

AMENDATORY AGREEMENT

This **AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **COLORADO NONPROFIT DEVELOPMENT CENTER**, a Colorado nonprofit Corporation whose address is 789 Sherman St., Suite 250, Denver, CO 80203 (the “Contractor”), jointly (“the Parties”).

RECITALS:

A. The Parties entered into an Agreement dated June 10, 2020 (the “Agreement”), to perform and complete all of the services and produce all the deliverables set forth in the Agreement.

B. The Parties wish to amend the Agreement to increase the maximum contract amount and as otherwise set forth herein.

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

1. The Scope of Services attached as **Exhibit A** to the Agreement is deleted and the Scope of Services marked as **Exhibit A-1** attached hereto is incorporated herein by this reference. All references to “**Exhibit A**” in the Agreement shall be amended to read: “**Exhibit A-1**.”

2. The Budget attached as **Exhibit B** to the Agreement is deleted and the Budget marked as **Exhibit B-1** attached hereto is incorporated herein by this reference. All references to “**Exhibit B**” in the Agreement shall be amended to read: “**Exhibit B-1**.”

3. The Federal Provisions attached hereto as **Exhibit D-1** is incorporated herein by this reference.

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

“(1) Notwithstanding any other provision of this Agreement, the City’s maximum payment obligation will not exceed **FOUR MILLION DOLLARS AND NO CENTS (\$4,000,000.00)** (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 the Contractor beyond that specifically described in Exhibit A-1. Any services performed beyond those in Exhibit A-1 are performed at the Contractor’s risk and without authorization under this Agreement.”

5. Section 4(e) of the Agreement, entitled “**Coronavirus Aid, Relief, and Economic Security Act of 2020 Funds:**”, is amended to read as follows:

“e. **Coronavirus Aid, Relief, and Economic Security Act of 2020 Funds:** 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) (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:

- “(1) Are necessary expenditures incurred due to the public health emergency with the respect to the Coronavirus Disease 2019 (“COVID-19”);
- “(2) Were not accounted for in the budget most recently approved by the City as of March 27, 2020; and
- “(3) Were incurred for the period that begins on March 1, 2020 and ends on December 30, 2020.

“The Contractor shall only utilize CRF Funds for the purposes described in the Scope of Work attached as **Exhibit A-1**. 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-1**. 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.

“The Contractor agrees and acknowledges that payment for all services performed by the Contractor using CRF Funds must be received by the Contractor no later than December 30, 2020. As such, the Contractor shall invoice the City for all work performed pursuant to this Agreement for which CRF Funds will be used no later than December 1, 2020, to enable sufficient time for the City to review, process, and pay such invoice by the deadlines prescribed in the CARES Act (the “Invoice Deadline Date”). Any invoice submitted by the Contractor after the Invoice Deadline Date for work performed prior to December 30, 2020, 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.”

6. Section 7 of the Agreement, entitled **EXAMINATION OF RECORDS**;, is amended to read as follows:

“7. **EXAMINATION OF RECORDS AND AUDITS**: The Contractor shall maintain records of the documentation supporting the use of CRF Funds in an auditable format, for the later of three (3) years after final payment on this Agreement or the expiration of the applicable statute of limitations. Any authorized agent of the City, including the City Auditor or his or her representative, and for CRF Funds any authorized agent of the Federal government, including the Special Inspector General for Pandemic Recovery (“Inspector General”), have the right to access, and the right to examine, copy and retain copies, at the official’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor’s use of CRF Funds pursuant to this Agreement. The Contractor shall cooperate with Federal and City representatives and such 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 the use of CRF Funds, 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 section shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.”

