

**FUNDING AGREEMENT  
(FY 2022 COMMUNITY PROJECT FUNDING GRANT)**

THIS **FUNDING AGREEMENT** (the “Agreement”) made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MONTBELLO ORGANIZING COMMITTEE**, a Colorado nonprofit corporation, with an address of 12000 E. 47<sup>th</sup> Ave, Suite 113, Denver, Colorado 80239 (“Grantee”), each individually a “Party” and collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, the City was awarded a grant pursuant to the Federal FY2022 Economic Development Initiative Community Project Funding;

**WHEREAS**, the City desires to provide funding from the Federal FY2022 Economic Development Initiative Community Project Funding to Grantee for hard construction costs related to the construction of ninety-seven (97) affordable rental units located at 12444 E. Albrook Drive, Denver, Colorado (the “Property”);

**WHEREAS**, the funds provided to Grantee pursuant to this Agreement will be loaned by Grantee to the owner of the Property, FreshLo LIHTC LLLP, a Colorado limited liability limited partnership (the “Owner”), to ensure that the Property is used and developed pursuant to the terms of this Agreement;

**WHEREAS**, Grantee is eligible to receive funds from the City, and is ready, willing and able to meet the conditions associated therewith.

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

**1. FEDERAL GRANT AWARD**: This Agreement is funded by, subject to, and entered into pursuant the FY 2022 Community Project Funding Grant Agreement No. B-22-CP-CO-0160 between the City and the U.S. Department of Housing and Urban Development (“HUD”), attached hereto as Exhibit A and incorporated herein by this reference (the “Federal Grant Agreement”). Grantee agrees that it shall be bound by the terms and conditions of the Federal Grant Agreement and such other rules, regulations, and requirements as HUD may impose pursuant thereto.

**2. THE PROJECT**: Grantee agrees to develop the Property in accordance with the provisions of and requirements set forth in the Project Narrative, attached as Appendix 1 to the

Federal Grant Agreement (the “Project”).

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

**A.** The amount to be paid by the City to Grantee shall not exceed **One Million Four Hundred Fifty Thousand Dollars and NO/100 (\$1,450,000.00)** (the “Grant”). The obligation of the City for payments under this Agreement is limited to monies appropriated by the City Council and paid into the City Treasury and encumbered for the purpose of this Agreement.

**B.** Grantee will lend the entirety of the Grant proceeds to Owner for hard construction costs related to the Project (the “Project Loan”). The Project Loan proceeds may only be used for hard construction costs related to the Project. Grantee must submit requisitions with documentation of incurred eligible costs on forms approved by the Department of Housing Stability (“HOST”) and otherwise comply with the disbursement terms and conditions set forth in Exhibit B, attached hereto and incorporated herein.

**C.** Where the City’s funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain five percent (5%) of each disbursement of funds, which retainage shall be released upon Grantee’s compliance with the requirements in **Exhibit B**.

**D.** In addition to the retainage specified above, HOST shall retain Ten Thousand Dollars and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Agreement (the “Compliance Retainer”). This amount shall be released upon Grantee’s compliance with the requirements of **Exhibit B**.

**E.** Grant funds may not be used as reimbursement for costs incurred prior to the “date of grant obligation,” as defined in the Federal Grant Agreement. All Grant funds must be disbursed, and Grantee must complete the Project, prior to August 31, 2030.

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

**A. Affordability Limitations.**

**i.** Eighteen (18) of the units at the Property (the “70% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 70% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

**ii.** Fifty-five (55) of the 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 HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

**iii.** Seventeen (17) of the 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. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 50% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

**iv.** Seven (7) of the 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. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

**v.** The 70%, 60% Units, 50% Units, and 30% Units are referred to collectively herein as the “City Units.” By executing this Agreement, Grantee acknowledges receipt of HUD'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.

**vi.** The City shall determine maximum monthly allowances for utilities and services annually in accordance with 24 C.F.R. 92.252(d)(1) 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 the Grantee.

**B. Occupancy/Income Limitations.**

**i.** The 70% Units shall be occupied by tenants whose incomes are at or below seventy percent (70%) of the median income for the Denver area as determined by HUD, 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 HUD, 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 HUD, with adjustments for family size.

iv. 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 HUD, with adjustments for family size.

v. By executing this Agreement, Grantee acknowledges receipt of HUD'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 City Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>30% Units</b>	<b>50% Units</b>	<b>60% Units</b>	<b>70% Units</b>
1 Bedroom	3	9	28	9
2 Bedroom	3	5	19	6
3 Bedroom	1	3	8	3
TOTAL	7	17	55	18

D. Accessibility Requirements. Grantee must design and construct five percent (5%) of the City Units, or at least one (1) unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional two percent (2%) of the City Units, or at least one (1), whichever is greater, must be accessible for persons with hearing or visual disabilities. Collectively, these units are referred to as the "Accessible Units." The Accessible Units must be designed and constructed in accordance with American National Standards Institute ("ANSI") Standard A117.1. Public and common areas must be readily accessible for persons with mobility disabilities and be designed and constructed in accordance with ANSI Standard A117.1.

E. Covenant Running with the Land. Prior to the execution of this Agreement, Grantee caused Owner to execute and record a covenant against the Property setting forth the affordability restrictions stated herein (the "Covenant"). The Covenant was recorded on February 15, 2023 at Reception No. 2023013250 and will terminate on February 15, 2083.

5. EXAMINATION OF RECORDS AND AUDITS: Any authorized agent of the City, including the City Auditor or his or her representative, the Comptroller General of the United States, HUD, or any of their duly authorized representatives, have 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 audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

**6. REPORTING REQUIREMENTS; ANNUAL MONITORING; INSPECTIONS:**

**A. Required Information and Reports:**

**i. Federal Grant Agreement Reporting Requirements:**

**1)** Grantee must submit a performance report on a semi-annual basis. Performance reports shall consist of a narrative of work accomplished during the reporting period. During the Period of Performance, as defined in the Federal Grant Agreement, Grantee must submit these reports no later than 10 calendar days after the end of the 6- month reporting period. The first of these reporting periods begins on the January or June after the date the Federal Grant Agreement between HUD and the City is executed.

