

STATE OF COLORADO GRANT AGREEMENT

COVER PAGE

State Agency Department of Local Affairs, for the benefit of the Division of Housing.	Contract Encumbrance Number H1ESG91231 CMS #166361		
Grantee City and County of Denver	Agreement Performance Beginning Date Effective Date Initial Agreement Expiration Date September 30, 2021		
Agreement Maximum Amount \$1,654,622.22	Fund Expenditure End Date September 30, 2021		
Funding Program: Emergency Solutions Grant – CARES Act (ESG-CV)	Funding Source: Federal Catalog of Federal Domestic Assistance #: 14.231		
Agreement Authority: Authority for this Agreement arises from CRS §24-32-705(1)(i). Authority exists in the law and funds have been budgeted, appropriated and otherwise made available pursuant to the federal Emergency Solutions Grants Program, 24 CFR Parts 91 and 576 and Public Law 116-136, the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), and a sufficient unencumbered balance thereof remains available for payment and the required approvals, clearance, and coordination have been accomplished from and with appropriate agencies.			
Agreement Purpose: To prevent, prepare for, and respond to coronavirus, among individuals and families who are homeless or receiving homeless assistance and to support additional homeless assistance and homelessness prevention activities to mitigate the impacts created by coronavirus under the Emergency Solutions Grants (ESG) program.			
Exhibits - The following Exhibits and attachments are included with this Agreement: Exhibit A, Applicable Laws Exhibit B, Statement of Project Exhibit C, Federal Provisions Exhibit D, FAQ Exhibit E, [Reserved] Exhibit F, [Reserved] Exhibit G, Sample Option Letter Form 1, [Reserved]			
Order of Precedence In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> 1. Exhibit C, Federal Provisions 2. Colorado Special Provisions in §19 of the main body of this Agreement. 3. The provisions of the other sections of the main body of this Agreement. 4. Exhibit B, Statement of Project 5. Exhibit A, Applicable Laws 6. Exhibit D, FAQ 7. Exhibit G, Sample Option Letter 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: Alison George, Director Division of Housing Department of Local Affairs 1313 Sherman Street, Rm 320 Denver, CO 80203 Alison.george@state.co.us </td> <td style="width: 50%; border: none;"> For Grantee: Britta Fisher, Executive Director Department of Housing and Stability City and County of Denver 201 West Colfax Denver, CO 80202 Britta.Fisher@denvergov.org </td> </tr> </table>		For the State: Alison George, Director Division of Housing Department of Local Affairs 1313 Sherman Street, Rm 320 Denver, CO 80203 Alison.george@state.co.us	For Grantee: Britta Fisher, Executive Director Department of Housing and Stability City and County of Denver 201 West Colfax Denver, CO 80202 Britta.Fisher@denvergov.org
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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

<p>GRANTEE CITY AND COUNTY OF DENVER</p> <p>By: _____ Britta Fisher, Executive Director</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor DEPARTMENT OF LOCAL AFFAIRS Rick M. Garcia, Executive Director</p> <p>By: _____ Rick M. Garcia, Executive Director</p> <p>Date: _____</p>
	<p>DIVISION OF HOUSING Contract Reviewer</p> <p>By: _____ Kristin Toombs, Director Office of Homeless Initiatives</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Yingtse Cha, Controller Delegate</p> <p>Effective Date: _____</p>	

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1. PARTIES

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the “Grantee”), and the STATE OF COLORADO (the “State”) acting by and through the Department of Local Affairs (“DOLA”) for the benefit of the Division of Housing (“DOH”). Grantee and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date.

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one (1) year or less at the same rates and under the same terms specified in this Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Grantee in a form substantially equivalent to Sample Option Letter attached to this Agreement. The total duration of this Agreement including the exercise of any options to extend shall not exceed five (5) years from its Effective Date without approval of the Colorado Office of the State Controller.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two (2) months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Grantee, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Grantee shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. **Payments**

If the State terminates this Agreement in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than sixty percent (60%) completed, as determined by the State, the State may reimburse Grantee for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

F. **Grantee's Termination Under Federal Requirements**

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

G. **Termination by State for Reasons Other than Breach**

Due to the emergency nature of these funds, the State reserves the right to suspend or terminate this Agreement or to reduce the amount of the Grant Funds for any reason or no reason upon notice to the Grantee of no fewer than five (5) business days.

3. **DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in **Exhibit B, §5.2**.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

- F. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- G. “**CORA**” means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- H. “**Effective Date**” means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- I. “**End of Term Extension**” means the time period defined in §2.D.
- J. “**Exhibits**” means the exhibits and attachments included with this Contract as shown on the Cover Page for this Agreement.
- K. “**Extension Term**” means the time period defined in §2.C.
- L. “**Federal Award**” means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- M. “**Federal Awarding Agency**” means a Federal agency providing a Federal Award to a Recipient. The United States Department of Housing and Urban Development is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. “**Goods**” means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- O. “**Grant Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- P. “**Incident**” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- Q. “**Initial Term**” means the time period defined in §2.B.
- R. “**Matching Funds**” means the funds provided Grantee as a match required to receive the Grant Funds.
- S. “**Party**” means the State or Grantee, and “Parties” means both the State and Grantee.

- T. “**PCI**” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- U. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501, C.R.S.
- V. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- W. “**Project**” means the overall project described in Exhibit B including, without limitation, the Work and the Services.
- X. “**Subject Property**” means real property that Grant Funds are used to acquire; or to which Grant Funds are used to make on-site improvements; or on which Grant Funds are used to construct, rehabilitate, clear or demolish improvements.
- Y. “**Recipient**” means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- Z. “**Services**” means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- AA. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- BB. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- CC. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

- DD.** “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- EE.** “**Subcontractor**” means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees of grant funds.
- FF.** “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Grantee is a Subrecipient.
- GG.** “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- HH.** “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the “Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- II.** “**Work**” means the Goods delivered and Services performed pursuant to this Agreement.
- JJ.** “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Agreement Maximum for each State Fiscal Year shown on the Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a.** The State shall pay Grantee in the amounts and in accordance with the schedule and other conditions set forth in **Exhibit B**. Satisfactory performance of the terms of this Agreement is a condition precedent to the State's obligation to pay Grantee.
- b.** Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c.** The State shall pay each invoice within forty-five (45) days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Grantee and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Grantee shall make all changes necessary to correct that invoice.
- d.** The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within forty-five (45) days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of one percent (1%) per month, as required by §24-30-202(24) (a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Grantee shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within thirty (30) days following the earlier to occur of Grantee's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Grantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Grantee shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal

or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

[Reserved].

