Amount requested from OED: \$00.00

Construction Interim Costs - Grow Market

- Total estimated costs: \$21,054.00
- 0%

This line item will be paid to cover financing costs during the construction period of the grow market including title work, construction loan origination fees, construction period interest, legal fees, and other miscellaneous financing costs associated with the construction loan.

Amount requested from OED: \$00.00

Tap Fees - Grow Market

- Total estimated costs: \$14,670.00
- 0%

This line item is the estimated cost to be paid to Denver Water for the installation of a new water tap and meter to serve the irrigation and other operational needs at the grow garden.

Amount requested from OED: \$00.00

Permanent Financing - Grow Market

- Total estimated costs: \$6,804.00

**The Housing Authority of the City and County of Denver
Grow Market**

- 0%

This line item will be paid to cover permanent financing costs to DHA's lender including title work, loan origination fees, legal fees, underwriting, and other miscellaneous financing costs associated with the permanent loan for the grow market.

Amount requested from OED: \$00.00

Studies - Grow Market

- Total estimated costs: \$6,000.00
- 0%

This line item is the estimated cost to fund development related studies such as geotechnical reports, environmental studies, and market studies

Amount requested from OED: \$00.00

Developer Fee - Grow Market

- Total estimated costs: \$143,806
- 43%

This line item is the estimated cost to fund the developers fee to pay for the time staff has spent and will spend on the project along with other DHA costs associated with the project

Amount requested from OED: \$62,548.00

Developer Fee - Grow Market

- Total estimated costs: \$134,883.00
- 62%

This line item will be required by the lender and DHA to fund rent-up reserves and operating budget reserves for the Grow Market.

Amount requested from OED: \$83,383.00

Totals:

Total OED CDBG Funds to Grow Market: \$750,000.00

EXHIBIT B-2

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Denver Economic Development Opportunity (DEDO) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by DEDO shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to DEDO 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 DEDO 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 DEDO 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 DEDO.
- 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 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) 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 DEDO prior to the draw request.
- 1.2.8 The standardized DEDO “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, worker'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

- 1.5.1 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.
- 1.5.2 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.
- 1.5.3 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.
- 1.5.4 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 DEDO.
- 1.5.5 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 DEDO 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 DEDO, 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 DEDO.

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 OMB Omni Circular 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 DEDO funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 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 DEDO 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 seven hundred and fifty thousand dollars (\$750,000) 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 OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the DEDO 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 DEDO along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to DEDO 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 DEDO

funding, the Contractor shall prepare and submit a Corrective Action Plan to DEDO in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **DEDO Financial Management Unit**; DEDOFMUAcctsPayable@denvergov.org

- 4.1.4 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.5 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 DEDO 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 DEDO. 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 DEDO prior to the last Quarter of the Contract Period, unless waived in writing by the DEDO 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 DEDO 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 DEDO contract close-out forms and submitting these forms to their appropriate DEDO Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by DEDO in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by DEDO within thirty (30) days prior to end of contract.
- 9.1.3 DEDO 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, DEDO 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, DEDO 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.

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Part II:

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

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “DEDO” means the City’s Denver Economic Development and Opportunity or a person authorized to act on its behalf.

D. “HUD” means the United States Department of Housing and Urban Development or a person authorized to act on its behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

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

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

B. In the sale, lease or other transfer of land acquired, cleared or improved with

assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

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

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

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

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

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

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

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

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

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor’s obligations under 24 C.F.R. Part 75.

F. Noncompliance with HUD’s regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act,

as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 116. Theft or embezzlement from DEDO funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the

Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

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

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

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

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

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

Sec. 203. Charges Against Project Account.

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

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

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

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

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

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to DEDO. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally

secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions”, Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at <http://www.hud.gov/offices/olr/library.cfm>.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than \$100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.).

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not

applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

“(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

“(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

“(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers’ representatives of the Contractor’s commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

“(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

“(6) In the event of the Contractor’s noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this

Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

“(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

“The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

“The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

“The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until

satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, until Contractor has received written environmental clearance from the City’s Department of Housing Stability (HOST). Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this

Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Executive Director of Denver Economic Development and Opportunity. Either of the parties may designate in writing substitute addresses or persons to receive notices.