**2)** The performance report must contain the information required for reporting program performance under 2 CFR § 200.329(c)(2) and (d), including a comparison of actual accomplishments to the objectives indicated in the Grantee's project narrative, the reasons why established goals were not met, if appropriate, and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

**3)** Grantee must report and account for all property acquired or improved with Grant funds as provided by 2 CFR Part 200 using the applicable common forms approved by OMB and provided on the Grants.gov website

<https://www.grants.gov/web/grants/forms/post-award-reportingforms.html>. This reporting obligation includes submitting status reports on real property at least annually as provided by 2 CFR § 200.330, accounting for real and personal property acquired or improved with Grant funds as part of Project Closeout, and promptly submitting requests for disposition instructions as provided by 2 CFR §§ 200.311(c), 200.313(e), and 200.314(a).

4) No drawdown of Grant funds will be allowed while Grantee has an overdue performance or financial report.

ii. *While Operating As Affordable Housing*: Grantee shall submit or cause to be submitted 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 City Units to verify compliance with affordability and other requirements of this Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City 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 City Units. The report required by subsection (2) of this Section 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.

B. 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 construction and (ii) during the period of affordability set forth in this Agreement. 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.

7. **FEDERAL GRANT AGREEMENT REQUIREMENTS**: Grantee must comply with the provisions of the General Federal Requirements set forth in Article IV of the Federal Grant Agreement.

**8. FEDERAL 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 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the OMB Omni Circular”) and applicable federal regulations.

**9. 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. Grantee agrees to pay reasonable closing costs, including all recording charges, costs of surveys, costs for certified copies of instruments, costs incurred for obtaining any documents or reports required pursuant to this Agreement, and all other direct costs incurred by the City in connection with the funding.

**10. COMPLIANCE WITH ALL LAWS:** Grantee shall undertake the Project and otherwise be in full compliance 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.

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

**A. Workers’ Compensation and Employer’s Liability Insurance:** Grantee shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**B. Commercial General Liability:** Grantee shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation, or misconduct.

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

**D.** Certificates of Insurance evidencing the above shall be submitted prior to

the first disbursement of Grant proceeds. 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.

**12. 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.



**13. NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or e-mailed, to the following:

To Grantee:

Montbello Organizing Committee  
12000 East 47th Ave., Ste. 113  
Denver, CO 80239  
Attn: Donna Garnett

To the City:

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. 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.

**14. 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.

**15. 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.

**16. 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 proceeds hereof are expended

**17. 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.

**18. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, Grantee's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**19. 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.

**20. 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 entered into after the date of this Agreement.

**21. GOVERNING LAW; VENUE:** This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of 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.

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

**23. 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 to Agreement

Exhibit A – FY 2022 Community Project Funding Grant Agreement No. B-22-CP-CO-0160

Exhibit B – Disbursement Terms and Conditions

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

HOST-202368263-00  
MONTBELLO ORGANIZING COMMITTEE

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-202368263-00  
MONTBELLO ORGANIZING COMMITTEE

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-202368263-00  
MONTBELLO ORGANIZING COMMITTEE

By: Donna M Garnett

Name: Donna M Garnett  
(please print)

Title: CEO  
(please print)

ATTEST: [if required]

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

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

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

# EXHIBIT A

**FY 2022 COMMUNITY PROJECT FUNDING  
GRANT AGREEMENT NO. B-22-CP-CO-0160**

**Grantee Name:** City and County of Denver

**Grantee Address:** 201 W. Colfax Denver, CO 80202

**Grantee's Unique Entity Identifier (UEI):** ELJXJKWTN8S5

**Grantee's Employer Identification Number (EIN)** 84-6000580

**Federal Award Identification Number (FAIN)** B-22-CP-CO-0160

**Assistance Listing Number and Name** 14.251 Economic Development Initiative,  
Community Project Funding, and Miscellaneous Grants

**Period of Performance/Budget Period Start Date** Date of grant obligation

**Period of Performance/Budget Period End Date** August 31, 2030

This Grant Agreement between the Department of Housing and Urban Development (HUD) and City and County of Denver (the Grantee) is made pursuant to the authority of the Consolidated Appropriations Act, 2022 (Public Law 117-103); and the Explanatory Statement for Division L of that Act, which was printed in the House section of the Congressional Record on March 9, 2022 (Explanatory Statement); and superseding provisions of the Consolidated Appropriations Act, 2023 (Public Law 117-328).

In reliance upon and in consideration of the mutual representations and obligations under this Grant Agreement, HUD and the Grantee agree as follows:

**ARTICLE I. Definitions**

The definitions at 2 CFR 200.1 apply to this Grant Agreement, except where this Grant Agreement specifically states otherwise.

Budget period is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

Period of Performance is defined in 2 CFR 200.1 and begins and ends on the dates specified above for the Period of Performance/Budget Period Start Date and Period of Performance/Budget Period End Date.

**ARTICLE II. Total Grant Amount**

Subject to the provisions of the Grant Agreement, HUD will make grant funds in the amount of \$1,450,000 available to the Grantee.

**ARTICLE III. Award-Specific Requirements**

A. Federal Award Description. The Grantee must use the Federal funds provided under this Grant Agreement (Grant Funds) to carry out the Grantee's "Project." Unless changed in accordance with Article III, section C of this Grant Agreement, the Grantee's Project shall be as described in the Project Narrative that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved Project Narrative as Appendix 1 to the Grant Agreement on the date that HUD signs this Grant Agreement.



**FY 2022 COMMUNITY PROJECT FUNDING  
GRANT AGREEMENT NO. B-22-CP-CO-0160**

B. **Approved Budget.** The Grantee must use the Grant Funds as provided by the Approved Budget. Unless changed in accordance with Article III, section C of this Grant Agreement, the Approved Budget shall be the line-item budget that is approved by HUD as of the date that HUD signs this Grant Agreement. For reference, HUD will attach this approved line-item budget as Appendix 2 to this Grant Agreement on the date that HUD signs this Grant Agreement.