D. Payment of Grantee Costs.

The State shall pay Grantee's allowable costs, not exceeding the maximum total amount described in **Exhibit B** and §5.A for all allowable costs described in this Grant and shown in the Budget in **Exhibit B**, except that Grantee may adjust the amounts between each line item of the Budget as provided for in §4.3 of **Exhibit B**, without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit B**. However, any costs incurred by Grantee prior to the Effective Date shall not be reimbursed absent specific allowance of pre-agreement costs pursuant to §5.3 of **Exhibit B**. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out

DOLA shall not release final payment until Grantee has met its close-out obligations, which include, without limitation, completion of the Project, and compliance with all monitoring reporting requirements. Grantee shall close out this Award within thirty (30) days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. The State may withhold up to 10% of allowable costs until all final documentation has been submitted and accepted by the State as complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure

End Date shown on the Signature and Cover Page for this Agreement due to Grantee's failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. REPORTING - NOTIFICATION

A. Periodic Reports

In addition to any reports required pursuant to §§6, 7 & 16 of this Agreement, Grantee shall comply with all reporting requirements of **Exhibit B**.

B. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee shall, within ten (10) days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page.

C. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State as provided in §7 of **Exhibit B**.

D. Violations Reporting

Grantee shall immediately notify the State in writing, as provided in §14, of any civil lawsuit, criminal charge or notice of violation, currently pending, hereinafter filed or entered in a court of law, against Grantee, a principal of Grantee, the Responsible Administrator, or Other Key Personnel identified in §§4.1 and 4.2 of **Exhibit B**, involving theft, fraud, bribery, gratuity violations, embezzlement, professional negligence or malfeasance. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records for a period (the "Record Retention Period") of six (6) years following the Project Close-Out Date, as defined in §2 of **Exhibit B** or six (6) years following termination of this Agreement, whichever is longer. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

D. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Grantee shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Grantee can establish that none of Grantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

F. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Grantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

10. INSURANCE

Grantee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i.** \$1,000,000 each occurrence;
- ii.** \$1,000,000 general aggregate;
- iii.** \$1,000,000 products and completed operations aggregate; and

iv. \$50,000 any one (1) fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Protected Information

This section shall | shall not apply to this Grant.

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

This section shall | shall not apply to this Grant.

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Grantee and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§10.A** through **§10.E** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

H. Property Insurance

If Grant Funds are provided for the acquisition, construction, or rehabilitation of real property, insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called “all risk” form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Properties, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and

expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

I. Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §10.H above, or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

J. Builder's Risk Insurance

This section shall | shall not apply to this Grant.

Grantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- i. The insurance shall include interests of the property owner, Grantee, and Subcontractors in the Project as named insureds.
- ii. All associated deductibles shall be the responsibility of the Grantee, and Subcontractor. Such policy may have a deductible clause but not to exceed \$10,000.
- iii. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's and Subcontractor's services and expenses required as a result of such insured loss.
- iv. Builders Risk coverage shall include partial use by Grantee and/or property owner.
- v. The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

K. Pollution Liability Insurance

If Grantee and/or its Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to

provide Pollution Liability Insurance coverage. The Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Grantee's Subcontractor.

L. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Grantee and Subcontractors.

M. Primacy of Coverage

Coverage required of Grantee and each Subcontractor shall be primary over any insurance or self-insurance program carried by Grantee or the State.

N. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with §14 within seven (7) days of Grantee's receipt of such notice.

O. Subrogation Waiver

All commercial insurance policies secured or maintained by Grantee or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

P. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Grantee shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Grantee shall ensure that the Subcontractor maintain at all times during the terms of this Agreement, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

Q. Certificates

For each commercial insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Grantee's subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Grantee's execution of the subcontract. No later than fifteen (15) days before the expiration date of Grantee's or any Subcontractor's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State,

Grantee shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Grantee's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Grantee fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Grantee shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Grantee's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State (i) secure that right to use such Work for the State and Grantee; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

f. Technical Assistance

State may elect to conduct on-site monitoring and work closely with Grantee until the Project is back on schedule. State shall provide prior written notice to Grantee if its elects to conduct on-site monitoring, which shall be conducted during normal business hours and shall not unduly disrupt Grantee's business operations.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution. This §13 shall not apply to a suspension or termination of this Agreement made by the State pursuant to §2.G.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within ten (10) Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the Department of Local Affairs as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §24-106-109, C.R.S. and §§24-109-101.1 through 24-109-505, C.R.S. (the "Resolution Statutes"), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address

set forth on the Cover Page for this Agreement or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

i. Copyrights

[Reserved].

ii. Patents

[Reserved].

iii. Assignments and Assistance

Whether or not Grantee is under contract with the State at the time, Grantee shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Grantee assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Grantee

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Grantee under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Grantee Property"). Grantee

Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Grantee agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Grantee's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. RESTRICTIONS ON PUBLIC BENEFITS

This section shall | shall not apply to this Grant.

Grantee shall confirm that any individual natural person is lawfully present in the United States pursuant to 8 U.S.C. §§1601, *et seq.*, when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- A. Produce a verification document in accordance with 62 Fed. Reg. 221 (November 17, 1997), pp. 61,363 - 61,371; and,
- B. Execute a Residency Declaration, attached as Form 1, or a substantially similar form as determined by the State.

18. GENERAL PROVISIONS

A. Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended including, without limitation, those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by Subcontractors under subcontracts permitted by this Grant.

B. Assignment

Grantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

C. Subcontracts

Grantee shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

D. Binding Effect

Except as otherwise provided in §17.B and Exhibit B, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

E. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

F. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

G. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

J. Jurisdiction and Venue

[Reserved].

K. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

i. By the Parties

If either the State or the Grantee desires to modify the Agreement Maximum Amount, make budget adjustments and/or change the term of the Agreement, this may be

achieved unilaterally by DOLA through an Option Letter, in form substantially similar to **Exhibit G**, properly executed and approved in accordance with applicable State laws, regulations, and policies.

Modifications other than by Option Letter shall not take effect unless agreed to in writing by both parties in an amendment to this Agreement properly executed and approved in accordance with State laws, regulations, and policies.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

iii. Items not Requiring Modification - Consents

Where the terms of this Agreement require the Grantee to obtain the consent of the Division of Housing, the Division Director or their delegate shall be authorized to provide such consent.

L. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

M. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

N. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

O. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

P. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely responsible

for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

Q. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §18.B of this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

R. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

S. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

T. Standard and Manner of Performance

Grantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Grantee's industry, trade, or profession.

U. Licenses, Permits, and Other Authorizations

Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

V. Indemnification

i. General Indemnification

Grantee shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Grantee in violation of §8 may be cause for legal action by third parties against Grantee, the State, or their respective agents. Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including

attorneys' fees and costs) incurred by the State in relation to any act or omission by Grantee, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Grantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

W. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit D at all times during the term of this Grant.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. Statutory Approval. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. Fund Availability. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. Governmental Immunity.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq., C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. Independent Contractor.

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof

thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. Compliance with Law.

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Choice of Law, Jurisdiction and Venue.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Prohibited Terms.

