MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made and entered into this 12th day of January, 2010, by and between DENVER HEALTH AND HOSPITAL AUTHORITY, a political subdivision of the State of Colorado, with offices located at 660 Bannock Street, 5th Floor, Denver, Colorado 80204, hereinafter referred to as “DHHA,” and SCHOOL DISTRICT NO. 1 FOR THE CITY AND COUNTY OF DENVER, with offices located at 900 Grant Street, Denver, Colorado 80203, hereinafter referred to as “DPS.”

RECITALS:

WHEREAS, DHHA is the owner and operator of Denver Health Medical Center in Denver, Colorado (the “Hospital”), which provides inpatient and out-patient medical services and fulfills public health functions for the citizens of the City and County of Denver; and

WHEREAS, DHHA has been providing basic primary health care services for the students of the Denver Public Schools through its School-Based Health Centers for many years; and

WHEREAS, DPS would like DHHA to continue to provide these services for its student population; and

WHEREAS, DHHA has informed DPS of its intent to apply for a Five Hundred Thousand Dollar grant from the U.S. Department of Health and Human Resources, Health Resources and Services Administration ("HRSA") which grant monies shall be used by DHHA to renovate an area within a DPS facility (the Place Bridge Academy) to be used exclusively as a School-Based Health Center for the benefit of DPS students; and

WHEREAS, DPS has indicated that it is in full support of DHHA’s plan to apply for the grant award; and

WHEREAS, the purpose of this Agreement is to serve as the operating agreement between the parties for the purpose of renovating the facility for use as a School-Based Health Center to be operated by DHHA for the exclusive benefit of DPS students; and

WHEREAS, the parties agree that this understanding will ensure better and more efficient basic primary health care services for the students of the Place Bridge Academy.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the parties agree as follows:
I. **FORM OF AGREEMENT.** This Agreement shall consist of the terms and conditions stated in the following numbered paragraphs. No other documentation related to this Agreement or generated as a result of this Agreement shall form a part of this Agreement unless it is expressly referenced and incorporated herein.

II. **DENVER HEALTH AND HOSPITAL AUTHORITY REPRESENTATIVE.** The Chief Executive Officer ("CEO") is the official Representative of DHHA and directs all services under this Agreement. Communication between DHHA and DPS shall be directed through the CEO or her designee.

III. **PURPOSE OF THE AGREEMENT.** This Agreement shall serve as the operating agreement between the parties and provide the framework for the renovation by DHHA of an area within the Place Bridge Academy that shall be used exclusively as a DHHA SBHC for as long as DPS continues to operate the facility as a school. The parties understand that this Agreement shall be contingent upon the award of the grant by HRSA to DHHA.

The parties anticipate that the award may be announced sometime during the spring of 2011. If DHHA is awarded the full amount of the grant, the parties anticipate that the project work may begin on or about July 1, 2011. DHHA and DPS agree to work closely throughout all phases of the renovation in order to plan, design and construct a facility that meets the approval of the parties and is within DHHA’s budget subject to the amount of the grant award. DPS shall have an opportunity to review and approve the design of the facility, including review and approval of the architect’s plans. DPS agrees that it will not unreasonably withhold such approval. DHHA shall retain final decision-making authority for the selection of the architect and the general contractor and all other contractors and subcontractors required by DHHA to complete the renovation work. Following construction of the SBHC within the Place Bridge Academy, DPS agrees that DHHA shall retain reasonable control over the facility for the duration of the useful life of the facility and for as long as DPS operates a school at that site. DPS further agrees it shall not require DHHA to make lease payments in any amount for as long as DHHA operates the SBHC. DPS also agrees that it will not sublease, assign or otherwise transfer the property which is the subject of the grant application and this Agreement without the prior written approval of HRSA. The parties agree that DPS shall be subject to the provisions in the DHHA’s grant award from HRSA. The parties agree that this Agreement shall serve as the agreement with regard to the renovation and use of the facility by DHHA.
IV. **FEDERAL INTEREST.** The parties hereto agreed and understand that the Federal government shall retain a reversionary interest in any real property, constructed, acquired or improved with Federal funds. The percentage of Federal interest shall be determined by the represented total allowable project costs (Federal and non-Federal), excluding moveable equipment and supplies. For renovation projects, Federal interest shall exist for the useful life attributable to the project funded under the grant which is the subject of this Agreement. The parties further agree that they shall comply with all HRSA requirements concerning filing of a Notice of Federal Interest against the property title. The parties further agree that signature on this Agreement represents their agreement to subordinate their interests to those of the Federal government. The parties also agree that each shall maintain adequate documentation related to the interest of the Federal government and that all such documentation shall be available for review by HRSA upon reasonable notice. The parties lastly agree that they will not mortgage, sell, transfer or use the property for any purpose inconsistent with the HRSA grant award.