C. **Project and Budget Changes.** All changes to the Grantee's Project or Approved Budget must be made in accordance with 2 CFR 200.308 and this Grant Agreement. To request HUD's approval for a change in the Project or Approved Budget, the Grantee must submit a formal letter to the Director of HUD's Office of Economic Development - Congressional Grants Division through the assigned Grant Officer. The letter must be submitted by email to the assigned Grant Officer and must provide justification for the change. The email submitting the letter must also include a revised project narrative or revised line-item budget, as applicable, that includes the requested change. The Grantee is prohibited from making project or budget changes that would conflict with the Applicable Appropriations Act Conditions described in Article III, section D of this Grant Agreement. The assigned Grant Officer for this grant is provided in the Award Letter for this grant and found on HUD's website. The HUD Office of Economic Development – Congressional Grants Division will notify the Grantee in writing, by email, whether HUD approves or disapproves the change. Before the Grantee expends Grant Funds in accordance with any change approved by HUD or otherwise allowed by 2 CFR 200.308, the Grantee must update its grant information in Disaster Recovery Grant Reporting (DRGR) to reflect that change.

D. **Applicable Appropriations Act Conditions.** The conditions that apply to the Grant Funds as provided by the Consolidated Appropriations Act, 2022, the Explanatory Statement, and the Consolidated Appropriations Act, 2023 are hereby incorporated and made part of this Grant Agreement. In the event of a conflict between those conditions, the conditions provided by the later Act will govern. The Grant Funds are not subject to the Community Development Block Grants regulations at 24 CFR part 570 or Title I of the Housing and Community Development Act of 1974.

E. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. As authorized under 2 CFR 200.307(e)(2), program income may be treated as an addition to the Federal award, provided that the Grantee uses that income for allowable costs under this Grant Agreement. In accordance with 2 CFR 200.307(b), costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the grant. Any program income that cannot be expended on allowable costs under this Grant Agreement must be paid to HUD before closeout of the grant, unless otherwise specified by an applicable Federal statute.

**FY 2022 COMMUNITY PROJECT FUNDING  
GRANT AGREEMENT NO. B-22-CP-CO-0160**

F. The Grantee must use the Grant Funds only for costs (including indirect costs) that meet the applicable requirements in 2 CFR part 200 (including appendices). The Grantee's indirect cost rate information is as provided in Appendix 3 to this Grant Agreement. Unless the Grantee is an Institution of Higher Education, the Grantee must immediately notify HUD upon any change in the Grantee's indirect cost rate during the Period of Performance, so that HUD can amend the Grant Agreement to reflect the change if necessary. Consistent with 2 CFR part 200, Appendix III (C.7), if the Grantee is an Institution of Higher Education and has a negotiated rate in effect on the date this Grant Agreement is signed by HUD, the Grantee may use only that rate for its indirect costs during the Period of Performance.

G. The Grantee must comply with any specific award conditions that HUD may attach to this Grant Agreement as provided by 2 CFR 200.208. If applicable, these conditions will be listed or added as Appendix 5 to this Grant Agreement.

H. The Grantee is responsible for managing the Project and ensuring the proper use of the Grant Funds. The Grantee is also responsible for ensuring the completion of the Project, the grant closeout, and compliance with all applicable federal requirements. The Grantee may subaward all or a portion of its funds to one or more subrecipients, as identified in the Project Narrative (Appendix 1) or as may be approved by HUD in accordance with 2 CFR 200.308. All subawards made with funding under this Grant Agreement are subject to the subaward requirements under 2 CFR art 200, including 2 CFR 200.332, and other requirements provided by this Grant Agreement. The Grantee is responsible for ensuring each subrecipient complies with all requirements under this Grant Agreement, including the general federal requirements in Article IV. A subaward may be made to a for-profit entity only if HUD expressly approves that subaward, and the for-profit entity is made subject to the same Federal requirements that apply to all other subrecipients, including the requirements 2 CFR part 200 provides for a "non-Federal entity" that receives a subaward.

#### **ARTICLE IV. General Federal Requirements**

A. If the Grantee is a unit of general local government, a State, an Indian Tribe, or an Alaskan Native Village, the Grantee is the Responsible Entity (as defined in 24 CFR part 58) and agrees to assume all of the responsibilities for environmental review and decision-making and action, as specified and required in regulations issued by the Secretary pursuant to section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 and published in 24 CFR art 58.

B. If the Grantee is a housing authority, redevelopment agency, academic institution, hospital or other non-profit organization, the Grantee shall request the unit of general local government, Indian Tribe or Alaskan Native Village, within which the Project is located and which exercises land use responsibility, to act as Responsible Entity and assume all of the responsibilities for environmental review and decision-making and action as specified in paragraph A above, and the Grantee shall carry out all of the responsibilities of a grantee under 24 CFR art 58.

**FY 2022 COMMUNITY PROJECT FUNDING  
GRANT AGREEMENT NO. B-22-CP-CO-0160**

C. After Grantee's receipt of the Letter of Invitation for this grant, neither the Grantee nor any of its contractors, subrecipients and other funding and development partners may undertake, or commit or expend Grant Funds or local funds for, project activities (other than for planning, management, development and administration activities), unless a contract requiring those activities was already executed prior to the Letter of Invitation, until one of the following occurs: (i) the Responsible Entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and given a release of funds; (ii) the Responsible Entity has determined and documented in its environmental review record that the activities are exempt under 24 CFR 58.34 or are categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or (iii) HUD has performed an environmental review under 24 CFR part 50 and has notified Grantee in writing of environmental approval of the activities.

D. Following completion of the environmental review process, the Grantee (recipient) shall exercise oversight, monitoring, and enforcement as necessary to assure that decisions and mitigation measures adopted through the environmental review process are carried out during project development and implementation.

E. The Grantee must comply with the generally applicable HUD and CPD requirements in 24 CFR part 5, subpart A, including all applicable fair housing, and civil rights requirements. If the Grantee is a Tribe or a Tribally Designated Housing Entity (TDHE) as established under 24 CFR 1000.206, the Grantee must comply with the nondiscrimination requirements in 24 CFR 1000.12 in lieu of the nondiscrimination requirements in 24 CFR 5.105(a). The Grantee must report data on the race, color, religion, sex, national origin, age, disability, and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of the Grantee's Project, consistent with the instructions and forms provided by HUD in order to carry out its responsibilities under the Fair Housing Act, Executive Order 11063, Title VI of the Civil Rights Act of 1964, and Section 562 of the Housing and Community Development Act of 1987 (e.g. HUD-27061).

