

THIRD AMENDATORY AGREEMENT

THIS **THIRD AMENDATORY AGREEMENT** (the “Amendment”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and the **HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER, COLORADO**, a public body corporate and politic (the “Contractor”), collectively the “Parties.”

RECITALS:

A. The Parties entered into an Agreement on May 22, 2019, as amended by the First Amendatory Agreement dated July 8, 2021 and the Second Amendatory Agreement dated January 17, 2023 (collectively, the “Agreement”), for the City to provide funding to the Contractor to support the construction of accessory dwelling units through the Contractor’s West Denver Single Family Plus Program; and

B. The Parties desire to amend the Agreement to extend the term, increase the maximum payment amount, and revise the scope of work.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Exhibit A-1 of the Agreement shall be replaced with the Exhibit A-3 attached to this Amendment and incorporated herein by this reference. The updated Scope of Work attached to this Amendment as Exhibit A-3 shall replace and supersede Exhibit A-1 of the Agreement effective as of the date set forth on the City’s signature page of this Amendment. All references to “Exhibit A-1” in the Agreement are amended to read “Exhibit A-3.”

2. Section 3 of the Agreement entitled “**TERM**” is amended to read as follows:

“The Agreement will commence on January 1, 2019 and will expire on December 31, 2026 (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

3. Subsection 4.a. of the Agreement is amended to read as follows:

a. The City shall provide and the Contractor shall accept as the sole City funding for the program and for services rendered by Contractor and subcontractors and costs incurred under this Agreement the amount of **ONE**

MILLION NINE HUNDRED THIRTY THOUSAND DOLLARS and NO/100 (\$1,930,000.00). Amounts billed may not exceed the reimbursement amounts set forth in Exhibit A-3.”

4. Subsection 4.d. of the Agreement entitled “**Maximum Contract Amount**” is amended to read as follows:

“Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **ONE MILLION NINE HUNDRED THIRTY THOUSAND DOLLARS and NO/100 (\$1,930,000.00) (the “Maximum Contract Amount”)**. The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A-3**. Any services performed beyond those in **Exhibit A-3** are performed at Contractor’s risk and without authorization under the Agreement.”

5. Section 7 of the Agreement, titled “**EXAMINATION OF RECORDS**,” is amended to read as follows:

“7. **EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Contractor’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired

during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Contractor to make disclosures in violation of state or federal privacy laws. Contractor shall at all times comply with D.R.M.C. 20-276.”

6. Section 19 of the Agreement, titled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**,” is amended to read as follows:

“19. **INTENTIONALLY OMITTED.**”

7. Section 22 of the Agreement, titled “**NO DISCRIMINATION IN EMPLOYMENT**,” is amended to read as follows:

“22. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

8. A new Section 35 titled “**COMPLIANCE WITH DENVER WAGE LAWS**,” is added to the Agreement to read as follows:

“35. **COMPLIANCE WITH DENVER WAGE LAWS**: To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City’s

Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.”

9. Except as herein amended, the Agreement continues in effect, and is affirmed and ratified in each and every particular.

10. This Amendment will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

[SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

Contract Control Number:
Contractor Name:

HOST-202475080-03 / OED-201846549-03
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202475080- 03 / OED-201846549-03
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

By: See attached signature page

Name: See attached signature page
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

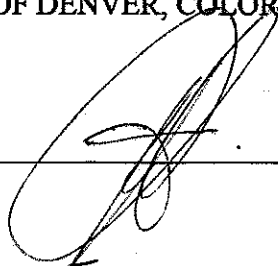
Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

HOST-202475080- 03 / OED-201846549-03
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

By: _____



Name: JOAQUIN CINTRON VEGA
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

SCOPE OF WORK

DEPARTMENT OF HOUSING STABILITY

HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER

HOST-202475080-03 / OED-201846549-03

THIRD AMENDMENT

I. INTRODUCTION

Period of Performance Start and End Dates: January 1, 2019 – December 31, 2026

Project Description:

The purpose of this contract amendment is to provide an additional Department of Housing Stability (HOST) grant award in the amount of \$800,000.00 for a total award amount of \$1,930,000.00 and to extend the maturity date from December 31, 2024, to December 31, 2026. These funds will be provided to the Housing Authority of the City and County of Denver through its entity West Denver Renaissance Collaborative (“WDRC”) to be utilized for the creation of 16 additional Accessory Dwelling Units (“ADU”), for a total of 44 ADUs during the pilot phase. Per the memo approved by HOST’s interim Executive Director dated November 6, 2023, ADU subsidies are increased to \$45,000 for Studio/One Bedroom, \$50,000 for Two Bedrooms, and \$55,000 for Three Bedrooms.

Funding Source:	Affordable Housing Fund – Property Tax and Inclusionary Housing Ordinance Incentive Fee
Project Name:	West Denver Single Family Plus Program
Contractor Address:	1035 Osage Street, Denver, CO 80204
Organization Type:	Non-Profit
Neighborhoods	70% of the ADUs must be built in the neighborhoods of West Colfax, Sun Valley, Lincoln Park, Villa Park, Barnum West, Barnum, Valverde, Westwood, and Athmar Park. The remaining 30% of the ADUs may be built citywide – where zoning allows – and priority will be given to homeowners in NEST neighborhoods.

II. DHA RESPONSIBILITIES

DHA, through WDRC, is responsible for providing design and permitting, financing, and construction management services to participants in a manner satisfactory to the City and consistent with all standards required as a condition of receiving these funds. Additionally, DHA, through WDRC, is responsible for monitoring and compliance of resales and repayments of program income throughout the period of affordability of each unit.

