

**FUNDING AGREEMENT  
(SKYLINE FUND)**

**THIS FUNDING AGREEMENT (“Agreement”)** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **BOULDER HOUSING COALITION**, a Colorado nonprofit corporation, whose address is 901 N. Clarkson St., Denver, Colorado 80218 (“Grantee”), each individually a “Party” and collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to funding conditions with respect to Skyline Funds, administered with restrictions similar to those that apply to federal Community Development Block Grant (“CDBG”) programs;

**WHEREAS**, Grantee is eligible to receive Skyline Funds from the City, and is ready, willing and able to meet the conditions associated therewith;

**WHEREAS**, Grantee is the contract purchaser of real property in the City and County of Denver located at 1350 Logan Street, Denver, Colorado 80203 and legally described in Exhibit A (the “Property”);

**WHEREAS**, the purpose of this Agreement is for the City to provide financing costs related to the acquisition of the Property for the development and operation of nineteen (19) affordable single room occupancy dwelling units (the “Project”);

**WHEREAS**, the City is making certain monies available to ensure the preservation of affordable housing.

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained, the Parties agree as follows:

1. **THE PROJECT**: Grantee, on behalf of itself or a wholly owned subsidiary of Grantee, agrees to acquire the Property for use as affordable housing. Grantee or an affiliate of Grantee must hold title to the Property. The Property will provide nineteen (19) single room occupancy (“SRO”) dwelling units that will be used as housing for low- to moderate-income households for a period of ninety-nine (99) years. Grantee agrees that each of the nineteen (19) SRO units (each a “Unit”) at the Property shall be rented to low- to moderate-income households in accordance with the terms of this Agreement. In accordance with Skyline Fund policies and the CDBG Program national objectives, the Grant funds will be used to benefit low- and moderate-income persons by acquiring the Property to provide dwelling units to low- and moderate-income households,

where at least fifty-one percent (51%) of the units will be occupied by low- and moderate-income households

**2. GRANT AMOUNT; USE AND DISBURSEMENT OF FUNDS:**

**A.** The amount to be paid by the City to Grantee shall not exceed **One Million Twenty Thousand Dollars and NO/100 (\$1,020,000.00)** (the “Grant”). The Grant will be used for acquisition costs of the Property.

**B.** All cost overruns and/or funding shortfalls shall be the sole responsibility of Grantee.

**C.** Grantee must satisfy all conditions precedent to the City providing funding set forth in this Agreement on or before September 5, 2025 (the “Closing Deadline”). Failure to meet this deadline may result in the termination of this Agreement, at the sole discretion of the Executive Director or the Executive Director’s designee (the “Executive Director”) of the Department of Housing Stability (“HOST”). No funds shall be disbursed under this Agreement until such time as (i) all applicable conditions of this Agreement have been met and (ii) all financing necessary to acquire the Property have been secured.

**D.** Grantee shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the disbursement terms and conditions set forth in **Exhibit B** attached hereto and incorporated herein. Grant funds used for acquisition costs will be disbursed at a scheduled closing on a date mutually agreeable to the Parties. Grantee must provide the City with wire instructions in a form acceptable to the City and the final settlement statement. Grantee may not request disbursement of funds until the funds are needed for payment of eligible costs.

**E.** HOST shall retain Ten Thousand Dollars and No/100 (\$10,000.00) of the total funds to be disbursed under this Agreement (the “Compliance Retainer”), which retainage shall be released upon (a) compliance with the requirements of Exhibit B, and (b) Grantee providing the City with (i) post-construction but pre-occupancy lead-based paint hazard clearance; (ii) post-construction but pre-occupancy radon testing result below current Environmental Protection Agency action level; and (iii) if previously untested building materials are disturbed during the renovation of the Property, documentation of asbestos testing and, if necessary, post-abatement clearance.

**F.** Grantee must submit all requirements for release of the Compliance Retainer no later than twelve (12) months after the Property is acquired by Grantee. At the sole and absolute

discretion of the Executive Director of HOST, one (1) six (6) month extension may be granted upon the written request of Grantee.

**G.** Grantee must submit quarterly status reports during the period that the Property is undergoing rehabilitation. Grantee may submit (i) an American Institute of Architects (“AIA”) G702 progress billing form and AIA G703 continuation sheet or (ii) a form provided by HOST. Status reports must be submitted even if all Grant proceeds have been disbursed by the City to Grantee.

**H.** Expenses incurred prior to August 15, 2024 are not eligible for reimbursement.

**I.** The Executive Director is authorized to extend or modify any deadlines or schedules (other than repayment deadlines or schedules) set forth herein, provided that Grantee also consents to any such change and that such changes are made in writing.