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. Software Piracy Prohibition.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J. Vendor Offsets and Erroneous Payments. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial

action. The State may also recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

K. Public Service Contracts. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.

L. Public Contracts with Natural Persons. §§24-76.5-101, et seq., C.R.S.

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Grantee (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

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EXHIBIT A - APPLICABLE LAWS

Federal laws and regulations incorporated into this Grant include, without limitation:

1. Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Proposed Rule for HMIS Requirements.
2. Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*
3. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634.
4. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, *et seq.*
5. Equal Pay Act of 1963, 29 U.S.C. 206(d).
6. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.
7. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.
8. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.
9. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e.
10. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, *et seq.*
11. Section 24-34-302, *et seq.*, C.R.S., as amended.
12. The applicable of the following:
 - a. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
 - b. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
 - c. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122); and
 - d. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133), and/or the Colorado Local Government Audit Law, §29-1-601, *et seq.*, C.R.S., and State implementing rules and regulations.
 - e. Colorado Local Governments Audit Law. §29-1-601, *et seq.*, C.R.S.
 - f. Administrative requirements for grants and cooperative agreements to state, local and federally recognized Indian tribal governments.
 - g. Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.
13. Cranston-Gonzales National Affordable Housing Act of 1990, PL 101-625.
14. The McKinney-Vento Homeless Assistance Act as amended by S. 896 The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009.
15. Colorado Housing Act of 1970, §24-32-701, *et seq.*, C.R.S.
16. Department of Housing and Urban Development – Independent Agencies Appropriations Act of 1989, P.L. 100-404 and Stewart B. McKinney Homeless Assistance Amendments Act of 1988, P.L. 100-628.
17. Emergency Solutions Grants Program, 24 C.F.R. Parts 84, 85, 91 and 576.
18. Lead-Based Paint Poisoning Prevention Act – Title IV, 42 U.S.C. 4821.
19. Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C. 1701(u).
20. Uniform Federal Accessibility Standards, 24 C.F.R. Part 40, Appendix A.
21. Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e, Section 7b.
22. Termination of Assistance Procedures, Section 1402(d), Housing and Community Development Act of 1992.
23. National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, as amended, and the implementing regulations of Housing and Urban Development, 24 C.F.R., Part 58.
24. Council on Environmental Quality, 40 C.F.R. Parts 1500 through 1508.
25. Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (Public Law 116-136)

EXHIBIT B - STATEMENT OF PROJECT

1. GENERAL DESCRIPTION OF THE PROJECT

- 1.1. Project Description.** These Emergency Solutions Grants (ESG) funds (the “grant Funds”) are sourced from the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (Public Law 116-136) (ESG-CV) and shall be used to prevent, prepare for, and respond to coronavirus (COVID-19) among individuals and families who are homeless or receiving homeless assistance. Grant Funds may only be used for Eligible Activities as defined in §8.1 and listed in §5.2 (Project Budget) of this **Exhibit B**. Grantee is responsible for completion of the Project and submission of all required reporting and other documentation in the manner and timeframes set forth herein.
- 1.2. Program Parameters.** Per the CARES Act, ESG-CV funds may not be used to require people experiencing homelessness to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services.

2. Definitions

The following definitions are in addition to definitions appearing in the main Grant Agreement and other Exhibits.

- 2.1. “Advance Payment”** means a payment for work that has not yet been completed or for costs that have not yet been incurred. Grantees must request Advance Payments from DOH in writing and document the lack of cash flow to follow traditional reimbursement models.
- 2.2. Area Median Income (AMI).** Determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes
- 2.3. Beneficiaries.** “Beneficiaries” shall mean the persons and/or households who are the end users that benefit from the Project.
- 2.4. “Comparable Database”** means a relational database that meets all Homeless Management Information Systems (HMIS) data standards and the minimum standards of HMIS privacy and security requirements, including the Department of Housing and Urban Development’s (HUD) most recent reporting standards and comma separated value (“CSV”) format specifications. DOH has chosen CAFÉ as the HMIS Comparable Database for ESG and ESG-CV funded programs.
- 2.5. “Continuum of Care (CoC)”** means a HUD identified regional that promotes communitywide commitment to the goal of ending homelessness; provides funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homeless individuals and families; and optimizes self-sufficiency among individuals and families experiencing homelessness.
- 2.6. “Coordinated Entry System,”** or Coordinated Assessment System, or Centralized Entry or Assessment System, means a regional, client-centered process that enables communities to assess and identify the housing and support needs of individuals experiencing homelessness.

Coordinated Entry Systems also match the right level of service and housing intervention as quickly and efficiently as possible, while being respectful of client choice and local providers.

- 2.7. **“Fiscal Agent”** means any Grantee that intends to pass funding received from DOH in this Grant Agreement to another agency which will perform the activities outlined in §5.2 (Project Budget) of this **Exhibit B**.
- 2.8. **“Homeless Management Information System” (HMIS)** means a local information technology system used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness.
- 2.9. **“Neighborhood Grants Management System”** means the DOH platform used to collect pay requests and quarterly reports.
- 2.10. **“Pre-Agreement Costs”** means costs incurred prior to the Effective Date of this Agreement that are eligible for payment with Grant Funds. Pre-Agreement Costs are allowed only to the extent such costs authorized by the federal funding source and specifically identified in §5.3 of this **Exhibit B**.
- 2.11. **Progressive Engagement.** “Progressive Engagement” is a services model that seeks to match services and resources to the participants presenting need. It is an approach to helping households end homelessness as rapidly as possible, despite barriers, with minimal financial and support resources. More supports are offered to households who struggle to stabilize and cannot maintain housing without assistance.
- 2.12. **Rent Reasonableness.** A standard defined by HUD designed to ensure that rents being paid are reasonable in relation to rents being charged for comparable unassisted units in the same market.

3. DELIVERABLES

- 3.1. **Outcome.** This Project will serve individuals and families currently experiencing homelessness to prevent, prepare for, and respond to COVID-19 pursuant to the Grantee’s approved application. Additionally, Grantee shall agree to comply with any ESG-CV program outcomes released by HUD.
- 3.2. **Performance Milestones.** Grantee shall achieve each of the following Milestones by the Date shown.

Milestone	Date
Submit request for reimbursement or advance payment, as approved, to DOH at least quarterly	On-going
Submit Quarterly Financial Status Report	See §7.3.1 below
Submit Quarterly Performance Measures Report	See §7.3.2 below
Submit Quarterly Homeless Management Information (HMIS) Report	See §7.3.3 below
Provide DOH access to Grantee’s HMIS web portal to review real time client data	On-going
Submit Project Completion Report to CDOH	10/31/2021

- 3.3. **Service Area.** The services described within this Grant may be provided in County of Denver, State of Colorado.

4. PERSONNEL

- 4.1. Replacement.** Grantee shall immediately notify the State if the Responsible Administrator specified in §4.2 or any other Grantee key personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the State and seek its approval, which shall be at the State's sole discretion, as the State executed this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend Work until such time as replacements are approved. All notices sent under this subsection shall be sent in accordance with §14 of the Grant.
- 4.2. Responsible Administrator.** Grantee's performance hereunder shall be under the direct supervision of Britta Fisher, Executive Director (Britta.Fisher@denvergov.org), who is hereby designated as the responsible administrator of this Project.