1. Each ADU developed under this agreement must be occupied for residential use. It may not be used as an office, workspace, short-term rental, or other non-dwelling use.
2. The maximum subsidy allowed is \$45,000 per Studio/One Bedroom ADU, \$50,000 for Two Bedroom ADU, and \$55,000 for Three or more Bedroom ADU.
3. No fewer than thirty-one (31) ADUs must be built in West Colfax, Sun Valley, Lincoln Park, Villa Park, Barnum, West Barnum, Valverde, Westwood, and Athmar Park.
4. No more than thirteen (13) ADUs may be built citywide.
5. DHA is responsible for marketing, selection, and income qualification of participants.
6. To receive City funding, participants must complete an income verification process. Either the homeowner or ADU renter must have incomes at or below 80% of the Area Median Income (“AMI”) as determined by the U.S. Department of Housing and Urban Development (“HUD”).
 - a. Homeowners with incomes at or below 80% of the AMI at the time of application may receive City funding. No subsequent income verification of the homeowner is required.
 - b. Homeowners with incomes above 81% of the AMI may receive City funding provided that the ADU is rented to households with initial incomes at or below 80% AMI for 25 years.
7. DHA will provide technical assistance to the participant with securing financing for the development of the ADU.
8. DHA will manage the planning and permitting for participants, including the completion of all due diligence, required or implied, to ensure permitting approval, including but not limited to:
 - a. Environmental studies;
 - b. Appraisal and appraisal review services;
 - c. Physical Needs Assessment;
 - d. Title Services;
 - e. Zoning Compliance;
 - f. Conveyance document preparation;
 - g. Surveys, maps, and legal descriptions;
 - h. Construction bids and drawings; and
 - i. Securing all required permits.
9. DHA, or its designee, will manage the construction of the ADUs on behalf of participants through issuance of Certificate of Occupancy.
 - a. Construction must be performed by licensed general or specialty contractors.
 - b. All City code requirements must be met.
 - c. Upon completion of construction, but prior to occupancy, the ADU must pass a HOST Housing Completion Inspection.
 - d. Upon completion of construction, DHA will provide HOST with a final line-item construction cost for each ADU.

III. REIMBURSEMENT REQUIREMENTS

1. ADU subsidy shall not exceed the limits in Section 2.II of this Exhibit will be provided to WDRC, through DHA.
2. DHA may request reimbursement after DHA advances the City Funds to the construction escrow account or directly to the escrow once construction costs up to the subsidy limits have been expended. If funds were advanced by DHA, proof of transfer receipt, along with the settlement statement listing all financing sources, recorded Deed of Trust and Covenant, will be required for reimbursement.
3. DHA must record a DHA Deed of Trust on the property covering the amount provided by the City. The Deed of Trust may be subordinate to the lien of the primary and/or other lenders.
4. DHA must record DHA's ADU Pilot Program Affordability Covenant and Restrictions that encumbers the property for twenty-five (25) years.
5. The per unit subsidy level and total units developed may be adjusted upon approval of the Executive Director of HOST, but the Maximum Contract Amount may not be increased without an amendment to the Agreement.

IV. LONG TERM COMPLIANCE

1. Payment on Event of Sale or Default - Acceleration: Except as provided in IV.2., if a home is sold or falls out of compliance prior to the end of the twenty-five (25) year covenant period, DHA must declare the entire unpaid principal immediately due and payable according to the Payment Schedule in the borrower's Promissory Note. All repaid funds must be used to support subsequent ADU development for homeowners under the terms of this agreement.
 - i. Any amount repaid will become program income to support the construction of ADUs for future homeowners under the terms of this agreement.
 - ii. Any repaid funds that cannot be used under the terms of this agreement must be returned to the City (i) at the expiration or earlier termination of this Agreement; or (ii) if program income is received after the expiration or earlier termination of this Agreement, within sixty (60) days of receipt of the funds.
 - iii. DHA must submit annual reports by January 15 of each year detailing any program income received and any disbursements of program income.
 - iv. This subsection will survive the expiration or termination of the Agreement
2. Resale to income qualified buyer: If a property is resold to an income qualified homebuyer or affordable housing agency that will keep the affordability restriction for the balance of the 25-year covenant period, Payment on Event of Default, as described in Section IV.1., is not required. The City must approve any assignment or new subordination of the DHA Deed of Trust and Affordability Covenant.
3. ADU Rental Occupancy: When the renter of an ADU is subject to the income qualification requirement in Section II.6.b., DHA is responsible for ensuring compliance with the DHA Rental and Occupancy requirements for the 25-year compliance period. DHA must submit to the City annual reports detailing all ADUs that are rented and records evidencing the income of each household occupying a rented ADU.
4. Security Requirements: DHA will ensure that the approved DHA Deed of Trust is recorded on the recipient's property prior to construction of the ADU.

5. City Right to Audit: The City will audit DHA's income qualification process prior to the first request for reimbursement. Additionally, the City will monitor the income qualification summary for each participant upon provision of funding to DHA or prior to occupancy of the ADU by an income-qualified renter. Subsequent monitoring of income qualifications will occur annually, as needed. The documentation must be sufficient to demonstrate that either the homeowner's or ADU renter's household income did not exceed 80% of the HUD AMI based on household size at the time of qualification.
6. Notification of Sale: DHA must provide the City with notification of any sales of properties that received funding pursuant to this agreement semi-annually, along with the amounts paid at each sale under the requirements of Section IV.1. HOST may, at its option, revise the frequency of notifications.

V. EXCLUDED ACTIVITIES FOR CITY FUNDING

1. Any rehabilitation of the primary unit.
2. Luxury improvements (e.g., swimming pools, hot tubs, etc.).
3. Payment or retirement of existing debt service.

VI. PERFORMANCE MONITORING

The city will monitor DHA's performance based on goals and performance standards as stated above along with all other applicable federal, state, and local laws, regulations, and policies governing the funds provided under the contract.