**3. RESTRICTIONS ON USE OF PROPERTY:**

**A. Affordability Limitations.**

**i.** Five (5) of the SRO units at the Property (the “80% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development (“HUD”), under 24 C.F.R. 888.111, or (ii) a rent that does not exceed the maximum rent for a zero (0) bedroom unit published by the Colorado Housing and Finance Authority (“CHFA”) for a household earning eighty percent (80%) of area median income (“AMI”).

**ii.** Three (3) of the SRO units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.111, or (ii) a rent that does not exceed the maximum rent for a zero (0) bedroom unit published by CHFA for a household earning sixty percent (60%) of AMI.

**iii.** Four (4) of the SRO units at the Property (the “50% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.111, or (ii) a rent that does not exceed the maximum rent for a zero (0) bedroom unit published by CHFA for a household earning fifty percent (50%) of AMI.

**iv.** Four (4) of the SRO units at the Property (the “40% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.111, or (ii) a rent that does not exceed the maximum rent for a zero (0) bedroom unit published by CHFA for a household earning forty percent (40%) of AMI.

v. Three (3) of the SRO units at the Property (the “30% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.111, or (ii) a rent that does not exceed the maximum rent for a zero (0) bedroom unit published by CHFA for a household earning thirty percent (30%) of AMI.

vi. The 80% Units, 60% Units, 50% Units, 40% Units, and 30% Units are referred to collectively herein as the “Affordable Units.” By executing this Agreement, Grantee acknowledges receipt of CHFA's current rent guidelines from HOST. It shall be Grantee's responsibility to obtain updated guidelines from HOST to confirm the annual calculation of the maximum rents for the Denver area.

vii. The City shall determine maximum monthly allowances for utilities and services annually in accordance with CHFA requirements or another method acceptable to the City. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services. The City shall review rents for compliance within ninety (90) days after HOST requests rent information from Grantee.

**B. Occupancy/Income Limitations.**

i. The 80% Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as determined by CHFA, with adjustments for family size.

ii. The 60% Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by CHFA, with adjustments for family size.

iii. The 50% Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as determined by CHFA, with adjustments for family size.

iv. The 40% Units shall be occupied by tenants whose incomes are at or below forty percent (40%) of the median income for the Denver area as determined by CHFA, with adjustments for family size.

v. The 30% Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as determined by CHFA, with adjustments for family size.

vi. By executing this Agreement, Grantee acknowledges receipt of CHFA’s current income guidelines from HOST. It shall be Grantee’s responsibility to obtain updated guidelines from HOST and comply with the current guidelines.

C. Designation of Units. All of the Affordable Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>30% Units</b>	<b>40% Units</b>	<b>50% Units</b>	<b>60% Units</b>	<b>80% Units</b>
SRO	3	4	4	3	5
<b>TOTAL</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>5</b>

D. Covenant Running with the Land. Prior to the disbursement of any Grant funds, Grantee shall execute a rental and occupancy covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in this Agreement, which shall be recorded in the real property records of the City and County of Denver, and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for ninety-nine (99) years from the date of the recording of the Covenant.

4. **PRIORITIZATION OF INCOME-RESTRICTED AFFORDABLE HOUSING ORDINANCE**: Grantee must comply with the City’s Prioritization of Income-Restricted Affordable Housing Ordinance, codified at D.R.M.C. §§ 27-241 *et seq*, and the ordinance’s implementing rules and regulations.

5. **TENANT SELECTION**: The owner of the Project must adopt and have approved by the City written tenant selection polices. The tenant selection policies must be approved by the City prior the City making any disbursements under this Agreement. The tenant selection policies must, at a minimum, contain criteria that:

A. Are consistent with the purpose of providing housing for very low-income and low-income families;

B. Are reasonably related to program eligibility and the applicant’s ability to perform the obligations of the lease;

C. Give reasonable consideration to the housing needs of families that would have a preference under federal selection preferences for admission to public housing;

D. Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance Housing Choice Voucher Program or an applicant participating in a HOME tenant-based rental assistance program because of the status of the applicant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document;

E. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, with prompt written notification to any rejected applicant of the grounds for any rejection; and

F. Comply with the Violence Against Women Act requirements prescribed in 24 CFR § 92.359.

6. **AFFIRMATIVE MARKETING**: The owner of the Project shall comply with the procedures outlined in the affirmative marketing program, attached hereto as **Exhibit C** and incorporated herein (the “Affirmative Marketing Program”), to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property’s housing market area in accordance with 24 CFR § 92.351. Except Grantee may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR § 92.253(d). Prior to making any disbursement, Grantee must provide the plan required by the Affirmative Marketing Program (the “Affirmative Marketing Plan”) to HOST. The Affirmative Marketing Plan must be approved by HOST prior to Grantee adopting it or engaging in any affirmative marketing of the Project.