F. The Grantee must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 CFR part 200, as may be amended from time to time. If 2 CFR part 200 is amended to replace or renumber sections of part 200 that are cited specifically in this Grant Agreement, the part 200 requirements as renumbered or replaced by the amendments will govern the obligations of HUD and the Grantee after those amendment become effective.

G. The Grantee must comply with the Award Term in Appendix A to 2 CFR part 25 ("System for Award Management and Universal Identifier Requirements") and the Award Term in Appendix A to 2 CFR part 170 ("Reporting Subawards and Executive Compensation"), which are hereby incorporated into and made part of this Grant Agreement.

H. If the Total Grant Amount, as provided in Article II of this Grant Agreement, is greater than \$500,000, the Grantee must comply with the Award Term and Condition for Grantee Integrity and Performance Matters in Appendix 4 to this Grant Agreement.

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I. Unless the Grantee is exempt from the Byrd Amendment as explained below, the Grantee must comply with the provisions of Section 319 of Public Law 101-121, 31 U.S.C. 1352, (the Byrd Amendment) and 24 CFR part 87, which prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement. The Grantee must include in its award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), the requirements for the certification required by Appendix A to 24 CFR part 87 and for disclosure using Standard Form- LLL (SF-LLL), "Disclosure of Lobbying Activities." In addition, the Grantee must obtain the executed certification required by Appendix A and an SF-LLL from all covered persons. "Person" is as defined by 24 CFR part 87. Federally recognized Indian tribes and TDHEs established by Federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment. State-recognized Indian tribes and TDHEs established only under state law must comply with this requirement.

J. The Grantee must comply with drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988, Pub. L. 100-690, Title V, Subtitle D (41 U.S.C. 701-707).

K. The Grantee must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) as implemented by regulations at 49 CFR part 24. The URA applies to acquisitions of real property and relocation occurring as a direct result of the acquisition, rehabilitation, or demolition of real property for Federal or Federally funded programs or projects. Real property acquisition that receives Federal financial assistance for a program or project, as defined in 49 CFR 24.2, must comply with the acquisition requirements contained in 49 CFR part 24, subpart B. Unless otherwise specified in law, the relocation requirements of the URA and its implementing regulations at 49 CFR part 24, cover any displaced person who moves from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD financial assistance

L. If Grant Funds are used for purchase, lease, support services, operation, or work that may disturb painted surfaces, of pre-1978 housing, you must comply with the lead-based paint evaluation and hazard reduction requirements of HUD's lead-based paint rules (Lead Disclosure; and Lead Safe Housing (24 CFR part 35)), and EPA's lead-based paint rules (e.g., Repair, Renovation and Painting; Pre-Renovation Education; and Lead Training and Certification (40 CFR part 745)).

M. The Grantee must comply with Section 3 of the Housing and Urban Development Act of 1968 (Section 3), 12 U.S.C. 1701u, and HUD's regulations at 24 CFR part 75, as applicable, including the reporting requirements in 24 CFR 75.25. Grants made to Tribes and TDHEs are subject to Indian Preference requirements in Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)). As stated in 24 CFR 75.3(c), grants to Tribes and TDHEs are subject to Indian Preference requirements in lieu of Section 3. Grantees that are not exempt from Section 3 must submit annual reports of Section 3

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accomplishment Performance Measures in DRGR in January of the calendar year. This report reflects Section 3 accomplishments for the previous calendar year.

N. The Grantee must not use any Grant Funds to support any Federal, state, or local project that seeks to use the power of eminent domain, unless eminent domain is employed only for a public use. Public use includes use of funds for mass transit, railroad, airport, seaport, or highway projects, and utility projects which benefit or serve the general public (including energy-related, communication-related, water-related, and waste water-related infrastructure), other structures designated for use by the general public or with other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields, as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107-118). Public use does not include economic development that primarily benefits private entities.

O. The Grantee must not use any Grant Funds to maintain or establish a computer network that does not block the viewing, downloading, and exchanging of pornography. This requirement does not limit the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.

P. The Grantee must administer its Grant Funds in accordance with the Conflict of Interest requirements set forth in Appendix 6 of this Grant Agreement.

Q. The Grantee must comply with the governmentwide debarment and suspension requirements in 2 CFR part 180 as incorporated and supplemented by HUD's regulations at 2 CFR part 2424.

R. The Grantee must comply with the award term and condition regarding trafficking in persons in Appendix 7 of this Grant Agreement.

S. The assurances and certifications the Grantee has made and submitted to HUD are incorporated by this reference and made part of this Grant Agreement.

#### **ARTICLE V. Drawdown Requirements**

A. The Grantee may not draw down Grant Funds until HUD has received and approved any certifications and disclosures required by 24 CFR 87.100 concerning lobbying, if applicable.

B. The Grantee must use HUD's Disaster Recovery Grant Reporting (DRGR) system to draw down Grant Funds and report to HUD on activities.

C. The Grantee must enter activity and budget information in DRGR that is consistent with the Project and Approved Budget as described in Article III, sections A and B of this Grant Agreement and complies with HUD's instructions for entering information in DRGR found in

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the document titled “Grant Award Instructions” that accompanies the Grant Agreement. The Grantee must only enter activities in DRGR that are described in the Approved Budget.

D. The Grantee must expend all Grant Funds in accordance with the activity and budget information in DRGR.

E. Each drawdown of Grant Funds constitutes a representation by the Grantee that the funds will be used in accordance with this Grant Agreement.

F. The Grantee must use DRGR to track the use of program income and must report the receipt and use of program income in the reports the Grantee submits to HUD under Article VI of this Grant Agreement. The Grantee must expend program income before drawing down Grant Funds through DRGR.

G. Notwithstanding any other provision of this grant agreement, HUD will not be responsible for payment of any Grant Funds after the date Treasury closes the account in accordance with 31 U.S.C. § 1552. Because Treasury may close the account up to one week before the September 30 date specified by 31 U.S.C. § 1552, the grantee is advised to make its final request for payment under the grant no later than September 15, 2030.