5. FUNDING

The State provided funds shall be limited to the amount specified under the "State ESG-CV Funds" column of §5.2, Project Budget, below.

5.1. Matching Funds. [Reserved].

5.2. Project Budget

Eligible Activity	State ESG-CV Funds
Emergency Shelter	\$1,654,622.22
Total	\$1,654,622.22

* Per the CARES Act, ESG-CV funds do not require the Grantee to provide matching funds.

- 5.3. Pre-Agreement Costs.** Because of the COVID-19 emergency, Pre-Agreement Costs related to COVID-19 expenses that were incurred from October 1, 2020 through the execution of this Agreement may be used to pay up to the Project Budget Costs listed in §5.2.
- 5.4. Advance Payments.** Grantees may request Advance Payments to meet immediate fiscal needs of the Grantee to provide the activities described within this Exhibit B. Advance Payments may be requested to pay the cost of up to one month of eligible activities in advance at a time. If such request is approved by DOH, Grantee shall submit weekly spend reports, which shall be used by DOH to evaluate any subsequent advance requests.
- 5.5. Project Budget Line Item Adjustments.** Grantee shall have authority to adjust individual budget line amounts with approval of the State up to an aggregate of 10% of such line item from which the funds are moved. Such authority shall not allow Grantee to transfer to or between administration budget lines. Grantee shall send written notification and receive written approval of allowed adjustments from the State prior to any adjustment.
- 5.6. Grantee may *not*:**
- 5.6.1.** Adjust budget amounts between eligible activities without the prior written consent of the State. (The State may make such adjustments via an Option Letter. See **Exhibit G.**)
- 5.6.2.** Amend any of the terms of this Grant except in accordance with the **Modification** subsection of the **General Provisions** of the Grant.

6. PAYMENT

Payments shall be made in accordance with the provisions set forth in §7 of this Grant.

6.1. Payment Schedule. Grantee shall disburse Grant Funds received from the State within fifteen (15) days of receipt. Excess funds shall be returned to the State.

Payment	Amount	
Interim Payment(s)	\$1,653,622.22	Paid upon receipt of actual expense documentation and written requests from the Grantee for reimbursement of eligible approved program activities.
Final Payment	\$1,000.00	Paid upon substantial completion of the Project, provided that the Grantee has submitted, and the Department has accepted, all required reports.
Total	\$1,654,622.22	

6.2. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with §16 of the Grant:

City and County of Denver 201 West Colfax Denver, CO 80202
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6.3. Interest. If advance payments are authorized, Grantee or Subgrantee may keep interest earned from all federal funds received by Grantee or Subgrantee up to \$500 per year (calculated on Grantee’s fiscal year) for administrative expenses. All interest earned in excess of \$500 shall be remitted to DOLA.

7. ADMINISTRATIVE REQUIREMENTS

7.1. Fiscal Agents. Grantees who meet the definition of Fiscal Agent in §2.5 of this **Exhibit B** and plan to pass funds received in this agreement to another agency must have DOH approved ESG policies and procedures. Detailed requirements of this document can be found in DOH’s ESG Policies and Procedures Manual, found at: <https://cdola.colorado.gov/emergency-solutions-grant-esg-program>.

7.2. Accounting. Grantee shall maintain properly segregated accounts of Grant Funds, and other funds associated with the Project and make those records available to the State upon request. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the Project Budget.

7.3. Audit Report. If an audit is performed on Grantee’s records for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA, Grantee shall submit the final audit report, including a report in accordance with the Single Audit Act, to:

Department of Local Affairs Accounting & Financial Services 1313 Sherman Street, Room 321 Denver, CO 80203 or email to: dola.audit@state.co.us
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7.4. Reporting. Grantee shall submit the following reports on a quarterly basis to the Department using the Neighborly Grants Management System. The Department may withhold payment(s) if such reports are not submitted timely.

- 7.4.1. Financial Status Report.** One copy of the Financial Status Report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar Quarter.
- 7.4.2. Performance Measures Report.** One copy of the Performance Measures report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar quarter.
- 7.4.3. Homeless Management Information System (HMIS) or Comparable Database Collection and Evaluation.** One copy of the HMIS or Comparable Database report shall be submitted upon request of DOH or at a minimum within twenty (20) calendar days of the end of each calendar quarter. The HMIS or Comparable Database report shall be submitted in Excel format and shall cover the timeframe from the Effective Date of this agreement to the end of the reporting period. The Grantee shall also comply with any additional reporting requirements as defined in the ESG-CV Program Notice.
- 7.4.3.1. HMIS Naming Convention.** Grantee agrees to work with the HMIS Lead agency within their CoC to set up the ESG-CV program. This shall include using “DOLA” in naming any HMIS programs funded with ESG-CV.
- 7.4.3.2. HMIS Compliance.** Grantee agrees to fully comply with the rules and regulations required by HUD which govern HMIS. HUD requires Grantees and Subgrantees of McKinney-Vento Act Funds to collect electronic data on their homeless clients through HMIS. HUD requires Grantees and Subgrantees serving victims of domestic violence use an HMIS comparable database that meets data requirements outlined per HUD regulations. Programs that receive funding through McKinney-Vento that produce a Consolidated Annual Performance and Evaluation Report (CAPER) must also collect program level data elements. These programs include ESG-CV. The Grantee shall conform to the HMIS policies established and adapted by the regional Continuum of Care (CoC). The Grantee’s aggregate HMIS performance data for projects shall be shared with the funder to improve system performance and assist with monitoring. Technical assistance and training resources for HMIS are available to the Grantee via the Colorado HMIS Helpdesk, which is available to all ESG-CV Grantees and can be accessed by submitting a request for assistance via the “Submit a Request” button at coHMIS.zendesk.com/hc/en-us. Technical assistance and training is provided based on requests by the Grantee and can also be recommended by DOLA based on periodic assessments of participation, compliance and accuracy of data collection.
- 7.4.3.3. HUD Continuum of Care (CoC) Data Standards.** HUD regularly releases updated HMIS Data Standards, and Grantee is required to collect data based on the newest standards. DOLA and its Grantees will collect Universal and Continuum of Care (CoC) Program Specific Elements. See <https://files.hudexchange.info/resources/documents/ESG-Program-HMIS-Manual.pdf> for a list of these required elements for ESG programs. The Grantee is required to attend any CoC provided HMIS training on the data collection requirements for these revised standards.