7. **LEASES**: There must be a written lease between the tenants of Affordable Units and the owner of the Project for a period of not less than one year, unless by mutual agreement between the tenant and the Owner of the Project a shorter period is specified.

8. **PROHIBITED LEASE TERMS**: Leases pursuant to which Affordable Units are occupied may not contain any of the following provisions:

A. **Agreement to Be Sued**. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

B. **Treatment of Property**. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out in accordance with Colorado law.

C. **Excusing Owner from Responsibility**. Agreement by the tenant not to hold the owner or the owner’s agents legally responsible for actions or failure to act, whether intentional or negligent.

D. **Waiver of Notice**. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

E. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of Jury Trial. Agreement by the tenant to waive any right to a trial by jury.

G. Waiver of Right to Appeal. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.

H. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

I. Mandatory Supportive Services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

9. **PROHIBITION OF CERTAIN FEES**: A tenant may not be charged fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that a tenant may be charged the following: reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided. The City acknowledges that the Project will operate under a cooperative model and that tenants may be charged mandatory fees for the participation in a tenant-approved food sharing budget. Any such fees are not prohibited by this Agreement.

10. **TERMINATION OF TENANCY**: The owner of the Project may not terminate the tenancy or refuse to renew the lease of a tenant of any of the Affordable Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; for completion of the tenancy period for transitional housing or failure to follow any required transitional supportive services plan; or for other good cause. Any termination or refusal to renew must be preceded by service of written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Notwithstanding the foregoing, nothing in this Agreement shall prevent the owner of the Project from terminating a tenancy in accordance with Colorado Revised Statutes § 13-40-107.5(4)(a) for a substantial violation as defined in that statute.

**11. MANAGEMENT OF PROPERTY:**

**A.** Grantee shall provide and maintain good and efficient management of the Property satisfactory to the City. Grantee must execute and maintain in effect a management agreement for the Project with a qualified manager that has experience with affordable housing. Grantee shall notify the City of any (i) changes to the manager of the Property and (ii) of any significant changes staffing changes to the manager. For the purposes of this Agreement, Grantee is deemed a qualified property manager.

**B.** Within the operating budget for the Property, Grantee must provide or cause to be provided a minimum of two hundred fifty dollars and NO/100 (\$250.00) per Affordable Unit, per year in a replacement reserve account.

**12. AUDIT/EXAMINATION OF RECORDS/REPORTING REQUIREMENTS/ANNUAL MONITORING; INSPECTIONS:**

**A. Examination of Records and Audits:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to Grantee's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Grantee shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Grantee to make disclosures in violation of state or federal privacy laws. Grantee shall at all times comply with D.R.M.C. 20-276.

**B. Required Information and Reports.** For the term of the Covenant, Grantee shall submit to the City the following information and reports on HOST approved forms or online system: (1) annual compliance statement; (2) report on rents and occupancy of Affordable Units to verify compliance with affordability requirements and other requirements of this Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in Affordable Units; (4) reports (including financial reports) that enable the City to determine the

financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for Affordable Units. The report required by subsection (2) of this Subsection B. shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information. The reports and information required by this Section shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within thirty (30) days of the City's request shall be considered a default of this Agreement. Grantee shall maintain (i) records evidencing the income of each family occupying an Affordable Unit, and (ii) a copy of the lease pursuant to which each Affordable Unit is occupied.

C. Access and Inspections. For the purposes of assuring compliance with the Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of rehabilitation of the Property and (ii) during the period of affordability set forth in Section 3. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Grantee shall fully cooperate with the City in an annual monitoring of Grantee's performance and site inspection to verify compliance with the requirements of this Agreement.

**13. FINANCIAL STATEMENTS:** Grantee must furnish to the City annually, within ninety (90) days of the end of Grantee's fiscal year or within thirty (30) days following a request by HOST, financial statements of Grantee audited by an independent certified public accountant, which must include an annual balance sheet and profit and loss statement of Grantee, in a form reasonably required by the City.

**14. TRANSFERS:** Grantee acknowledges that the City has examined and relied on the experience of Grantee and its general partners, directors, and members in owning and operating affordable housing projects, such as the Project, in agreeing to make the Grant, and the City will continue to rely on Grantee's ownership and control of the Property and Project as a means of maintaining the affordability requirements and the value of the Property as security for repayment of the Grant. Without the prior written consent of the City, which may not be unreasonably withheld, Grantee shall not: (i) sell, convey, assign, or otherwise transfer or dispose of the Property or any part thereof (other than leases to tenants), or (ii) sell, convey, assign, or otherwise transfer any interest in Grantee; or (iii) change the control or management of Grantee.