## **ARTICLE VI. Program-Specific Reporting Requirements**

In addition to the general reporting requirements that apply under other provisions of this Agreement, the following program-specific reporting requirements apply to the Grantee:

A. The Grantee must submit a performance report in DRGR on a semi-annual basis and must include a completed Federal financial report as an attachment to each performance report in DRGR. Performance reports shall consist of a narrative of work accomplished during the reporting period. During the Period of Performance, the Grantee must submit these reports in DRGR no later than 30 calendar days after the end of the 6-month reporting period. The first of these reporting periods begins on the first of January or June (whichever occurs first) after the date this Grant Agreement is signed by HUD.

B. The performance report must contain the information required for reporting program performance under 2 CFR 200.329(c)(2) and (d), including a comparison of actual accomplishments to the objectives of the Project as described in Article III, section A of this Grant Agreement; the reasons why established goals were not met, if appropriate; and additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

C. Financial reports must be submitted using DRGR or such future collections HUD may require and as approved by OMB and listed on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>).

D. The performance and financial reports will undergo review and approval by HUD. If a report submission is insufficient, HUD will reject the report in DRGR and identify the corrections the Grantee must make.

E. No drawdown of funds will be allowed through DRGR while the Grantee has an overdue performance or financial report.

F. The Grantee must report and account for all property acquired or improved with Grant Funds as provided by 2 CFR part 200 using the applicable common forms approved by OMB and provided on the Grants.gov website (<https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>). This reporting obligation includes submitting status reports on real property at least annually as provided by 2 CFR 200.330, accounting for real and personal property acquired or improved with Grant Funds as part of Project Closeout, and promptly submitting requests for disposition instructions as provided by 2 CFR 200.311(c), 200.313(e), and 200.314(a).

## **ARTICLE VII. Project Closeout**

A. The grant will be closed out in accordance with 2 CFR part 200, as may be amended from time to time, except as otherwise specified in this Grant Agreement.

B. The Grantee must submit to HUD a written request to closeout the grant no later than 30 calendar days after the Grantee has drawn down all Grant Funds and completed the Project as described in Article III, section A of this Grant Agreement. HUD will then send the Closeout Agreement and Closeout Certification to the Grantee.

C. At HUD's option, the Grantee may delay initiation of project closeout until the resolution of any findings as a result of the review of semi-annual activity reports in DRGR. If HUD exercises this option, the Grantee must promptly resolve the findings.

D. The Grantee recognizes that the closeout process may entail a review by HUD to determine compliance with the Grant Agreement by the Grantee and all participating parties. The Grantee agrees to cooperate with any HUD review, including reasonable requests for on-site inspection of property acquired or improved with Grant Funds.

E. No later than 120 calendar days after the Period of Performance, Grantee shall provide to HUD the following documentation:

1. A Certification of Project Completion.
2. A Grant Closeout Agreement.
3. A final financial report giving the amount and types of project costs charged to the grant (that meet the allowability and allocability requirements of 2 CFR part 200, subpart E); a certification of the costs; and the amounts and sources of other project funds.

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4. A final performance report providing a comparison of actual accomplishments with the objectives of the Project as described in Article III, section A of this Grant Agreement, the reasons for slippage if established objectives were not met and additional pertinent information including explanation of significant cost overruns.
5. A final property report, if specifically requested by HUD at the time of closeout.

**ARTICLE VIII. Default**

A default under this Grant Agreement shall consist of any use of Grant Funds for a purpose other than as authorized by this Grant Agreement, any noncompliance with statutory, regulatory, or other requirements applicable to the Grant Funds, any other material breach of this Grant Agreement, or any material misrepresentation in the Grantee's submissions to HUD in anticipation of this award. If the Grantee fails to comply with the terms and conditions of the Grant Agreement, HUD may adjust specific conditions of this Grant Agreement as described in 2 CFR part 200, as may be amended from time to time. If HUD determines that noncompliance cannot be remedied by imposing additional conditions, HUD may take one or more of the remedies for noncompliance described in 2 CFR part 200, as may be amended from time to time. HUD may also terminate all or a part of this award as provided by 2 CFR 200.340 and other applicable provisions of 2 CFR part 200, as may be amended from time to time. Nothing in this Grant Agreement shall be construed as creating or justifying any claim against the Federal government or the Grantee by any third party.



**ARTICLE IX. HUD Contact Information**

Except where this Grant Agreement specifically states otherwise, all requests, submissions, and reports the Grantee is required to make to HUD under this Grant Agreement must be made in writing via email to CPFGGrants@hud.gov.

**This agreement is hereby executed on behalf of the Grantee and HUD as follows:**

**GRANTEE**

**City and County of Denver**

(Name of Organization)

BY: *Laura Brudzynski*  
(Signature of Authorized Official)

**Laura Brudzynski** Chief Housing Officer and Executive Director, Department of Housing Stability

(Typed Name and Title of Authorized Official)

July 13th, 2023  
(Date)

HUD BY: 

<b>NADAB BYNUM</b> Digitally signed by NADAB BYNUM Date: 2024.01.23 17:17:41 -05'00'
--

Nadab Bynum,  
Acting Deputy Assistant Secretary for Economic Development

\_\_\_\_\_  
(Date)

**APPENDIX 1 – Project Narrative**

The approved narrative has been appended to the end of the grant agreement.

**APPENDIX 2 – Approved Budget**

The approved budget has been appended to the end of the grant agreement.

**APPENDIX 3 – Grantee’s Indirect Cost Rate Information**

Subject to the applicable requirements in 2 CFR part 200 (including its appendices), the Grantee will use an indirect cost rate as represented by the Grantee below:

- The Grantee will not use an indirect cost rate to charge its indirect costs to the grant.

The Grantee will use the indirect cost rate(s) identified in the table below to charge its indirect costs to the grant.

Agency/Dept./Major Function	Indirect cost rate	Direct Cost Base
_____	_____ %	_____
_____	_____ %	_____

[PLEASE NOTE: The grantee must check one of the two boxes above. If the second box is checked, the corresponding table must be filled out as described below.

The table must include each indirect cost rate that will be used to calculate the Grantee’s indirect costs under the grant. The table must also specify the type of direct cost base to which each included rate applies (for example, Modified Total Direct Costs (MTDC)). Do not include indirect cost rate information for subrecipients.

