

SECOND AMENDATORY AGREEMENT

THIS SECOND 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 **BROTHERS REDEVELOPMENT, INC.**, a Colorado nonprofit corporation, whose address is 2250 Eaton Street, Suite B, Denver, Edgewater 80214 (the “Contractor”), collectively the “Parties.”

RECITALS:

A. The Parties entered into an agreement on July 15, 2020 and a First Amendatory Agreement on December 9, 2020 for the City to provide funding to the Contractor and for the Contractor to utilize the funding for administration of the Coronavirus Emergency Rental and Utility Assistance Program (collectively, the “Agreement”); and

B. The Agreement expired by its terms on December 30, 2020, and rather than enter into a new agreement, the Parties desire to revive and reinstate all terms and conditions of the Agreement as they previously existed prior to the expiration of the term and to amend the Agreement as set forth below.

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 is replaced with Exhibit A-2 attached to this Amendment. The updated Scope of Services marked as Exhibit A-2, attached hereto and incorporated herein by this reference, supersedes and replaces Exhibit A-1 attached to the Agreement.

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

“The Agreement will commence on March 1, 2020 and will expire on December 31, 2021.”

3. Subsection 4.d.(1) of the Agreement entitled “**Maximum Contract Amount**” is amended to read as follows:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **THREE MILLION FIFTY**

THOUSAND DOLLARS and NO/100 (\$3,050,000.00) (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-2**. Any services performed beyond those in **Exhibit A-2** are performed at Contractor’s own risk and without authorization under the Agreement.”

4. Section 5 of the Agreement entitled “**CARES ACT; CORONAVIRUS RELIEF FUNDS**” is amended to read as follows:

“The Contractor agrees and acknowledges that some or all of the funds encumbered by the City to pay for the services described herein have been provided in accordance with Sections 601(b) and (d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Public Law No. 116-136, Division A, Title V (March 27, 2020) and as amended by Section 1001 of the Consolidated Appropriations Act, 2021, H.R. 133, Division N, Title X (December 27, 2020) (collectively, the “CARES Act”). The Parties acknowledge that all funding from the CARES Act (collectively, “CRF Funds”) may only be used to cover those costs that:

- a. Are necessary expenditures incurred due to the public health emergency with the respect to the Coronavirus Disease 2019 (“COVID-19”);
- b. Were not accounted for in the budget most recently approved by the City as of March 27, 2020; and
- c. Were incurred for the period that begins on March 1, 2020 and ends on December 31, 2021.

The Contractor shall only utilize CRF Funds for the purposes described in the Scope of Services attached as **Exhibit A-2**. The Contractor agrees and acknowledges that, as a condition to receiving the CRF Funds, it shall strictly follow the Federal Provisions attached hereto and incorporated herein as **Exhibit D**. All invoices submitted by the Contractor to the City pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by CRF Funds to facilitate the tracking of Agreement-related spending related to COVID-19. The Contractor shall segregate and specifically identify the time and expenditures billed to the City on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the services and/or goods provided by the Contractor for which CRF Funds are used shall not, to the extent that CRF Funds are used, also be paid for or reimbursed by monies provided under any other federal program.

The Contractor agrees and acknowledges that all services performed and/or goods provided by the Contractor using CRF Funds must be performed and/or provided by the Contractor no later than December 31, 2021. Further, the Contractor agrees and acknowledges that payment for all services performed and/or goods provided by the Contractor using CRF Funds must be provided by the City to the Contractor no later than March 30, 2022. As such, the Contractor shall invoice the City not later than February 28, 2022 for all work performed pursuant to this Agreement for which CRF Funds will be used to enable sufficient time for the City to review, process, and pay such invoice by the March 30, 2022 deadline prescribed in the CARES Act (the “Invoice Deadline Date”). Any invoice submitted by the Contractor after the Invoice Deadline Date for services performed and/or goods provided on or prior to December 31, 2021 may not be eligible to be paid by CRF Funds, and, to the extent that CRF Funds are not available to pay such invoice, partially or in total, such invoice shall only be paid subject to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement.”

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

6. 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: HOST-202157582-02 / HOST-202054984-02
Contractor Name: BROTHERS REDEVELOPMENT, INC.

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-202157582-02 / HOST-202054984-02
BROTHERS REDEVELOPMENT, INC.