7. As herein amended, the Agreement is affirmed and ratified in each and every particular.

8. This Amendatory Agreement 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.

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SIGNATURE PAGES FOLLOW.]**

Contract Control Number: OEDEV-202056026-01[OEDEV-202054860-01]
Contractor Name: Colorado Nonprofit Development Center

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:

OEDEV-202056026-01[OEDEV-202054860-01]
Colorado Nonprofit Development Center

By: _____

Name: SEE NEXT PAGE

(please print)

Title: (please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

OEDEV-202056026-01[OEDEV-202054860-01]
Colorado Nonprofit Development Center

By: 

Name: MELINDA A. NIGGS
(please print)

Title: PRESIDENT
(please print)

ATTEST: [if required] N/A

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contractor Relationship:

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

The Federal Funding Accountability and Transparency Act (FFATA)

1. In the business or organization's preceding completed fiscal year, the business or organization (the legal entity to which this specific SAM.gov record, represented by a DUNS number, belongs) received: (1) 80 percent or more of annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements:
 Yes No

If YES, continue to statement 2.

2. The public has access to information about the compensation of the executives in the business or organization (the legal entity to which this specific SAM.gov record, represented by a DUNS number, belongs) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986:
 Yes No

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

3. Provide the names and amounts of the five most highly compensated officers or executives:

- Program income (of any type, e.g., fees) will be generated by this activity. Yes No
- Contract will be funding architectural, engineering or other project soft cost. Yes No
- If yes, final project be completed within 24 months. Yes No

II. ACTIVITY DESCRIPTION

Description of Activity and Program Requirements and Responsibilities

Colorado Nonprofit Development Center (CNDC) was formed in 1999 by a group of community leaders and foundations looking for a mechanism to reduce the risk of investing in charitable projects while encouraging innovation in social enterprises. CNDC is considered an essential part of the nonprofit sector infrastructure in Colorado. CNDC creates efficiencies, fosters innovation and improves the implementation of nonprofit best practices. CNDC has also become a national leader in promoting fiscal sponsorship best practices as a founding organization of the National Network of Fiscal Sponsors. CNDC will prepare a letter (with content provided by DEDO) on their letterhead to accompany the grant disbursement to the eligible nonprofit organizations. The letter shall be subject to DEDO's review and approval prior to delivery to grant recipients. CNDC will provide weekly a list of all grants paid out, including eligible nonprofit organization name, payment date, and amount, with accompanying proof of payment documentation.

1. Description of Activity: The purpose of this contract agreement is to provide an award not to exceed \$2,000,000 as set forth in Ex B-Budget through the Denver Office of Economic and Development and Opportunity's (DEDO) in response to the COVID-19 outbreak, and as part of its Nonprofit Relief and Recovery Program. DEDO will provide to Colorado Nonprofit Development Center, for disbursement to eligible Denver nonprofit corporations to grant funds up to a maximum of \$15,000 under the Corona Virus Relief Fund program for the purpose of increased mitigation of negative economic impacts of small nonprofit orgaizations due to the COVID19 Pandemic.

1. AMENDED Description of Activity: The purpose of this contract agreement is to provide an award

not to exceed \$4,000,000 as set forth in Ex B-1-Budget through the Denver Office of Economic and Development and Opportunity's (DEDO) in response to the COVID-19 outbreak, and as part of its Nonprofit Relief and Recovery Program. DEDO will provide to Colorado Nonprofit Development Center, for disbursement to eligible Denver nonprofit corporations to grant funds up to a maximum of \$15,000 under the Corona Virus Relief Fund program for the purpose of increased mitigation of negative economic impacts of small nonprofit organizations due to the COVID19 Pandemic.

2. Funds will be used for: CNDC to prepare and deliver micro grants (either electronically or by mail) to the qualifying small nonprofit businesses. \$2,000,000 of the funds will be utilized for nonprofit organizations through the established program. This includes administrative support to CNDC for the management, grant distribution, consultation and technical support of this program.

2. AMENDED Funds will be used for: CNDC to prepare and deliver micro grants (either electronically or by mail) to the qualifying small nonprofit businesses. \$4,000,000 of the funds will be utilized for nonprofit organizations through the established program. This includes administrative support to CNDC for the management, grant distribution, consultation and technical support of this program.