7.4.3.4. Security. All workstations, desktops, laptops, and servers connected to the Grantee's network or computers accessing the HMIS through a Virtual Private Network (VPN) must comply with the baseline security requirements. The Grantee's HMIS computers and networks must meet the following standards:

- Secure location
- Workstation username and password
- Virus protection with auto update
- Locking password protected screen saver
- Individual or network firewall
- PKI-certificate installed or static IP address

7.4.3.5. Data Quality Standards

- The Grantee must enter HMIS data (program enrollments and services) into the system within five business days of the actual enrollment or service provided date.
- DOLA reserves the right to request Data Quality reports from Colorado HMIS for Grantee's ESG-CV funded programs on a monthly basis.
- DOLA reserves the right to participate in on-site HMIS audits.
- DOLA reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Grantee's programs in HMIS.
- DOLA reserves the right to request detailed CAPERs displaying client-level data and/or displaying aggregate-level data from Colorado HMIS at any time during the Project's operating year. CAPERs are used to review and monitor the Grantee's program data quality and progress toward achieving annual Project goals and outcomes per HUD and CoC requirements. The Grantee's data will be consolidated with other ESG-CV Subgrantees and DOLA data to fulfill HUD annual reporting requirements.
- DOLA reserves the right to access Grantee's HMIS web portal to review real-time client data to ensure Grantee adheres to the data quality standards required by the designated Colorado Continuum of Care.

7.4.4. Project Completion Report. Within thirty (30) days after the completion of the Project or the final draw, whichever is later, the Grantee shall submit one copy of the Project Completion Report, and two copies of the final Financial Status Report.

7.5. Monitoring. The State shall monitor this Grant in accordance with its Risk-Based Monitoring Policy and §§7(B) and (C) of the Grant. Final evaluation of the Project will be accomplished when the Department approves the Project Completion Report.

8. ESG-CV ACTIVITIES

Grantee shall ensure that all Project activities are in accordance with 24 C.F.R. Parts 84, 85, 91 and 576, and all related regulations and requirements. Only costs incurred for ESG-CV funded activities, as detailed in §5.2 above, are reimbursable. Activities and related services/costs allowed under ESG-CV program, but not necessarily under this Grant, are detailed below. Additionally,

Grantee shall agree to comply with any additional ESG-CV program guidelines, notices, waivers, regulations, or any other guidance released by HUD.

8.1. Eligible Activities.

8.1.1. Temporary Emergency Shelter. ESG-CV funds may be used for the costs of providing temporary emergency shelter, which means any structure or portion of a structure, which is used for a limited period of time because of a crisis, such as a natural disaster or public health emergency, to provide shelter for individuals and families displaced from their normal place of residence or sheltered or unsheltered locations. Eligible costs include:

- 8.1.1.1. Leasing.** The costs of leasing existing real property or temporary structures to be used as temporary emergency shelters.
- 8.1.1.2. Acquisition.** The cost of acquisition of real property (e.g. hotels, ancillary structures, parking lots). The total amount of ESG-CV funds used for acquisition must not exceed \$2.5 million per real property.
- 8.1.1.3. Renovation.** The costs of renovation (including major rehabilitation and conversion) of real property (e.g., hotels) into temporary emergency shelters. Eligible costs include labor, tools, and other costs for renovation.
- 8.1.1.4. Operations.** The cost of shelter operations costs including the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, supplies necessary for the operation of the temporary emergency shelter.
- 8.1.1.5. Essential Services Services,** including essential services under §8.1.2.1 below, housing search and placement services under 24 CFR 576.105(b)(1), and housing search and counseling services as provided under 24 CFR 578.53(e)(8)
- 8.1.1.6. Volunteer Incentive.** The cost of providing reasonable incentives to volunteers (e.g., gift cards) who have been and are currently helping to provide necessary street outreach, emergency shelter, essential services, and housing relocation and stabilization services during the coronavirus outbreak.
- 8.1.1.7. Hazard Pay.** The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus

8.1.2. Emergency Shelter Component. Subject to the expenditure limit in §576.100(b), ESG-CV funds may be used for costs of providing essential services to homeless families and individuals in emergency shelters, renovating buildings to be used as emergency shelter for homeless families and individuals, and operating emergency shelters.

8.1.2.1. Essential services. ESG-CV funds may be used to provide essential services to individuals and families who are in an emergency shelter, as follows:

8.1.2.1.1. Case management. The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible. Component services and activities consist of:

- Using the centralized or coordinated assessment system as required under §576.400(d);
- Conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility;
- Counseling;
- Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- Developing an individualized housing and service plan, including planning a path to permanent housing stability.

8.1.2.1.2. Childcare. The costs of childcare for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

8.1.2.1.3. Education services. When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

8.1.2.1.4. Employment assistance and job training. The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is

an eligible cost. Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

8.1.2.1.5. Outpatient health services. Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Emergency Solutions Grant (ESG-CV) funds may be used only for these services to the extent that other appropriate health services are unavailable within the community. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

8.1.2.1.6. Legal services. Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the State in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing. Emergency Solutions Grant (ESG-CV) funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community. Eligible subject matters are child support, guardianship, paternity, emancipation, and legal separation, orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking, appeal of veterans and public benefit claim denials, and the resolution of outstanding criminal warrants. Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling. Fees based on the actual service performed (*i.e.* fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the Subgrantee is a legal services provider and performs the services itself, the eligible costs are the Subgrantee's employees' salaries and other costs necessary to perform the services. Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee

arrangements and contingency fee arrangements are ineligible costs.

8.1.2.1.7. Life skills training. The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

8.1.2.1.8. Mental health services. Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions. ESG-CV funds may only be used for these services to the extent that other appropriate mental health services are unavailable or inaccessible within the community. Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management. Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

8.1.2.1.9. Substance abuse treatment services. Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. ESG-CV funds may only be used for these services to the extent that other appropriate substance abuse treatment services are unavailable or inaccessible within the community. Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

8.1.2.1.10. Transportation. Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs include the following:

- The cost of a program participant's travel on public transportation;
- If service workers use their own vehicles, mileage allowance for service workers to visit program participants;

- The cost of purchasing or leasing a vehicle for the Grantee or Subgrantee in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle; and
- The travel costs of Grantee or Subgrantee staff to accompany or assist program participants to use public transportation.

8.1.2.1.11. Services for special populations. ESG-CV funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1)(i) through (a)(1)(x) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

8.1.2.2. Renovation. Eligible costs include labor, materials, tools, and other costs for renovation (including major rehabilitation of an emergency shelter or conversion of a building into an emergency shelter). The emergency shelter must be owned by a government entity or private nonprofit organization.

8.1.2.3. Shelter Operations. Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter. Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

8.1.2.4. Volunteer Incentive. The cost of providing reasonable incentives to volunteers (e.g., gift cards) who have been and are currently helping to provide necessary street outreach, emergency shelter, essential services, and housing relocation and stabilization services during the coronavirus outbreak.