DocuSigned by:
Jeff Martinez
8A0221C31D8A4BF...

By: _____

Jeff Martinez

Name: _____
(please print)

President

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

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SCOPE OF SERVICES

DEPARTMENT OF HOUSING STABILITY

Contract # HOST202157582-02

ACTIVITY NAME: Coronavirus Emergency Rental and Utility Assistance Program

I. INTRODUCTION

Period of Performance Start and End Dates: March 1, 2020 – December 31, 2021

Project Description:

The purpose of this contract agreement is to provide a Coronavirus Relief Fund Subaward for up to \$3,050,000 through the Department of Housing Stability (HOST). These funds will be provided to Brothers Redevelopment, Inc to be utilized for administration of the Coronavirus Emergency Rental and Utility Assistance Program. Brothers will provide housing rental assistance and utility assistance to eligible households in the City and County of Denver. The program is designed to help residents avoid an eviction and maintain housing stability by assisting low- and moderate-income residents (80% AMI and below) who are experiencing a housing crisis due to the COVID-19 public health emergency. This award is not for Research and Development (R&D).

Funding Source:

[X] Coronavirus Relief Fund

Amount: Up to \$ 3,050,000

CFDA Number: 21.019

Proposed Number of outcomes: Rental assistance payments and utility (water and energy) assistance payments to serve approximately 690 unduplicated households

Organization:

EIN#: 84-0615347
DUNS#: 078354792
Address: 2250 Eaton St, Garden Level B, Edgewater, CO 80214-1276
Contact Person: Jeff Martinez
Phone: 303-685-4222
Email: jeff@brothersredevelopment.org

Organization Type:

[X] Non-Profit [] For-Profit [] Individual [] Partnership [] Corporation [] Publicly Owned [] Other

Council District(s): Target Zip Codes: 80227, 80219, 80221, 80211, 80210, 80212, 80209, 80223, 80236, 80202, 80216, 80110, 80204, 80235, 80123.

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

Rent and utility assistance is available through multiple partners as a citywide program to all low- and moderate-income individuals in Denver. Brothers is responsible for administering the program to residents living in the afore

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mentioned zip codes. Brothers may serve additional zip codes as long as they are determined to be in the City and County of Denver.

Program income (of any type, e.g., fees) will be generated by this activity.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Contract will be funding architectural, engineering or other project soft cost.	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If yes, final project be completed within 24 months.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Purpose of this activity is to:		
Help prevent homelessness	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Help the homeless	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Help those with HIV/AIDS	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Primarily help persons with disabilities	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

II. ACTIVITY DESCRIPTION

Description of Activity: The funds will be used to help residents avoid an eviction and maintain housing stability by providing rental and utility assistance to eligible low- and moderate-income residents in the City and County of Denver who are experiencing a housing crisis due to the COVID-19 public health emergency.

Prohibition on duplication of benefits: Applicants must disclose other local, state and federal benefits they have received or have applied to receive specific to the impacts of COVID-19, including Unemployment Insurance benefits or other rental/mortgage assistance or forbearance. Applicants will be required to repay funds if duplicate benefits are received. Participating agencies are encouraged to work with applicants to apply for other available assistance, including but not limited Unemployment Insurance to ensure their housing stability into the future.

Activity Requirements:

Rental Assistance (RA): Brothers Redevelopment will provide rental assistance to eligible households for a period of up to 6 months depending upon need. The program is designed to help residents avoid an eviction and maintain housing stability by assisting low- and moderate-income residents who are experiencing a housing crisis due to the COVID-19 public health emergency.

- i. The participant must provide evidence of tenancy via a lease, 10-Day Rent Demand and/or Rent Ledger reflecting the participant’s name or other evidence of residency at the current residence within the City and County of Denver boundaries. If there is no formal lease, evidence of residency at the current residence may be provided in lieu of the lease and include demonstrated regular payments to the owner of the property or a signed Affidavit by the lessee that the property is the participant’s primary residence.
- ii. Program assistance must be provided according to Fair Housing requirements that protect citizens from discrimination on the basis of race, color, religion or creed, national origin, ancestry, age, sex, gender, sexual orientation, gender identity or gender expression, marital or familial status, military status or physical or mental disability.
- iii. The participant must demonstrate a current financial hardship and housing crisis caused by the COVID-19 public health emergency to be eligible for financial assistance.
- iv. Assistance will not exceed 6 months.
- v. Assistance may include deposit assistance and/or first month’s rent if Brothers is unable to help mitigate involuntary displacement from current residence. To receive deposit and/or first month’s rent, the following criteria must be met:
 1. Cannot have been displaced from City and County of Denver residence for more than 30 days.
 2. Must provide proof of involuntary displacement (eviction, domestic violence, hazardous conditions, landlord refusing to renew lease, etc).
 3. Must be approved for a unit in the City and County of Denver.