For government entities, enter each agency or department that will carry out activities under the grant, the indirect cost rate applicable to each department/agency (including if the de minimis rate is used per 2 CFR 200.414), and the type of direct cost base to which the rate will be applied.

For nonprofit organizations that use the Simplified Allocation Method for indirect costs or elects to use the de minimis rate of 10% of Modified Total Direct Costs in accordance with 2 CFR 200.414, enter the applicable indirect cost rate and type of direct cost base in the first row of the table.

For nonprofit organizations that use the Multiple Allocation Base Method, enter each major function of the organization for which a rate was developed and will be used under the grant, the indirect cost rate applicable to that major function, and the type of direct cost base to which the rate will be applied.]

**APPENDIX 4 –  
Award Term and Condition for Grantee Integrity and Performance Matters**

## Reporting of Matters Related to Grantee Integrity and Performance

*1. General Reporting Requirement*

If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then during that period of time the Grantee must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

*2. Proceedings About Which Grantee Must Report*

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b. Reached its final disposition during the most recent five-year period; and
- c. Is one of the following:
  - (1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and the Grantee's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (4) Any other criminal, civil, or administrative proceeding if:
    - (i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

- (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Grantee's part; and
- (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

### *3. Reporting Procedures*

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. The Grantee does not need to submit the information a second time under assistance awards that the Grantee received if the Grantee already provided the information through SAM because the Grantee was required to do so under Federal procurement contracts that the Grantee was awarded.

### *4. Reporting Frequency*

During any period of time when the Grantee is subject to the requirement in paragraph 1 of this award term and condition, the Grantee must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the Grantee has not reported previously or affirm that there is no new information to report. If the Grantee has Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000, the Grantee must disclose semiannually any information about the criminal, civil, and administrative proceedings.

### *5. Definitions*

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a cost share or match requirement; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**APPENDIX 5 – Specific Award Conditions**  
NONE.

## APPENDIX 6 – Conflict of Interest Requirements

1. *Conflicts Subject to Procurement Regulations.* When procuring property or services, the grantee and its subrecipients shall comply with the applicable conflict-of-interest rules in 2 CFR 200.317 and 2 CFR 200.318(c). In all cases not governed by 2 CFR 200.317 and 2 CFR 200.318(c), the Grantee and its subrecipients must follow the requirements contained in paragraphs 2-5 below.

2. *General prohibition.* No person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee or subrecipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), sibling (including a stepsibling), grandparent, grandchild, and in-laws of a covered person.

3. *Exceptions.* HUD may grant an exception to the general prohibition in paragraph (ii) upon the Grantee's written request and satisfaction of the threshold requirements in paragraph (iv), if HUD determines the exception will further the Federal purpose of the award and the effective and efficient administration of the Grantee's project, taking into account the cumulative effects of the factors in paragraph (v).

4. *Threshold requirements for exceptions.* HUD will consider an exception only after the Grantee has provided the following documentation:

- a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how that disclosure was made; and
- b. An opinion of the Grantee's attorney that the interest for which the exception is sought would not violate state or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the Grantee has satisfactorily met the threshold requirements in paragraph (iii), HUD will consider the cumulative effect of the following factors, where applicable:

- a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- b. Whether an opportunity was provided for open competitive bidding or negotiation;
- c. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception



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will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

*d.* Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process regarding the assisted activity in question;

*e.* Whether the interest or benefit was present before the affected person was in a position as described in paragraph (ii);

*f.* Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

*g.* Any other relevant considerations.

*6. Disclosure of potential conflicts of interest.* The Grantee must disclose in writing to HUD any potential conflict of interest.

## APPENDIX 7 – Award Term and Condition Regarding Trafficking in Persons

The following award term and condition, which is required by 2 CFR part 175, applies as written:

*a. Provisions applicable to a grantee that is a private entity.*

1. You as the grantee, your employees, subrecipients under this award, and subrecipients' employees may not—
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity:
  - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
  - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

*b. Provision applicable to a grantee other than a private entity.*

We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:

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- i. Associated with performance under this award; or
- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by HUD at 2 CFR 2424.

*c. Provisions applicable to any grantee.*

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

*d. Definitions. For purposes of this award term:*

1. “Employee” means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

The Executive Director of the City's Department of Housing Stability ("HOST"), or permitted designee, is authorized to (i) execute documents on behalf of the City necessary to receive grant funds from the U.S. Department of Housing and Urban Development ("HUD"), including the FY 2022 Community Funding Grant Agreement No. B-22-CP-CO-0160 ("Grant Agreement"), so long as the documents requiring the City's signature are executed or requested by HUD; and (ii) submit to HUD a Project Narrative and Approved Budget (a draft of which follows this page), as required by Article III. A. and B., for the respective documents to be attached to the Grant Agreement by HUD.

**MONTBELLO FRESHLO HUB  
AFFORDABLE APARTMENT CONSTRUCTION  
FY2022 CPF: B-22-CP-CO-0160**

**PROJECT NARRATIVE**

**Summary**

The City and County of Denver (CCD) was designated as a recipient of Community Project Funding in the amount of \$1,450,000 for Affordable Apartment Construction (B-22-CP-CO-0160) for the project described herein. CCD intends to grant the CP funds to a sub-recipient, the project’s non-profit sponsor, the Montbello Organizing Committee (MOC), which will in turn loan them at a below market interest rate to the project entity.

MOC will fulfill the role, responsibilities, and functions described in this project narrative. MOC’s EIN is 81-4339690.

**Description**

The Montbello FreshLo Hub (the HUB) is a 97-unit affordable Low Income Housing Tax Credit project with one-, two-, and three-bedroom apartments for families earning 30–70% of area median income. The building will be the only affordable housing development in Montbello that provides multi-bedroom units, suitable for families.

Additionally, the HUB will include a flexible retail incubation space where entrepreneurs can offer new products at kiosks and test their concepts. Finally, the HUB will include a Community Service Facility providing mental health services for residents of the HUB and the Montbello neighborhood via WellPower, formerly the Mental Health Center of Denver. The HUB is at the heart of a six-mile walkable loop that connects the community to services, retail, and arts.