3. Implementation Plan and Timeline:

The following table outlines the implementation plan and timelines for this contract:

Task	Projected Beginning & End Dates
Prepare payments to eligible nonprofit organizations referred by DEDO staff and issue to awarded nonprofit organizations within five business days. It is anticipated that payments will be distributed in three (3) rounds.	June 2020 through December 2020
Provide consulting and technical assistance services to DEDO.	June 2020 through December 2020

3. AMENDED Implementation Plan and Timeline:

The following table outlines the implementation plan and timelines for this contract:

Task	Projected Beginning & End Dates
Prepare payments to eligible nonprofit organizations referred by DEDO staff and issue to awarded nonprofit organizations within five business days. It is anticipated that payments will be distributed in five (5) rounds .	June 2020 through December 2020
Provide consulting and technical assistance services to DEDO, including financial reviews of nonprofit applicants .	June 2020 through December 2020

III. Budget

Please refer to Ex B-Budget 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

Individual Nonprofit Organization (NPO) data collection is required and must be qualified demonstrating income deprivation as a result of Covid19 Economic Impacts. Disbursement of funds is contingent based on the ability to collect the required information. Under the COVID-19 grant program, CNDC will provide weekly a list of all grants paid out, including business name, payment date, and amount, with accompanying proof of payment documentation.

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

Contractor will email the aforementioned reports to the Contract Administrator.

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Program Budget and Cost Allocation Plan Summary

Contractor Name: Colorado Nonprofit Development Center (CNDC) **Program Year:** 2020
Project : Nonprofit Corona Virus Relief Fund
Contract Dates: 6/1/2020 to 12/31/2020 **Return to DEDO Project Specialist:** Nancy Hernandez

Budget Category	Agency Total (All Funding Sources)	Project Costs DEDO Funding 1 Corona Virus Relief Fund		Modification Amount Funding 1 202056026-01	Total Project Costs requested from DEDO		Other City & County of Denver Funding (Add applicable funding as necessary)		Other Federal Funding		Other Non-Federal Funding		Agency Total	
		Amount	%		Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Personnel: Name and Job Title	Total	Amount	%	Amount	Subtotal	%	Amount	%	Amount	%	Amount	%	Amount	%
<i>Job Title</i>		-	#DIV/0!		-	#DIV/0!		#DIV/0!	-	#DIV/0!		#DIV/0!		
<i>Job Title</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
Total Salary:	-	-	#DIV/0!	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!
Fringes			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
Personnel Total:	-	-	#DIV/0!	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!
Non-Personnel:	Total	Amount	%	Amount	Subtotal	%	Amount	%	Amount	%	Amount	%	Amount	%
Nonprofit Grant -Direct Services	\$3,809,523.81	1,904,762	50.00%	1,904,762	3,809,524	100.00%		0.00%		0.00%		0.00%	3,809,524	100.00%
Other Direct Expense Administrative Costs	\$190,476.19	95,238	50.00%	95,238	190,476	100.00%		0.00%		0.00%		0.00%	190,476	100.00%
<i>Subcontractor (BID Consultant)</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
<i>Subcontractor (Legal consultation)</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
<i>Indirect Costs</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
Total Non-Personnel	4,000,000	2,000,000	50.00%	2,000,000	4,000,000	100.00%	-	0.00%	-	0.00%	-	0.00%	4,000,000	100.00%
Total Project Cost	4,000,000	2,000,000	50.00%	2,000,000	4,000,000	100.00%	-	0.00%	-	0.00%	-	0.00%	4,000,000	100.00%
Program Income (through funded activities)			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
Non-Project:	Total	Amount	%	Amount	Subtotal	%	Amount	%	Amount	%	Amount	%		
<i>Personnel Costs:</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
<i>Non-Personnel Costs:</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
<i>Other (Specify):</i>			#DIV/0!		-	#DIV/0!		#DIV/0!		#DIV/0!		#DIV/0!	-	#DIV/0!
Total Non-Project Cost	-	-	#DIV/0!	-	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!
Grand Total	4,000,000	2,000,000	50%	2,000,000	4,000,000	100.00%	-	0.00%	-	0.00%	-	0.00%	4,000,000	100.00%

Ex B-1 Budget Narrative
Colorado Nonprofit Development Center
NONPROFIT CORONA VIRUS RELIEF FUND (NCVRF)

A. Direct Services:

CNDC will administer the Nonprofit Corona Virus Emergency Relief Fund program for Denver Economic Development & Opportunity.