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4. Security deposit/first month's rent payment will be made to the individual/vendor where the funds are due on behalf of clients.
- vi. Brothers Redevelopment will process rental payments for eligible participant households who are deemed eligible for the program.
- vii. Payment requests will be delivered from Brothers Redevelopment to the individual/vendor where the funds are due on behalf of clients.
- viii. Rental assistance is not intended to provide perpetual assistance beyond the 6-month maximum as outlined in the program guidelines. Assistance is intended to benefit participants who are not able to meet their monthly housing expenses due to unexpected financial hardship caused by the COVID-19 public health emergency.

Utility Assistance (UA): Brothers Redevelopment will provide utility assistance to eligible households for a period of up to 2 occurrences. The assistance is designed to help residents avoid an eviction, prevent utility services from being disconnected, and maintain housing stability by assisting low- and moderate-income residents who are experiencing a housing crisis due to the COVID-19 public health emergency. This program provides UA in the form of water, electric, gas assistance for renters and homeowners.

- i. The participant must provide evidence of residency at the current residence within the City and County of Denver boundaries via a lease, deed of trust, or mortgage reflecting the participant's name or alternative evidence of residency in accordance with the program guidelines. The residence must be the participant's primary residence. To be eligible for utility assistance, homeowners/renters must provide proof of ownership/tenancy for the property in which they reside.
- ii. The participant must demonstrate a current financial hardship and housing crisis caused by the COVID-19 public health emergency to be eligible for financial assistance
- iii. Program assistance must be provided according to Fair Housing requirements that protect citizens from discrimination on the basis race, color, religion or creed, national origin, ancestry, age, sex, gender, sexual orientation, gender identity or gender expression, marital or familial status, military status or physical or mental disability.
- iv. The participant must demonstrate need in the form of a disconnection notice or past due bill.
- v. Assistance will not exceed 2 occurrences
- vi. Water and utilities may be paid separately.
- vii. Brothers Redevelopment will process utility payments for eligible participant households who are deemed eligible for the program.
- viii. Payment requests will be delivered from the Brothers Redevelopment to the vendor where the funds are due on behalf of clients.
- ix. UA assistance is not intended to provide perpetual assistance. Assistance is intended to benefit participants who are not able to meet their monthly housing expenses due to unexpected financial hardship caused by the COVID-19 public health emergency.

Administrative Costs: The intended purpose of the program is to provide direct financial housing assistance. The administrative budget shall encompass cost related to administering the program (e.g., financial audit/accounting, program management, data/reporting, personnel, supplies).

Eligible Administrative Costs include but are not limited to:

- a. Accounting for the use of grant funds (issuing administrative salary and direct cost checks, etc.)
- b. Preparing reports for submission to HOST
- c. Staff salaries associated with these administrative costs

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- d. Training for staff who will administer the program or navigators who will serve program participants, as long as this training is directly related to learning about the program

Contractor Intake Process Requirement

Contractor must provide an initial consultation and eligibility assessment with a case manager or other authorized representative to determine eligibility and the type, level, and duration of assistance for each program participant. Eligibility assessments, even when the client did not receive financial assistance, must be documented and kept in a client file. If a client was determined to be ineligible for program assistance, the reason for denial should be included as part of the client file.