V. **TERM; TERMINATION.** The term of this Agreement shall commence on January 1, 2011 and shall continue in full force and effect until December 31, 2015. Thereafter this Agreement shall automatically renew for successive periods of five years until such time as DPS no longer operates the facility as a school or DHHA no longer operates the SBHC within the school. In such event, the terminating party must provide the other party with no less than 180 days prior written notice of its intent to terminate this Agreement.

In the event that DHHA is not awarded the HRSA grant which is the subject of this Agreement, this Agreement shall terminate immediately upon ten (10) days written notice to DPS.

VI. **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other entity or third person. It is the express intention of the parties that any person other than a party to this Agreement receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
VII. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

VIII. **ASSIGNMENT OR SUBCONTRACTING.** DPS and DHHA agree not to assign, pledge, transfer, or subcontract their duties and rights in this Agreement, in whole or in part without first obtaining the written consent of the other parties, the CEO in the case of DHHA, or the representative of DPS. Any attempt by DPS or DHHA to assign, transfer, or subcontract their rights hereunder without such prior written consent of the CEO or the representative of DPS, as the case may be, shall at the option of the non-defaulting parties automatically terminate this Agreement and all rights of the defaulting party. Such consent may be granted or denied at the sole and absolute discretion of the representative of DPS if DHHA is seeking consent or by the CEO if DPS is seeking such consent.

IX. **NO WAIVER OF RIGHTS.** No assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

X. **VENUE, GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado without regard to the choice of law thereof. Venue for any legal action relating to this Agreement shall lie in Denver, Colorado courts.

XI. **CONFLICT OF INTEREST.** The parties agree that no employee of DHHA shall have any personal or beneficial interest whatsoever in the services or property described herein.

XII. **LIABILITY.** DPS agrees to be responsible for any and all negligent or wrongful acts or omissions of its officers, employees and agents arising out of this Agreement. The parties acknowledge that DHHA is covered and self-insured under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

XIII. **PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.
XIV. **BINDING EFFECT.** This Agreement shall be binding on all parties, their successors and assigns.

XV. **NOTICES.** Notices concerning termination of this Agreement, notice of alleged or actual violation of the terms or provision of this Agreement, and other notices shall be provided to the parties at the following addresses:

If to DHHA:

Denver Health and Hospital Authority  
Office of General Counsel  
660 Bannock Street, 5th Floor, Mail Code 1919  
Denver, Colorado 80204

If to DPS:

Denver Public Schools  
Attn: John Simmons  
900 Grant Street  
Denver, Colorado 80203

Said notice shall be delivered personally during normal business hours to the appropriate office, above, or by prepaid U.S. mail. Mailed notice shall be deemed effective three (3) days after deposit with the U.S. Postal Service. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered but such substitutions shall not be effective until actual receipt of written notification.

XVI. **COUNTERPARTS OF AGREEMENT.** This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper Agreement bearing the original signature.

XVII. **ENTIRE AGREEMENT: AMENDMENT.** This Agreement reflects the entire Agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written statements, understandings or correspondence, if any, with respect thereto. This Agreement may be amended only by one or more Amendatory Agreements executed in the same manner as this Agreement.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

DENVER HEALTH AND HOSPITAL AUTHORITY

By ____________________________

Patricia A. Gabow, M.D.
Chief Executive Officer
Contract # A4676

“DHHA”

SCHOOL DISTRICT NO. 1 FOR THE CITY AND COUNTY OF DENVER

Tax ID No. ______________________

By ____________________________

John Simmons

Executive Director, Student Services

“DPS”