15. **CAPITAL NEEDS ASSESSMENT**: During the term of the Covenant, Grantee must provide the City with any capital needs assessment or physical needs assessment performed on or related to the Property or any improvements on the Property every ten (10) years or, if performed earlier, whenever such assessments are performed.

16. **MAINTENANCE AND REPLACEMENT**: The owner of the Project shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. § 92.251.

17. **LEAD-BASED PAINT HAZARDS**: Housing funded, in part, by funds provided through this Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852 et seq.), and is therefore subject to 24 C.F.R. Part 35; the owner of the Project shall comply with these provisions in the construction of the Project.

18. **CONDITIONS PRECEDENT TO CITY PROVIDING FUNDING**: In addition to any other conditions stated in the Agreement, the following conditions must be satisfied at prior to the Closing Deadline:

A. **Environmental Reports**. Grantee must provide the City with a Phase I Environmental Site Assessment (“ESA”) and, if necessary, a Phase II ESA, in form and substance acceptable to the City. If the ESA is not in the City’s name, the City must be provided with a reliance letter in the name of the City from the environmental engineer, which must be satisfactory to the City.

B. **Appraisal**. Grantee must provide the City with an as-is appraisal of the Property, which must be satisfactory in form and substance to the City.

C. **Organizational Documents**. Grantee must provide the City with (i) evidence that it is a Colorado non-profit corporation in good standing and authorized to transact business in the State of Colorado; (ii) evidence in a form satisfactory to the City that the person executing this Agreement and any other documents related to the Grant has the full power and authority to bind Grantee; and (iii) all organizational documents related to Grantee, which must be acceptable to the City. Organization documents include, but are not limited to, Articles of Incorporation, bylaws, and, if a nonprofit corporation, tax exempt letter from the Internal Revenue Service and a list of board members, and a certificate of good standing.

**D. Survey.** Grantee must provide the City with a current ALTA survey of the Property. The ALTA survey must be prepared by a licensed land surveyor, certified to the City, and satisfactory to the City.

**E. Evidence of Financing.** Grantee must provide such information and documentation sufficient to satisfy the City, in the City's sole discretion, that Grantee has secured all financing necessary to acquire the Property and complete the necessary rehabilitation. Documentation sufficient to satisfy the City may include, but not be limited to, commitment letters for all other financing or funding.

**F. Insurance.** Grantee must provide the City with certificates of insurance or copies of the policies of insurance required under this Agreement.

**G. Construction; Timeline.** Grantee must provide the City with a certified copy of the construction budget and rehabilitation timeline, which must be satisfactory in form and substance to the City.

**H. Purchase and Sale Agreement.** Grantee must provide the City with a copy of the fully executed Purchase and Sale Agreement to the Property and any amendments to that agreement.

**I. Title Policy.** Borrower must obtain a title policy and provide the City with a copy of policy.

**J. Covenant.** Grantee must execute and record the Covenant.

**19. COSTS AND EXPENSES:** Grantee agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with Grantee's breach or default of this Agreement or the Covenant.

**20. CONDITIONS:**

**A.** The obligation of the City to lend the above sums is limited to funds appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**B.** Grantee shall comply with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver, as the same may be amended from time to time.

These laws, regulations, and other authorities are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated.

C. The policies of the City regarding Skyline Funds.

D. The terms and conditions set forth in Part II Supplementary General Conditions (CDBG), as applicable, which are incorporated into this Agreement.

21. **INSURANCE**: Grantee or its contractor(s) shall procure and maintain insurance in the following types and amounts:

A. Where Grant proceeds are disbursed for construction, Builders Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

B. Commercial General Liability Insurance covering all operations by or on behalf of Grantee, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Grantee's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

C. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Grantee and its contractor under Colorado law.

D. Grantee shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

E. Property insurance satisfactory to the City in the amount of the value of the property subject to the Covenant.

F. Certificates of Insurance evidencing the above shall be submitted prior to the Closing Deadline. Policies shall include a waiver of subrogation and rights of recovery against the City. Insurance companies providing the above referenced coverage must be authorized and licensed to issue insurance in Colorado and be otherwise acceptable to the Risk Management Office.

22. **DEFENSE & INDEMNIFICATION**:

A. Grantee agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless and until such Claims have been specifically determined by

the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Grantee or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Grantee's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Grantee's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

**C.** Grantee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Grantee under the terms of this indemnification obligation. Grantee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**23. NONCOMPLIANCE:** If the Property is not used in accordance with this Agreement or the Covenant throughout the term of the Covenant, Grantee shall repay the full amount of the Grant funds to the City, within sixty (60) days of the City's request.