1. Contractor will:
 - a. Maintain well-developed internal policies that address the administration of the program.
 - b. Assess each client to determine appropriate resources and services to eliminate housing related barriers.
 - c. Refer clients with housing barriers to appropriate resources.
 - d. Maintain well-developed partnerships with other service and housing providers, agencies, and local governments.
 - e. Work with each client in a culturally appropriate way.
 - f. Have a process in place to refer individuals and families that are ineligible for this program to the appropriate resources or service provider that can assist them.
2. Client intake forms should include, at a minimum:
 - a. Name and contact information of applicant
 - b. Address including zip code
 - c. Income and assets of all household members over the age of 18 who are requesting assistance
 - d. Self-certification of hardship caused by COVID-19 public health emergency
 - e. Demographic information needed for contract reporting requirements
 - f. Utility/company account information (if applicable)
 - g. Landlord contact information (if applicable)

Documentation Requirement

Contractor must maintain adequate and easily identifiable documentation to determine the eligibility of program participants served. Documentation must demonstrate activities and expenses that are:

- Allowable
- Reasonable
- Defensible

Contractor must:

1. Verify and document eligibility prior to providing assistance
2. Maintain documentation in participant case file.

Minimum acceptable types of documentation, in order of preference:

1. Written third party
2. Oral third-party
3. Applicant self-declaration via an Affidavit

Determining Acceptable Level of Documentation:

1. Contractor must make every effort to achieve the highest standard that is reasonable
2. Contractor must document reasons when using lower standard of documentation.

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Payment Process Requirement

- i. Brothers Redevelopment will receive, review, and approve signed requests that contain all the information needed to determine eligibility and determine that the amount requested is allowed under established guidelines as noted in the participant eligibility above.
- ii. Once approved, checks or ACH payment will be issued as quickly as possible. No checks are to be made out to the participant. Checks or ACH payments will be made out to each individual (vs. companies/utilities) only after the individual has been identified through City property records, lease, W9, or other documentation as the owner of the property where the participant lives as the owner of the property where the participant lives.
- iii. Maintain financial assistance records.
- iv. Provide HOST with monthly financial data summarizing the financial assistance provided to each participant to avoid disallowed assistance. In all cases, assistance will be paid directly to the owner, vendor or management company providing the housing/utilities.
- v. Brothers must submit invoices with back up documentation on each of the payments. Expenses eligible for reimbursement may only be incurred March 1, 2020 through December 31, 2021.

Client Requirements:

1. **Proof of Residency for Renters-** The participant must provide evidence of tenancy via a lease, 10-Day Rent Demand and/or Rent Ledger reflecting the participant's name or other evidence of residency at the current residence within the City and County of Denver boundaries. If there is no formal lease, evidence of residency at the current residence may be provided in lieu of the lease and include demonstrated regular payments to the owner of the property or a signed Affidavit by the lessee that the property is the participant's primary residence.
2. **Proof of Residency for Homeowners -** The participant must provide evidence of residency via a deed of trust or mortgage reflecting the participant's name or other evidence of residency at the current residence within the City and County of Denver boundaries.
3. **Proof of Income –** For the purposes of this contract, the participant household must be low- to moderate-income. A household is considered low- to moderate-income if the household's income is at or below the current HUD 80% Area Median Income (AMI) as provided and updated annually here:

<https://www.huduser.gov/portal/datasets/il.html>.

Written proof of income may include the following:

- Pay stubs (wages, salary, armed forces income)
- Proof of unemployment application
- Certification of Zero Income
- State or benefit notice
- Court order (alimony, child support)
- Federal or state tax return
- Dividend interest statement
- Other written verification of income:
 - o Name of income source, and applicant name
 - o Income amount and frequency
 - o Contact information for authorized income source representative
 - o Signed and dated by authorized income source representative

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Self-declaration (only if written verification cannot be obtained) of income:

- a. Self-declaration of income is acceptable ONLY in very limited circumstances. A self-declaration must be clearly documented in the case file, including all attempts to obtain third party verification and a signed Affidavit that the declared income is accurate. Self-declared cases will be monitored closely for compliance with program requirements.

4. **Verification of Need**

The participant must have a verifiable documentation of need as outlined in each program area. Contractor will be responsible for determining that the participant meets the eligibility requirements and will maintain participant financial assistance records.

- The household must meet the following circumstances:
 - No appropriate subsequent housing options have been identified;
 - The household lacks the financial resources to obtain immediate housing or remain in its existing housing;
 - The household lacks the support networks needed to obtain immediate housing or remain in its existing housing.

5. **Identification** – The applicant must provide identification as required by City policies and ordinances.