8.1.2.5. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus

8.1.3. Street Outreach. Subject to the expenditure limit in §576.100(b), ESG-CV funds may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing, or an appropriate health

facility. For the purposes of this section, the term “unsheltered homeless people” means individuals and families who qualify as homeless under paragraph (1)(i) of the “homeless” definition under §576.2. The eligible costs and requirements for essential services consist of:

- 8.1.3.1. Engagement.** The costs of activities to locate, identify, and build relationships with unsheltered homeless people and engage them for the purpose of providing immediate support, intervention, and connections with homeless assistance programs and/or mainstream social services and housing programs. These activities consist of making an initial assessment of needs and eligibility; providing crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; and actively connecting and providing information and referrals to programs targeted to homeless people and mainstream social services and housing programs, including emergency shelter, transitional housing, community-based services, permanent supportive housing, and rapid re-housing programs. Eligible costs include the cell phone costs of outreach workers during the performance of these activities.
- 8.1.3.2. Case management.** The cost of assessing housing and service needs, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. Eligible services and activities are as follows: using the centralized or coordinated assessment system as required under §576.400(d); conducting the initial evaluation required under §576.401(a), including verifying and documenting eligibility; counseling; developing, securing and coordinating services; obtaining Federal, State, and local benefits; monitoring and evaluating program participant progress; providing information and referrals to other providers; and developing an individualized housing and service plan, including planning a path to permanent housing stability.
- 8.1.3.3. Emergency health services.** Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals operating in community-based settings, including streets, parks, and other places where unsheltered homeless people are living. ESG-CV funds may be used only for these services to the extent that other appropriate health services are inaccessible or unavailable within the area. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate emergency medical treatment; and providing medication and follow-up services.
- 8.1.3.4. Emergency mental health services.** Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions operating in community-based settings, including streets, parks, and other places where unsheltered people are living. ESG-CV funds may be used only for these services to the extent that other appropriate mental health services are inaccessible or unavailable within the community. Mental health services are the application of therapeutic processes to personal, family, situational, or

occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Eligible treatment consists of crisis interventions, the prescription of psychotropic medications, explanation about the use and management of medications, and combinations of therapeutic approaches to address multiple problems.

8.1.3.5. Transportation. The transportation costs of travel by outreach workers, social workers, medical professionals, or other service providers are eligible, provided that this travel takes place during the provision of services eligible under this section. The costs of transporting unsheltered people to emergency shelters or other service facilities are also eligible. These costs include the following:

- The cost of a program participant's travel on public transportation;
- If service workers use their own vehicles, mileage allowance for service workers to visit program participants;
- The cost of purchasing or leasing a vehicle for the Grantee or Subgrantee in which staff transports program participants and/or staff serving program participants, and the cost of gas, insurance, taxes and maintenance for the vehicle; and
- The travel costs of Grantee or Subgrantee staff to accompany or assist program participants to use public transportation.

8.1.3.6. Services for special populations. ESG-CV funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under paragraphs (a)(1) through (a)(5) of this section. The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

8.1.3.7. Volunteer Incentive. The cost of providing reasonable incentives to volunteers (e.g., gift cards) who have been and are currently helping to provide necessary street outreach, emergency shelter, essential services, and housing relocation and stabilization services during the coronavirus outbreak.

8.1.3.8. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus

8.1.4. HMIS or Comparable Database - Data collection and Evaluation.

- 8.1.4.1. Data collection.** Reporting for ESG-CV will be conducted through the use of Homeless Management Information Systems (HMIS) or for Domestic Violence Shelters the CAFÉ system. Therefore, reasonable and appropriate costs associated with operating an HMIS for purposes of collecting and reporting data required under ESG-CV and analyzing patterns of use of ESG-CV funds are eligible.
- 8.1.4.2. Eligible costs.** Eligible costs include (a) the purchase or leasing computer hardware, purchase software or software licenses, (b) purchase or leasing equipment, including telephones, faxes and furniture, (c) staffing associated with operating HMIS including data collection, completing data entry, monitoring and reviewing data quality, completing data analysis, reporting to the HMIS lead, training staff on using the HMIS or comparable database, implementing and complying with HMIS requirements.
- 8.1.4.3. Ineligible costs.** Ineligible HMIS activities include, without limitation, development of new software systems.
- 8.1.4.4. Coordinated Assessment.** Grantee and Subgrantee shall participate in the coordinated assessment process and collect consistent baseline data to better ensure HMIS data collected is consistent across the State and Continuum of Care. Further, Grantee and Subgrantee shall ask all Program Participants whether their participant-specific HMIS information may be utilized for programmatic and regional evaluation. Such information shall only be used with the Program Participant’s documented consent.
- 8.1.4.5. Evaluation.** Grantee and Subgrantee(s) must comply if asked to participate in HUD-sponsored research and evaluation of ESG-CV. Eligible costs include costs for Grantee participation in HUD research and evaluation of the program.
- 8.1.5. Rapid Re-housing:** Eligible Program Participants for Rapid Re-housing assistance are individuals and families who meet the definition of “homeless” at 24 CFR 576.2. Financial assistance is limited to the following activities: short-term rental assistance, medium-term rental assistance, rental application fees, security deposits, utility deposits, utility payments, moving cost assistance, and Housing Relocation and Stabilization Services. Grantee and Subgrantees must not make payments directly to Program Participants, only to third parties, such as property owners or utility companies. Grantee or Subgrantee must ensure that the units in which ESG-CV assistance is provided to these individuals and families meet the rent reasonableness standard. In addition, an assisted property may not be owned by the Grantee, Subgrantee or the parent, subsidiary or affiliated organization of the Subgrantee.
- 8.1.5.1. Centralized or Coordinated Assessment.** Per the HUD ESG interim rule, Grantee must use a Centralized or Coordinated System to initially assess the eligibility and needs of each individual or family who seeks homeless assistance. This Centralized or Coordinated Assessment System should be developed and implemented by the CoC in accordance with minimum requirements to be established by HUD. Should the CoC not have a CoC-wide system that it implements for homeless assistance, Grantee may use a local Centralized System approved by the local CoC and DOH. Should the CoC

develop and implement a system during this contract period, Grantee must work with DOH and the CoC to coordinate adoption of the CoC system.

- 8.1.5.2. Rental Assistance.** Short and medium-term rental assistance is tenant-based rental assistance that may be used to allow individuals and families to obtain rental units. Short-term rental assistance may not exceed rental costs accrued over a period of 3 months. Medium-term rental assistance may not exceed actual rental costs accrued over a period of 4-12 months. Program Participants may receive up to 12 months of assistance contingent on the availability of ESG-CV funds.
- 8.1.5.3. Financial Assistance Costs.** ESG-CV funds may be used to pay housing owners, utility companies, and other third parties for the following costs:
 - 8.1.5.3.1. Rental application fees.** ESG-CV funds may pay for the rental housing application fee that is charged by the owner to all applicants.
 - 8.1.5.3.2. Security and Utility Deposits.** ESG-CV funds may be used to pay for security deposits, including utility deposits, for eligible Program Participants. In contrast to the requirements regarding rental assistance payments, security and utility deposits covering the same period of time in which assistance is being provided through another housing subsidy program are eligible, as long as the assistance from the other housing subsidy program does not include security and utility deposits.
 - 8.1.5.3.3. Last month's rent.** If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 12 months during any 3-year period.
 - 8.1.5.3.4. Utility Payments.** ESG-CV funds may be used for up to 18 months of utility payments, including up to 6 months of utility payments in arrears, for each Program Participant, provided that the Program Participant or a member of his/her household has an account in his/her name with the utility company or proof of responsibility to make utility payments, such as cancelled checks or receipts in his/her name from the utility company.
 - 8.1.5.3.5. Moving Cost Assistance.** ESG-CV funds may be used for reasonable moving costs, such as truck rental, hiring a moving company, or short-term storage fees for a maximum of 3 months or until the Program Participant is in housing, whichever is shorter.
- 8.1.5.4. Services costs.,** ESG-CV funds may be used to pay the costs of providing the following services:

8.1.5.4.1. Housing search and placement. Services or activities necessary to assist program participants in locating, obtaining, and retaining suitable permanent housing, include the following:

- Assessment of housing barriers, needs, and preferences;
- Development of an action plan for locating housing;
- Housing search;
- Outreach to and negotiation with owners;
- Assistance with submitting rental applications and understanding leases;
- Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness;
- Assistance with obtaining utilities and making moving arrangements; and
- Tenant counseling

8.1.5.4.2. Housing stability case management. ESG-CV funds may be used to pay cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing or to assist a program participant in overcoming immediate barriers to obtaining housing. This assistance cannot exceed 30 days during the period the program participant is seeking permanent housing and cannot exceed 24 months during the period the program participant is living in permanent housing. Component services and activities consist of:

- Using the centralized or coordinated assessment system as required under § 576.400(d), to evaluate individuals and families applying for or receiving homelessness prevention or rapid re-housing assistance;
- Conducting the initial evaluation required under § 576.401(a), including verifying and documenting eligibility, for individuals and families applying for homelessness prevention or rapid re-housing assistance;
- Counseling;
- Developing, securing, and coordinating services and obtaining Federal, State, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Developing an individualized housing and service plan, including planning a path to permanent housing stability; and

- Conducting re-evaluations required under § 576.401(b).

8.1.5.5. Mediation. The cost of mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.

8.1.5.6. Legal services. The cost of legal services, as set forth in § 576.102(a)(1)(vi), except that the eligible subject matters also include landlord/tenant matters, and the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.

8.1.5.7. Credit repair. The cost of credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.

8.1.5.8. Re-Evaluations. Grantee or Subgrantee must re-evaluate each Program Participant's eligibility and the types and amounts of assistance the program participant needs not less than once annually for Program Participants receiving rapid re-housing assistance. At a minimum, each re-evaluation of eligibility must establish that:

7.1.5.5.1. The program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and

7.1.5.5.2. The program participant lacks sufficient resources and support networks necessary to retain housing without ESG-CV assistance.

8.1.5.9. Landlord incentives. The cost of paying for landlord incentives as reasonable and necessary to obtain housing for individuals and families experiencing homelessness and at risk of homelessness. However, a recipient may not use ESG-CV funds to pay the landlord incentives set forth below in an amount that exceeds three times the rent charged for the unit. Waiving the limitation on eligible costs under housing relocation and stabilization services to pay for the costs of landlord incentives will increase the number of housing units available to people experiencing homelessness or at risk of homelessness, especially in tight rental markets and obtaining and maintaining housing is critical to preventing the spread of coronavirus and helping mitigate the economic impact of the crisis. The limitation to three times the rent charged for each unit ensures enough ESG-CV funds remain available to provide other eligible activities necessary to prevent the spread of coronavirus. Eligible landlord incentive costs include:

- Signing bonuses equal to up to 2 months of rent;

- Security deposits equal to up to 3 months of rent;
- Paying the cost to repair damages incurred by the program participant not covered by the security deposit or that are incurred while the program participant is still residing in the unit; and,
- Paying the costs of extra cleaning or maintenance of a program participant's unit or appliances.

8.1.5.10. Hazard Pay. The cost of hazard pay for staff working directly to prevent, prepare for, and respond to coronavirus among persons who are homeless or at risk of homelessness. Examples of subrecipient staff working directly in support of coronavirus response include emergency shelter intake staff, street outreach teams, emergency shelter maintenance staff, emergency shelter security staff, staff providing essential services (e.g., outpatient health or mental health, housing navigators), and staff in proximity to persons with coronavirus or working in locations with a high likelihood of contracting coronavirus.

8.1.6. Administration. Cost of overall program management, coordination, monitoring and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

8.1.6.1. Salaries, wages, and related costs of the Grantee's staff, the staff of Subgrantees, or other staff engaged in program administration. In charging costs to this category, the Grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The Grantee may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

- Preparing program budgets and schedules, and amendments to those budgets and schedules;
- Developing systems for assuring compliance with program requirements;
- Developing interagency agreements and agreements with Subgrantees and contractors to carry out program activities;
- Monitoring program activities for progress and compliance with program requirements;
- Preparing reports and other documents directly related to the program for submission to HUD;
- Coordinating the resolution of audit and monitoring findings;
- Evaluating program results against stated objectives; and
- Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

8.1.6.2. Travel costs incurred for monitoring of Subgrantees;

- 8.1.6.3. Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and
- 8.1.6.4. Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
- 8.1.6.5. Administrative costs *do not* include the costs of issuing financial assistance, providing housing relocation and stabilization services, or carrying out eligible data collection and evaluation activities, as specified above, such as Grantee or Subgrantee staff salaries, costs of conducting housing inspections, and other operating costs. These costs should be accounted for under one of the other eligible activity categories in this §8.1.

8.1.7. Ineligible and Prohibited Activities.

- 8.1.7.1. **Duplication of Other Resources.** The intent of ESG-CV is to provide funding for housing expenses to persons who are homeless or who would be homeless if not for this assistance. Therefore, financial assistance or services to pay for expenses that are available through other programs, are not eligible. Case managers should work to link Program Participants to these other resources.
- 8.1.7.2. **Mortgage Costs.** Financial assistance may not be used to pay for any mortgage costs or costs needed by homeowners to assist with any fees, taxes, or other costs of refinancing a mortgage to make it affordable. This includes the development and implementation of any mortgage assistance activity costs including, but not limited to, short-term subsidies to defray mortgage arrearages.
- 8.1.7.3. **Other Activities.** ESG-CV funds may not be used to pay for any of the following items: credit card bills or other consumer debt; clothing and grooming; home furnishings; pet care; entertainment activities; work or education related materials; and cash assistance to Program Participants. ESG-CV funds may not be used to develop discharge planning programs in mainstream institutions such as hospitals, jails, or prisons. Finally, while training for case managers and program administrators is an eligible administrative cost as long as it is directly related to ESG-CV program operations and has been awarded through this contract, ESG-CV funds may not be used to pay for certifications, licenses, and general training classes. Programs may not charge fees to ESG-CV Program Participants. Any ESG-CV funds used to support Program Participants must be issued directly to the appropriate third party, such as the landlord or utility company, and in no case are funds eligible to be issued directly to Program Participants. If funds are found to be used for ineligible activities as determined by the State or HUD, the Grantee is required to remit the ineligible costs to the State promptly.
- 8.1.7.4. **Acquisition Costs.** [Reserved].