**24. NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, if to Grantee at the address:

Boulder Housing Corporation  
901 N. Clarkson Street  
Denver, Colorado 80218  
Attn: Lincoln Miller

and if to the City at:

Executive Director of the Department of Housing Stability  
City and County of Denver  
201 West Colfax Avenue, Dept. 615  
Denver, Colorado 80202

With a copy to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**25. AUDIT REQUIREMENTS:** Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") and applicable federal regulations.

**26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:**

**A.** Grantee represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

**B.** Grantee will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

**C.** Grantee shall include the certification contained in subsection A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

**D.** Grantee will immediately notify HOST in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances the Grantee or any of its principals have subsequently been excluded by a federal agency.

**E.** The representation made in subsection A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

**27. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS:** Grantee shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating the Agreement or barring the Borrower from City facilities or from participating in City operations. The Contractor shall cooperate and comply with the provisions of 2 CFR Part 2429 regarding a Drug-Free Workplace

**28. DISPUTES:** All disputes between the City and Grantee arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director.

**29. ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than Grantee. Grantee shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement except upon prior written consent of the City.

**30. CITY NOT PARTY TO CONSTRUCTION CONTRACT:** The City is not, and nothing in this Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the Grant or grant proceeds hereof are expended.

**31. PUBLICATIONS/ANNOUNCEMENTS:** HOST approval must be obtained prior to publicizing activities or projects funded by HOST or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by HOST. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

**32. ACKNOWLEDGEMENT OF FUNDING:** Grantee will provide and install at the Property signs, in a form mutually agreeable to the Executive Director and Grantee, acknowledging the participation of the City and the City funding of the Project.

**33. WAIVER:** No waiver of any breach or default under this Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

34. **DURATION/BINDING EFFECT:** This Agreement shall remain in effect for the period of affordability specified in Section 3 above, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

35. **COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

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

37. **RECITALS:** All of the recitals above are hereby confirmed and incorporated herein as part of this Agreement.

38. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Grantee consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

List of Exhibits and Attachments to Grant Agreement

Exhibit A – Legal Description of Property

Exhibit B – Disbursement Terms and Conditions

Exhibit C – Affirmative Marketing Program

Part II Supplementary General Conditions (CDBG)

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**Contract Control Number:**  
**Contractor Name:**

HOST-202476086-00  
BOULDER HOUSING COALITION

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-202476086-00  
BOULDER HOUSING COALITION

By: See Attached Signature Page

Name: See Attached Signature Page  
(please print)

Title: \_\_\_\_\_  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**Contract Control Number:**  
**Contractor Name:**

HOST-202476086-00  
BOULDER HOUSING COALITION

By: Signed by:  
*Lincoln Miller* \_\_\_\_\_  
802EE7162500417...

Name: Lincoln Miller  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

# **Exhibit A**

## **LEGAL DESCRIPTION**

The following real property located in the City and County of Denver, State of Colorado:

LOTS 7 TO 10, INCLUSIVE, BLOCK 80,  
J. W. SMITH'S ADDITION TO DENVER,  
CITY AND COUNTY OF DENVER,  
STATE OF COLORADO

Purported address (for information only): 1350 N. Logan Street, Denver, CO

## EXHIBIT B

### DISBURSEMENT TERMS AND CONDITIONS

#### I. Disbursement Request Procedures

- a. Disbursements shall be processed through the Department of Housing Stability (“HOST”) and the Department of Finance (“DOF”).
- b. HOST will disburse loan or grant funds to the Borrower or Grantee (referred to herein as the “Borrower”) for “hard cost expenses,” “soft cost expenses,” and “acquisition cost expenses” (“Disbursement”) upon the Borrower’s written request delivered to HOST (the “Disbursement Request”). The Disbursement Request shall be in the form approved or required by HOST and DOF and may be submitted no more frequently than once every month. Disbursement Requests must be submitted by Borrower electronically to the assigned HOST staff member who will review the submission for completeness and accuracy.
- c. Prior to the first Disbursement Request, Borrower must provide to the City for review and approval, if necessary, the following items:
  - i. A partnership agreement, operating agreement, corporate resolution, or other corporate documentation to demonstrate who has authority for the Borrower to submit Disbursement Requests.
  - ii. The affirmative marketing plan.
  - iii. The tenant selection plan.
  - iv. The form lease agreement for dwelling units at the Project, which contains no prohibited provisions as described in the Agreement.
- d. All Disbursements will be via check sent by regular mail unless ACH or other method of disbursement is requested.
- e. Disbursements involving federal funds must have satisfied all environmental review requirements under 24 C.F.R. Part 58.
- f. The Borrower may not make a Disbursement Request until such funds are needed to pay costs of the Project. The amount of each Disbursement Request must be limited to the amount needed to pay costs actually incurred by the Borrower at the time of the Disbursement Request. The Disbursement Request may not include items previously submitted to and reimbursed by other lenders, amounts for prospective or future needs, funds to be placed into escrow accounts, or advances in lump sums to the Borrower.
- g. Each Disbursement Request must be accompanied by documentation acceptable to HOST and DOF that evidence payments for which a disbursement request has been made. HOST and DOF will review documentation for incurred costs that match the Disbursement Request. Documentation to be submitted with a Disbursement Request shall include, as applicable, but not be limited to:

## EXHIBIT B

- i. A completed and signed HOST expense certification form.
  - ii. For hard cost draws, a completed standard AIA Form G702 and Form G703 certified by the architect and signed and notarized by the general contractor. If the Disbursement Request includes costs for minor construction not shown on the G702 and G703, the scope of work and contractor invoices must be submitted.
  - iii. Invoices and other evidence satisfactory to HOST and DOF for “hard” or direct costs provided to the Project with respect to the Disbursement Request. All invoices must show the Project name and address.
  - iv. Invoices and other evidence satisfactory to the City for “soft” or indirect costs provided to the Project with respect to the Disbursement Requests. All invoices must show the Project name and address.
  - v. Evidence satisfactory to HOST and DOF to demonstrate proof of payment of any cost or expense contained on a Disbursement Request. Evidence of proof of payment may include, but not be limited to: cancelled checks; copies of checks; documentation of cost or expense in a general ledger; credit or debit card statements; final signed settlement statements, wire transfer records, or bank statements.
  - vi. An updated itemized budget.
  - vii. Current certificates of insurance.
  - viii. Lien waivers from all applicable contractors, subcontractors, and suppliers.
  - ix. For agreements receiving federal funding and to which the Davis-Bacon Act applies, Borrower must be current in submissions of all paperwork and documentation requested by the City to demonstrate compliance with the requirements of the Davis-Bacon Act.
  - x. For acquisition Disbursement Requests being funded at a scheduled closing, the following items will be required: a) Preliminary closing statement; b) wire instructions on bank letterhead including date wire is required; and c) final settlement statement and recorded documents after closing.
- h. The Borrower must cooperate with HOST in obtaining or providing any additional documentation that may be required by HOST, DOF, or any other agency of the City.
  - i. The City will retain the first \$10,000.00 of Disbursements for the purposes of the Compliance Retainer as set forth in the Agreement. The \$10,000.00 that is retained pursuant to this provision will be released under the terms described in Section II.
  - j. The City will disburse to the Borrower 95% of hard expenses for each Disbursement and all of the soft expenses. The retained 5% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.

## EXHIBIT B

- k. At all times during the construction of the Project, the City shall have the right, but not the obligation, to enter and inspect all work done, and all materials, equipment, and other matters relating to the Project.
  - l. HOST reserves the right, in its sole and absolute discretion, to revise or modify the processes, procedures, and requirements related to the disbursement procedures. HOST will notify Borrower of any such changes to the disbursement procedures.
  - m. The City will not make any Disbursements of loan or grant proceeds to the Borrower for costs or expenses that:
    - i. Are prohibited by Federal or City regulations related to the funding source.
    - ii. Are not requested or otherwise not in accordance with Agreement or the procedures for a Disbursement Request set forth herein.
    - iii. Were requested or incurred, or both, after the termination of the Agreement or outside the time periods set forth in the Agreement.
    - iv. Were requested during the occurrence and continuation of an event of default specified in the Agreement.
- II. Disbursement of Compliance Retainer and Retainage**
- a. *Compliance Retainer.* For the City to release the Compliance Retainer, a Disbursement Request must be submitted along with the following information, as applicable:
    - i. A completed HOST expense certification form.
    - ii. For agreements funded with federal funds, any required federal forms or reports. The City must review and approve any completed federal forms or reports for any federally funded agreement.
    - iii. All documents or items required to be submitted to the City pursuant to the Agreement not previously provided.
    - iv. A certificate of occupancy.
    - v. Current certificates of insurance.
    - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.
    - vii. The Project must pass a HUD standard inspection performed by the City.
    - viii. Lease-up information on all units restricted by the City through the use of City funds or Federal funds, as applicable. The information must include number of bedrooms in the unit, household size, tenant household incomes, date of income certification, tenant paid portion of rent, total lease rent, voucher amounts, voucher type (project based or tenant based), utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Project's lease-up is in compliance with the affordability restrictions contained in the Agreement and Rental & Occupancy Covenant.
    - ix. Any other documents required by HOST.