Ineligible Activities:

Ineligible program, activities include:

- Rent or utility assistance to residents who are facing a financial hardship not related to the impacts of the COVID 19 public health emergency
- Assistance to individuals or households with income exceeding 80% of AMI. For the purpose of this contract, the Contractor will use the income limits as published by HUD, as provided and updated annually here: <https://www.huduser.gov/portal/datasets/il.html>
- Mortgage costs including payment, fees, taxes and refinancing expenses
- Direct legal services
- Other costs such as credit card bills or other consumer debt, car repair or other transportation costs, travel, food, medical and dental care and medicines, clothing and grooming, home furnishings, pet care, entertainment activities, work or education related materials
- Direct cash assistance to program participants
- Rent or utility payments, including any late fees, penalties, or interest, that were due or that accrued prior to March 1, 2020

Confidentiality Requirement

Contractor will ensure the confidentiality of the name and any other information regarding individuals assisted under this grant. Information on the client receiving assistance is confidential and must be maintained in a manner that guarantees confidentiality, as required by law. The Contractor shall provide any and all participant data as requested by the City in compliance with any and all applicable laws.

Objective & Outcome

Objective

The program is designed to help residents avoid an eviction and maintain housing stability by assisting low- and moderate-income residents who are experiencing a housing crisis due to the COVID-19 public health emergency

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Outcome

Mitigate the displacement of low- and moderate-income residents of Denver who are experiencing a housing crisis due to the COVID-19 public health emergency.

III. Budget

Please refer to the Cost Allocation Plan and budget narrative for a detailed estimated description and allocation of funds. Organization receives income from operations. Yes No If Yes, describe:

Non-personnel costs are being funded. Yes No

IV. Reporting

Data collection is required and must be completed demonstrating income eligibility and progress toward meeting the proposed number of outcomes contained in this Scope of Services.

If the Contractor completes the project and all money is drawn, a final report will be submitted indicating “final report” and no further reports are required.

Contractor will email the following report to the Program Specialist:

Performance Report

Frequency:

Monthly by the 15th day

The information reported must include progress toward meeting the proposed number of outcomes and participant demographic information as outlined on the Performance Report.

V. HIPAA/HITECH (Business Associate Terms)**1. GENERAL PROVISIONS AND RECITALS**

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information (“PHI”) as defined below, to be used or disclosed in the course of providing services and activities.

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- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.

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3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

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- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

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- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

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- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.

EXHIBIT A-2

- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY HOST Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

EXHIBIT A-2

- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
 - 6.03.1 The Disclosure is required by law; or
 - 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

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6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return, or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 The obligations of this Agreement shall survive the termination of the Agreement.

9 SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.

VI. Budget

Program Budget and Cost Allocation Plan Summary

Contractor Name: Brothers Redevelopment, Inc. Program Year: 2020 - 2021
 Project : Emergency Rental & Utility Assistance (TRUA) Program/CRF
 Contract Dates: 3/1/2020 to 12/31/2021

Budget Category	Agency Total (All Funding Sources)		Project Costs HOST Funding 1 201100000		Project Costs HOST Funding 2 201100000		Total Project Costs requested from HOST		Other City & County of Denver Funding (Add applicable funding as necessary)		Other Federal Funding		Other Non-Federal Funding		Agency Total		Budget Narrative
	Total	Amount	%	Amount	%	Subtotal	%	Amount	%	Amount	%	Amount	%	Amount	%		
<i>Receptionist (A. Culley prev, now A. Santamaria) - THROUGH 01/31/21</i>	\$41,600.00	3,500	8.41%			3,500	8.41%					38,100	91.59%	\$41,600	100.00%	Answer TRUA Calls on Office Main Line, Replenish TRUA Applications in outside box, mail out applications via USPS, scan incoming apps to TRUA Staff. Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.	
<i>Bilingual TRUA Navigator (M. Jaimes) - THROUGH 12/31/20</i>	\$41,600.00	1,840	4.42%			1,840	4.42%					39,760	95.58%	\$41,600	100.00%	Answers all incoming calls to the TRUA Hotline. Instructs clients on how to complete TRUA Application. Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.	
<i>Bilingual TRUA Navigator (M. Salazar)- THROUGH 12/31/20</i>	\$41,600.00	21,880	52.60%			21,880	52.60%					19,720	47.40%	\$41,600	100.00%	Answers all incoming calls to the TRUA Hotline. Instructs clients on how to complete TRUA Application. Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.	
<i>Bilingual TRUA Case Worker (A. Ordenez) - THROUGH 01/31/21</i>	\$41,600.00	19,500	46.88%			19,500	46.88%					22,100	53.13%	\$41,600	100.00%	Checks Applications for Completeness. Contacts clients when documentation is missing. Ensures file is complete before sending to Final Processing Dept. Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.	
<i>Bilingual TRUA Case Worker (C. Velazquez) - THROUGH 12/31/21</i>	\$41,600.00	21,080	50.67%			21,080	50.67%					20,520	49.33%	\$41,600	100.00%	Processes all TRUA rent/utility assistance payments. Salaries and wages will be reimbursed at cost based on portion of time spent working on the program. Bonuses; severances; or payouts of leave are not reimbursable when an employee separates from job.	
<i>Bookkeeper (P. Richmond) - THROUGH 01/31/21</i>	\$76,500.00	6,000	7.84%			6,000	7.84%		0.00%	0.00%		70,500	92.16%	\$76,500	100.00%	Oversees TRUA Staff, Quality Assurance checks, Monthly Reporting, Reimbursement Requests, Database Management, Contract Compliance, etc. Full-time employees' salaries and wages will be reimbursed at cost. HOST will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.	
<i>TRUA Program Manager (A. Bugas) - 01/01/20-12/31/21</i>	\$60,050.00	60,050	100.00%			60,050	100.00%		0.00%	0.00%		0.00%	0.00%	\$60,050	100.00%		
Total Salary:	\$344,550	133,850	38.85%	-	-	133,850	38.85%	0.00%	-	0.00%	210,700	61.15%	\$344,550	100.00%			