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EXHIBIT C - FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

- 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

- 2.1.1.1. Awards may be in the form of:

- 2.1.1.1.1. Grants;

- 2.1.1.1.2. Contracts;

- 2.1.1.1.3. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

- 2.1.1.1.4. Loans;

- 2.1.1.1.5. Loan Guarantees;

- 2.1.1.1.6. Subsidies;

- 2.1.1.1.7. Insurance;

- 2.1.1.1.8. Food commodities;

- 2.1.1.1.9. Direct appropriations;

- 2.1.1.1.10. Assessed and voluntary contributions; and

- 2.1.1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

- 2.1.1.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

- 2.1.1.2. Award *does not* include:

- 2.1.1.2.1. Technical assistance, which provides services in lieu of money;

- 2.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 2.1.1.2.3. Any award classified for security purposes; or
 - 2.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 2.1.2. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.3. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
- 2.1.3.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.3.2. A foreign public entity;
 - 2.1.3.3. A domestic or foreign non-profit organization;
 - 2.1.3.4. A domestic or foreign for-profit organization; and
 - 2.1.3.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.7. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 2.1.8. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 2.1.9. “Grant” means the Grant to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.10. “Grantee” means the party or parties to a Grant funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Grantee does not include Vendors.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.

- 2.1.12. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 2.1.13. “Subaward” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.17. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 2.1.17.1. Salary and bonus;
 - 2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 2.1.17.4. Change in present value of defined benefit and actuarial pension plans;
 - 2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life

insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.18. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

2.1.19. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.20. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

3.1. Grantee shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee’s information.

5. TOTAL COMPENSATION.

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.3. The public does not have access to information about the compensation of such Executives 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 § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

- 6.1. Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Grantee is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

- 8.1. If Grantee is a Subrecipient, Grantee shall report as set forth below.
 - 8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 8.1.1.1. Subrecipient DUNS Number;
 - 8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 8.1.1.3. Subrecipient Parent DUNS Number;

- 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Grant, the following data elements:
- 8.1.2.1. Subrecipient's DUNS Number as registered in SAM.
 - 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 9.2. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

- 10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

- 11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. **Exemption.** If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. **Subrecipient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT CONTRACTS

12.1. If Grantee is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant.

12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Grant Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.1.1. During the performance of this contract, the contractor agrees as follows:

12.1.1.1.1. Grantee 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 12.1.1.1.2. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- 12.1.1.1.3. Grantee will send to each labor union or representative of workers with which he has a collective bargaining Grant or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.1.1.1.4. Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.1.1.1.5. Grantee will furnish all information and reports required by Executive Order 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 contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.1.1.1.6. In the event of Grantee's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965,

and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.1.7. Grantee will include the provisions of 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 contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Grantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

12.1.3. **Rights to Inventions Made Under a Grant or Grant.** If the Federal Award meets the definition of “funding Grant” under 37 CFR §401.2 (a) and

Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding Grant,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

- 12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. CERTIFICATIONS.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
- 14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

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Federal Funding Accountability and Transparency Act (FFATA) Data Report Form
(For Grantee Completion)

Reporting is required for initial awards of \$25,000 or more or award modifications that result in a total award of \$25,000 or more.

Information Field (Definitions can be found in Exhibit C)	Response
1. Agency or Jurisdiction DUNS Number:	
2. Subrecipient Name Receiving Award:	
3. Subrecipient Parent DUNS Number: (Report if different from subrecipient number)	
4. Location of Entity Receiving Award: (Full street address)	
5. Primary Location of Performance of the Award: (City, State and Congressional District)	
	Answer True or False
6. In the preceding fiscal year, Contractor received:	
a. \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
b. 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
c. The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	

Note: An answer to question 7 is required ONLY when all answers to question 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

Print Name	Compensation Amount
_____	_____
_____	_____
_____	_____

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

Signature of Responsible Administrator

Date

**EXHIBIT D –
[RESERVED]**

**EXHIBIT E -
[RESERVED]**

**EXHIBIT F -
[RESERVED]**

EXHIBIT G - SAMPLE OPTION LETTER

State Agency Department of Local Affairs, for the benefit of the Division of Housing	Grantee [Grantee's full legal name.]
Original Agreement Number H0ESG00000	Option Letter Number (1, 2, 3, etc.)
Current Agreement Maximum Amount \$000,000.00	New Agreement Maximum Amount \$000,000.00
Current Expiration Date Month, Day, Year	New Expiration Date [Month, Day, Year]
Existing CMS Number(s) 000000, 000000, 000000	New CMS Number (This Option Letter) 000000
Effective Date This Option Letter is effective as of the date signed by the State Controller or Month, Day, Year, whichever is later.	

1. **OPTIONS:** *(Select all that are applicable.)*

- A. Option to extend time for performance.
(Select this if extending the Agreement Expiration Date.)
- B. Change in the Agreement Maximum Amount.
(Select this if increasing or decreasing the amount of Grant Funds awarded.)
- C. Budget Line Item Adjustment(s) Only
(Select this if redistributing how Grant Funds are allocated within the Project Budget with no change in the Agreement Maximum Amount.)

2. **REQUIRED PROVISIONS:**

- A. **For use with Option 1(A):** In accordance with §2.C of the Original Agreement referenced above, as amended, the State hereby exercises its option for an additional term, beginning on the Effective Date of this Option Letter and ending on the New Expiration Date shown above.
- B. **For use with Options 1(B):** The Agreement Maximum Amount shown on the Cover Page of the Original Agreement referenced above, as amended, is hereby deleted and replaced with the New Agreement Maximum Amount shown in the table above. In addition, the **Sources** table in §5.2.1, the **Uses** table in §5.2.2, the **Eligible Uses of DOLA Grant Funds** table in §5.2.3, the **Pre-Agreement Costs** table in §5.2.4, and the **Payment Schedule** in §6.1, all of **Exhibit B**, are deleted and replaced as follows:

5.2.1 Sources

Sources	Amount
Total	\$ 0.00

5.2.2 Uses/Project Activities

Uses	Amount
Total	\$ 0.00

5.2.3 Eligible Uses of DOLA Grant Funds

Eligible Activity	Amount
Total	\$ 0.00

5.2.4 Pre-Agreement Costs

Eligible Use	Amount
Total	\$ 0.00

6.1 Payment Schedule

Payment	Amount	
Interim Payment(s)	\$0.00	Paid upon receipt of actual expense documentation and written Pay Requests from the Grantee for reimbursement of eligible approved expenses.
Final Payment	\$0.00	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Grantee has submitted, and DOLA has accepted, all required reports.
Total	\$0.00	

- C. **For use with Option 1(C):** The **Grant Funds** table in **§5.2.3** of **Exhibit B** to the Original Agreement, as amended, is deleted and replaced with the following:

Use	Amount
Total	\$ 0.00

In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor</p> <p style="text-align: center;">Department of Local Affairs Rick M. Garcia, Executive Director</p> <p>By: _____ Rick M. Garcia, Executive Director</p> <p>Date: _____</p>	<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Yingtse Cha, Controller Delegate</p> <p>Option Effective Date: _____</p>
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**FORM 1 -
[RESERVED]**