## EXHIBIT B

- b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information, as applicable:
- i. A completed HOST expense certification form.
  - ii. Final unconditional lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
  - iii. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective, as applicable.
  - iv. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled, as applicable.
  - v. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received, as applicable.
  - vi. All documents or items required to be submitted to the City pursuant to the Agreement not previously provided.
  - vii. A certificate of occupancy.
  - viii. Current certificates of insurance.
  - ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.
  - x. The Project must also pass a HUD standard inspection performed by the City.
  - xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”) Determination, as applicable.
  - xii. Environmental mitigation memorandum of understanding, as applicable.
  - xiii. Any other documents required by HOST.

### III. **Conditions Precedent to All Disbursements**

- a. The making of each Disbursement shall be subject to the satisfaction of each of the following additional conditions precedent, and a waiver of any condition to any Disbursement shall not constitute a waiver as to any subsequent Disbursement. The City may, in its sole discretion, withhold all or a portion of a Disbursement if any of the following conditions have not been satisfied or if the Borrower has not submitted the required documentation and information required by the Agreement, including the documentation and information required by these terms and conditions.
- i. *No Default*. The Borrower must be in full compliance with and must not be in default under the Promissory Note, the Deed of Trust, or the Covenant or any other document executed by the Borrower in connection with the Agreement.
  - ii. *Time to Complete the Project*. In the sole opinion of the City, there must be sufficient time remaining to complete the construction of the Project in accordance with the terms of the Agreement, and in conformance with federal regulations and requirements for federally funded agreements.

## EXHIBIT B

- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, the Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the loan or grant yet to be disbursed, together with any other sources of funds available to the Borrower and not yet disbursed, will be sufficient to complete the Project in compliance with the Agreement and to pay all costs therefore, and all other direct or indirect costs relating to the loan or grant and the Project.
- iv. *Lien waivers.* If requested by the City, the Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Project and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Agreement, the Borrower shall use the proceeds of the loan or grant exclusively for the costs of the Project.
- vi. *Compliance with Federal Requirements.* As applicable, Borrower must be compliant with all federal requirements, including, but not limited to, compliance with the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968, and all reporting obligations under any such federal requirements.
- vii. *Pass-Through Loans.* If the Agreement is structured as a “pass-through” loan, Borrower must demonstrate that Borrower has the authority to submit disbursement requests on behalf of the Project owner, which may be done by providing HOST with an operating agreement or partnership agreement establishing such authority. A “pass-through” loan is defined as a loan made by the City to a borrower where loan proceeds will be granted or loaned by the borrower to the developer or owner of the Project for construction and development costs.

#### IV. **Financial Management Systems – The Borrower must maintain financial systems that meet the following standards:**

- a. Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- b. Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- c. Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property, and it must be assured that it is used solely for authorized purposes.

## **EXHIBIT B**

- d. Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
  - e. For contracts subject to federal agreements, applicable 2 C.F.R. Part 200 cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
  - f. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Borrower will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
  - g. For contracts subject to federal agreements, the Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
  - h. The Borrower must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
  - i. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
  - j. The Borrower shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.
- V. Audit Requirements**
- a. For contracts subject to federal agreements, if the Borrower expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Borrower's fiscal year, the Borrower shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the 2 C.F.R. Part 200.
  - b. A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
  - c. A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the

## **EXHIBIT B**

Management Letter has matters related to HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200, as set forth in 2 C.F.R. 200.511(c) for each applicable management letter matter.

- d. All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to HOST.
- e. The Borrower will be responsible for all Questioned and Disallowed Costs.
- f. The Borrower may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Borrower shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

### **VI. Procurement**

- a. The Borrower shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
- b. The Borrower will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to, the following: rationale for the method of procurement, selection of contract type, Borrower selection or rejection, and the basis for the contract price.
- c. If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Borrower will compensate the awarding agency for its share.

### **VII. Bonding**

- a. HOST may require adequate fidelity bond coverage, in accordance with 2 C.F.R. 200.304(b), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.
- b. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

### **VIII. Collection of amounts due**

- a. Any funds paid to a Borrower in excess of the amount to which the Borrower is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and/or the City. If not paid within a reasonable period after demand, HOST may: 1) Make an administrative offset against other requests

## **EXHIBIT B**

for reimbursements, 2) Withhold advance payments otherwise due to the Borrower, or 3) Pursue other action permitted by law.