**Project Address:** 12300 Albrook Drive Denver, Co. 80239 (now 12444 East Albrook Drive)

**Census Tract Number:** 08031008312

**Acquisition Date:** 2020

**Square Footage of Building:** 124,527 sq ft

**Total Cost of Development and Construction:** \$51,782,231

**CP Funding:** \$1,450,000

## **Community and Project Background**

Montbello is a large, vibrant, and diverse community in Far Northeast Denver. An early planned community, the area consists of single-family homes with high rates of homeownership and is separate and distinct from nearby neighborhoods. Despite its vibrant and strong community fabric, Montbello faces economic challenges, in part due to years of underinvestment in infrastructure and community resources.

To address issues affecting Montbello, the community created Montbello Organizing Committee (MOC), a nonprofit organization established to galvanize Montbello residents and provide them with the tools and resources necessary to develop their leadership skills so that they can proactively address the issues affecting their community and quality of life. The community has driven the efforts for the FreshLo Hub.

The Montbello neighborhood is desperately in need of quality affordable housing. Montbello is characterized as Severely Distressed based on Median Family Income of 51.16%.

**Affordability:** Montbello has an average household size of 4.05 which is 58% larger than the metro Denver average. To best serve this family-oriented community, the HUB will offer a wide range of generously sized units and layout options. The LIHTC project will include 49 one-bedroom apartments, 33 two-bedroom apartments, and 15 three-bedroom apartments for families earning at or below 30-70% of the area median income (AMI). Of the 97 total units, seven will serve households earning at or below 30% AMI, 17 units will serve households at or below 50% AMI, 55 units will serve households at or below 60% AMI, and 18 units will serve households at or below 70% AMI.

**Location:** After a three-year planning process and participation from over 2,500 Montbello neighborhood residents, the abandoned RTD Park and Ride (vacant since April 2016) emerged as the preferred location for the HUB. Montbello is one of Denver's largest and most diverse neighborhoods with 61% of the total 41,000 residents identifying as Latinx, 24% African American and 11% Caucasian. The neighborhood consists predominantly of single-family homes with relatively few multifamily rental options.

**Connectivity:** Access to public transportation is excellent with a bus stop adjacent to the site offering frequent service by two bus lines (Route 42 and 45). Together, these routes include stops at three rail stations—Peoria, Gateway Park, and Central Park. Route 45 offers residents a 7-minute ride to the Peoria Station which provides access to employment centers at the Anschutz campus, DIA, and downtown via the "A" and "R" lines. The site is very walkable and has convenient pedestrian access to employment and neighborhood amenities such as a library, post office, municipal center, multiple schools, park, and health center.

The HUB will renew and enhance the entire Montbello community with a central and welcoming place for healthy living, cultural exploration, and safe gatherings. Residents will enjoy multiple amenities including a full appliance package with microwaves and ovens; in unit

washers and dryers; parking; and access to common areas. In addition to the mental health center and retail space on the first floor, the second floor common and fitness rooms will open onto a patio featuring space for community gardens and outdoor programming.

### **Readiness**

The HUB is ready to commence construction upon approval by HUD and release of requested funds. The site is owned by Montbello Organizing Committee and is zoned for mixed use development. The project's financing, development, and required approval timeline will allow the project to close in February of 2023.

***Please note, Montbello Organizing Committee will not begin construction before HUD has approved the environment certification of compliance and the Request for Release of Funds.***

The HUB building will consist of six floors and be approximately 124,527 sq ft. The upper five floors will consist of 97 units of affordable housing serving families with 30% - 70% AMI while the mental health center, community wealth building center, a community meeting space, retail space, and office space will comprise the first floor. The project is on track to close its financing in February 2023.

This project is a dense urban development with the associated expenses of maximizing density in mid-rise construction. The building is six stories with associated mid-rise construction costs and requires two elevators within the residential area to serve the 97 units. The geotechnical soils report suggests that the underlying soil conditions require a drilled pier foundation, which impacts costs. Cost containment measures have already been taken by the development team.

### **Development and Construction Funding**

Total costs for the project are approximately \$51.8 mm. 100% of the \$1,450,000 in HUD funding will be used for construction. Overall, the FreshLo HUB will leverage a variety of financing and revenue sources, including Low-Income Housing Tax Credits (LIHTC), Colorado State Affordable Housing Tax Credits, government grants, and construction loans. See attached Line-Item Budget for details. All other funding sources for the project are committed.

### **Green Building Features**

The Montbello FreshLo HUB will achieve the National Green Building Standard (NGBS) GOLD certification, an ANSI-accredited, third party certified, residential building standard that demonstrates high-performance building in 6 areas: Lot Design and Development, Resource Efficiency, Water Efficiency, Energy Efficiency, Indoor Environmental Quality, and Building Operation & Maintenance. Energy efficiency and reduced operating costs are a key focus. The current project design exceeds 2018 International Energy Conservation Code (IECC) baseline requirements by 24.0% and meets the highest certification level in the energy efficiency of NGBS (Emerald).



**Construction Jobs**

The project is committed to having 25% MBE/WBE subcontractors incorporated into the construction process. The primary architect for the HUB LIHTC building is minority-owned. Additionally, the General Contractor of the HUB building is partnering with a minority owned firm based in Montbello and with strong roots in the community. The construction is anticipated to create approximately 80 construction jobs.

**Developer Experience**

MOC has carefully assembled a development team with the depth of tax credit experience and the breadth of community involvement vital to complete this much needed mixed-use project. The project is a partnership between FLO Development Services LLC (principals are John Huggins of Longs Peak Advisors, LLC; Denise Burgess of Burgess Community Development; and Willie Shepherd of Platten Strasse, LLC and Burgess Community Development) and the Montbello Organizing Committee.

John Huggins has over three decades of experience working in affordable housing and with LIHTC projects. He has been an active participant in the development of three LIHTC projects in Colorado – University Station Apartments (9%) and Ash Street Apartments in Denver (4% & State) in addition to Eaton Street Apartments in Westminster (4% & State). His responsibilities for these developments included negotiating the non-LIHTC public financial support (Ash and Eaton); securing the initial land acquisition/site control (University Station); and participating in design and financial planning through construction (Ash and Eaton). John also has experience with New Markets Tax Credit projects as both a developer and public finance official.