CNDC will disburse up to \$3,809,523.81 in anticipated NCVRF application rounds, through awards not to exceed a \$15,000 grant, to qualified, eligible nonprofit organizations. CNDC will collect 5% of total direct costs which will not exceed \$190,476.19.

The program will allow for disbursement of grant funds, up to a maximum of \$15,000 per eligible nonprofit organization for the purposes of increased mitigation against the negative economic impacts of nonprofits due to the COVID 19 Pandemic. At DEDO's discretion, criteria of the applicants or the application may be modified, including the frequency or total grant amount allowed per qualified recipient.

TOTAL DIRECT EXPENSES: \$3,809,523.81

B. Other Direct Expenses:

Administrative Fee (5% of total direct costs on gross grant awards of \$3,809,523.81): \$190,476.19

CNDC will collect 5% of total direct costs which will not exceed \$190,476.19

Other Direct Expenses will be distributed in a reimbursement capacity for services rendered once invoices have been submitted, reviewed and approved

TOTAL OTHER DIRECT COSTS: \$190,476.19

Total Amount Requested from DEDO: \$4,000,000

At DEDO's discretion, modifications to any services that require line item budget changes, which do not increase the total funding to the Contractor and do not modify the total maximum administration fee, may be made without a formal budget modification process.

Ex B-1 Budget Narrative
Colorado Nonprofit Development Center
NONPROFIT CORONA VIRUS RELIEF FUND (NCVRF)

C. Fee and Payment Schedule

1. The maximum budget for this contract is \$4,000,000 to fund the Nonprofit Coronavirus relief fund (NCVRF), inclusive of (i) grants disbursed to grant recipients and (ii) fees to CNDC as further described herein and as set forth in the Fee Schedule below.
2. An initial transfer of \$1,000,000 is expected to be made at the onset of the executed amended agreement, which shall be disbursed as grants to eligible businesses as identified by DEDO under the NCVRF.
DEDO may change the amount of this initial payment in its sole discretion.
3. After a minimum of \$750,000 of the amended \$2,000,000 total has been granted to eligible organizations as identified by DEDO under the NCVRF and disbursed by CNDC, with the appropriate supporting documentation provided by CNDC as set forth in the applicable Scope of Work, CNDC may then periodically request additional grant funds to be advanced, as mutually agreed upon based on the program needs, to be disbursed as grants to eligible organizations under the NCVRF. A minimum of 50% of any subsequent advanced grant funds received through grant fund transfers shall be disbursed by CNDC, with the appropriate supporting documentation provided by CNDC as set forth in the applicable Scope of Work, prior to requesting additional grant fund advances.
4. CNDC may invoice against the administrative support fee periodically. Effective the execution date of the first amendment, CNDC may invoice periodically up to 5% of the grant amounts disbursed under the NCVRF and the as the administrative support fee, with the total administrative fee not to exceed \$190,476.19.
5. The parties may mutually agree to adjust the payment schedule in the event actual work performed warrants an adjustment, but in no event shall total funds received by CNDC exceed the Maximum Contract Amount or the "Total" set forth in the Fee Schedule table below.

Fee Schedule
Service Budget

Nonprofit Coronavirus Relief Fund (NCVRF): \$3,809,523.81

Administrative support fee NCVRF: \$190,476.19

Total: \$4,000,000

EXHIBIT D-1, 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 SUBRECIPIENT 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.