EXHIBIT D, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

- 1.1. The Agreement 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 body of the Agreement, or any attachments or exhibits incorporated into and made a part of the Agreement, 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 Agreement 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. Funding provided to the City and County of Denver, Colorado in accordance with Sections 601(b) and (d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Public Law No. 116-136, Division A, Title V (March 27, 2020) ("CARES Act");

- 2.1.1.1.2. Grants;

- 2.1.1.1.3. Contracts;

- 2.1.1.1.4. 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);

- 2.1.1.1.5. Loans;

- 2.1.1.1.6. Loan Guarantees;

- 2.1.1.1.7. Subsidies;

- 2.1.1.1.8. Insurance;

- 2.1.1.1.9. Food commodities;

- 2.1.1.1.10. Direct appropriations;

- 2.1.1.1.11. Assessed and voluntary contributions; and

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

- 2.1.1.1.13. 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. “Agreement” means the Agreement to which these Federal Provisions are attached and includes all Award types in §2.1.1.1 of this Exhibit.
- 2.1.3. “Contractor” means the party or parties to a Agreement 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, Contractor does not include Vendors.
- 2.1.4. “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>.
- 2.1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;
 - 2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 2.1.5.2. A foreign public entity;
 - 2.1.5.3. A domestic or foreign non-profit organization;
 - 2.1.5.4. A domestic or foreign for-profit organization; and
 - 2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 2.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 2.1.8. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37
- 2.1.9. “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.”
- 2.1.10. “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 City and County of Denver, Colorado agency.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Prime Recipient” means the City and County of Denver, Colorado, or an agency thereof, 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. Contractor 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 City and County of Denver, Colorado may provide written notification to Contractor 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. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor 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. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5. TOTAL COMPENSATION.

5.1. Contractor 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, Contractor 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. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract 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 Agreement and shall become part of Contractor's obligations under this Agreement.

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 Contractor is a Subrecipient, Contractor 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 Contract, 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 City and County of Denver, Colorado, 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. CONTRACT PROVISIONS FOR SUBRECEPIENT CONTRACTS

12.1. If Contractor 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 Agreement.

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 Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

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

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

12.1.1.1.2. Contractor 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. Contractor will send to each labor union or representative of workers with which Contractor has a collective bargaining contract 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. Contractor 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. Contractor 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 Contractor's 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 Contractor's non-compliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement 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. Contractor 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 Contractor 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 Contract or Contract.** If the Federal Award meets the definition of “funding Contract” 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 Contract,” 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, the City and County of Denver as Prime 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 City and County of Denver 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 Contractor 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 Agreement and the City and County of Denver, Colorado may terminate the Agreement upon thirty (30) days prior written notice if the default remains uncured five (5) calendar days following the termination of the thirty (30) day notice period. This remedy will be in addition to any other remedy available to the City and County of Denver, Colorado under the Agreement, at law or in equity.

END OF DOCUMENT.