**EXHIBIT C**  
**(Affirmative Marketing)**

**City and County of Denver**  
**Affirmative Marketing Program**

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the City's Housing Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its Housing programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the Housing Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City's Housing programs on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
- (2) require compliance with all applicable fair housing and equal opportunity laws, and
- (3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City's Housing Loan Program, the objective of the Affirmative Marketing Program and a project's Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project's tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity.

In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner's actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to

the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity. The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.

**PART II**  
**SUPPLEMENTARY GENERAL CONDITIONS (CDBG)**

**ARTICLE I**  
**FEDERAL REQUIREMENTS**

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

**Sec. 100. Definitions.** As used in this Part II:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “HOST” means the City’s Department of Housing Stability or a person authorized to act on its behalf.

D. “HUD” means the United States Department of Housing and Urban Development or a person authorized to act on its behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

**Sec. 101. Housing and Community Development Act of 1974.** This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

**Sec. 102. Uniform Administrative Requirements.** This Agreement is subject to the requirements of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

**Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.**

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with

assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

**Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968.** This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

**Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975.** This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

**Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974.** This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

**Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063.** This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

**Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973.** This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93- 112), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

**Sec. 109. “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities.**

A. The work to be performed under this contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor’s obligations under 24 C.F.R. Part 75.

F. Noncompliance with HUD’s regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

**Sec. 110. Relocation Assistance and Property Acquisition Requirements.** This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, CDBG Part II rev.5/25/2021

as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

**Sec. 111. Conflict of Interest.**

A. Conflicts Prohibited.

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the City or of a sub-recipient, if applicable, who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 C.F.R. 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Sec. 112. Political Activity Prohibited.** None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Sec. 113. Lobbying Prohibited.** None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

**Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION, Section 319, P.L. 101-121.** Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Sec. 114. Copyrights.** If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

**Sec. 115. Patents.** Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

**Sec. 116. Theft or embezzlement from HOST funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions.** Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if

s/he:

- A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;
- B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;
- C. Willfully obstructs or impedes an investigation or inquiry under HUD;
- D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by HOST funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;
- E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

## **ARTICLE II** **DISBURSEMENTS AND ACCOUNTING**

**Sec. 201. Eligible and Ineligible Costs.** Costs under this Agreement are governed by the OMB Omni Circular as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (1) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (2) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (3) Not be allocable to or included as a cost of any other Federally financed program; (4) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (5) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

**Sec. 202. Documentation of Costs.** All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

**Sec. 203. Charges Against Project Account.**

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from HOST.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

**Sec. 204. Method of Payment and Disbursements.** The Contractor must submit properly executed invoices and requests for payment to HOST. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

**Sec. 205. Travel Expenses.** Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

**Sec. 206. Designation of Depository.** The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

**Sec. 207. Refunds.** The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

### **ARTICLE III** **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

**Sec. 301. Lead-Based Paint Hazards.** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead- Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

**Sec. 302. Davis-Bacon Act.** Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions”, Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at <http://www.hud.gov/offices/olr/library.cfm>.

**Sec. 303. Contract Work Hours and Safety Standards Act.** All federally assisted construction contracts of more than \$2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than \$100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 *et seq.*).

**Sec. 304. Anti-Kickback Act.** If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

**Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended.** If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below

and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

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

(1) The 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 setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers’ representatives of the Contractor’s commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or 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 subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following

actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

#### **ARTICLE IV** **ENVIRONMENTAL AND HISTORIC CONDITIONS**

**Sec. 401. Environmental Clearance.** Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, until Contractor has received written environmental clearance from HOST. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

**Sec. 402. Compliance with Clean Air and Water Acts.** Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

**Sec. 403. Additional Environmental and Historic Conditions.** This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

## **ARTICLE V** **TERMINATION**

**Sec. 501. Termination Due to Loss of Funding.** This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

**Sec. 502. Termination for Cause.**

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is

otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

**Sec. 503. Termination for Convenience.** The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

**Sec. 504. Payment After Termination.** The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

**Sec. 505. Reversion of Assets.** Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

## **ARTICLE VI** **MISCELLANEOUS**

**Sec. 601. Personnel.** The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

**Sec. 602. Subject to Local Laws.** This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

**Sec. 603. Contractual Relationship.** The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

**Sec. 604. When Rights and Remedies Not Waived.** Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

**Sec. 605. Sales and Use Taxes.** The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

**Sec. 606. Patented Devices, Materials, and Processes.** If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

**Sec. 607. Titles and Subheadings.** The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

**Sec. 608. Notices.** All notices shall be given by certified mail. Notices to the City shall be addressed to the Executive Director of the Department of Housing Stability. Either of the parties may designate in writing substitute addresses or persons to receive notices.

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