Van Meter Williams Pollack LLP merges their LIHTC expertise with The Roybal Corporation's affordable housing experience to create a formidable and diverse architect team, augmented by consulting and engineering firms Boulder Engineering; Wilson & Company; KL&A, Inc.; Olsson, Inc.; and Group14 Engineering with deep experience in affordable housing.

Alliance Construction Solutions in partnership with Gilmore Construction (a minority owned firm based in Montbello) is the General Contractor. Alliance with more than 40 years of experience in the industry specializes in affordable housing, healthcare, hospitality, education, multi-family, and commercial building solutions. Gilmore Construction is one of Colorado's largest minority-owned, commercial construction companies. They specialize in design/build, pre-construction, and construction. Ross-Envolve, a leader in Denver affordable multifamily housing management, is the residential property management firm. Ross has extensive experience in the leasing and management of market rate, affordable, tax credit, senior, and service enriched properties layered with various funding vehicles.

**Community Benefits**

Investors and lenders have determined a set of impact goals that are articulated to provide substantial benefit to the Montbello community and its residents. These include but are not limited to the following:

a) Affordable Housing

- LIHTC building to provide approximately 97 units of housing, from one- to three-bedroom units, targeted to individuals and families living at 30%-70% AMI in accordance with applicable LIHTC regulations;

b) Community/Community Governance

- Offer space for community gatherings and fellowship among community leaders/groups seeking to bring voice to community members;
- Ensure that the governing body of the Project includes one or more voting members from the Target Area and/or the HUB;

c) Economic Development

- Job creation;
- Offer a percentage of available commercial square footage for rental by local business owners, in particular female-identifying entrepreneurs and/or those of minority backgrounds;
- Provide available on-site office space to nonprofits serving low-income Coloradans;
- Create employment opportunities for approximately 25 persons through activities within the HUB, including through the office and retail tenants;
- Create employment opportunities for approximately 80 persons through the construction of the HUB;
- Provide capacity building to business owners through MOC's Building Wealth from Within Initiative;

d) Health Impacts

- Reduce housing cost burden/improve affordability by providing affordable rental units;
- Ensure safety and quality of homes through periodic building inspections in accordance with LIHTC regulations;
- Connect the larger community to the HUB through a walkable loop promoting exercise and healthy living habits;
- Prohibit smoking within and on the grounds of the HUB as permitted by applicable law.

**Community Support**

The HUB is possibly the most community inspired and directed project in Denver's history. Literally thousands of Montbello residents have participated in the conceptualization and planning for this project.

In 2014, a group of Montbello residents began organizing their neighbors in response to the closure of the last full-service grocery store in the community, which temporarily rendered the neighborhood a Food Desert. Catalyzed by their efforts to bring back a grocery store to the Montbello neighborhood, this group of residents incorporated themselves as the Montbello Organizing Committee (MOC).

In 2016 and 2018, MOC led two community-wide surveys that were completed by over 2,500 people. The results highlighted the need for affordable housing, a grocery store and community

arts space in Montbello. From this feedback, MOC began to build a foundation for the FreshLo Hub. In March 2018, the Urban Land Institute completed an Advisory Panel study process for the community, culminating in a report (available upon request) which called for a fresh food market, cultural hub, affordable housing, and a walkable loop to connect the site to nearby civic amenities.

In 2020 and 2021 the MOC Community Engagement team met with the community and began sharing early design renderings and asked residents to “dream with us.” After such a meeting, a Montbello mother cried as she expressed how thankful she was that The HUB would allow her to continue living in her community despite the lack of affordable housing. At every turn, the promise of The HUB brought hope to residents. In the end, the Community Engagement team collected hundreds of dreams and organized them into the main policy impact areas which are addressed through the FreshLo Hub: access to fresh, healthy food; affordable family housing; small business and community spaces; and culturally relevant programming.

The public hearing required for the CHFA LIHTC application was attended by over one thousand participants via Zoom and Facebook Live. One participant and community leader, Vernon Jones, explained that The HUB “is what will help heal the community. This gives the community hope. And this will hold us up for generations to come... I mean, this is, this is why we're alive—to do this kind of work.”

The Community Engagement team has received numerous support letters for the tax credit application and will continue to build and maintain strong connections in Montbello.

**PROJECT BUDGET**

Land and Building	1,300,000
Construction	36,176,187
Common Areas FF&E	450,000
3rd Party/Admin	35,000
Other Construction Interim Costs	2,401,272
Professional and Predevelopment Fees	2,317,037
Other Permanent Financing Costs	431,601
Soft Costs Tax Credit Eligible	246,669
Soft Costs Tax Credit Ineligible	585,023
Syndication Costs	40,000
Construction Loan Eligible Interest	1,917,698
Interest Expense Tax Credit Ineligible	1,550,839
Developer Fee Category for Developer	3,375,995
Developer Fee Category for Consultants/Other	146,000
Project Reserves	809,000
<b>Total</b>	<b>51,782,321</b>

**USE OF CPF**

Construction	1,450,000
<b>Total</b>	<b>1,450,000</b>


**Contract Control Number:** HOST-202366805-00  
**Contractor Name:** U.S. Department of Housing & Urban Development (HUD)


IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of: 6/26/2023 | 10:05 AM PDT

**SEAL** DocuSigned by:  


**CITY AND COUNTY OF DENVER:**

**ATTEST:**

DocuSigned by:  
  
401385B9DD354C3...  
Clerk and Recorder/Public Trustee  
Paul López

By: DocuSigned by:  
  
63CED49359814EC...  
Mayor  
Michael B. Hancock


**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By: DocuSigned by:  
  
B59DAD348660494...  
Assistant City Attorney  
Eliot Schaefer

By: DocuSigned by:  
  
F121BA102D29409...  
Chief Financial officer  
Margaret Danuser

By: DocuSigned by:  
  
0269594F8B7845D...  
Auditor  
Timothy O'Brien

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

HOST-202366805-00  
U.S. Department of Housing & Urban Development (HUD)

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

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

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

ATTEST: [if required]

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

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

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

## 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.