

SECOND AMENDATORY AGREEMENT

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

RECITALS:

A. The Parties entered into an Agreement on May 22, 2019 for the City to provide funding to the Contractor to support the construction of accessory dwelling units through the Contractor’s West Denver Single Family Plus Program (the “Original Agreement”); and

B. The Parties entered into a First Amendatory Agreement (the “First Amendment,” and collectively with the Original Agreement, the “Agreement”) on July 8, 2021, to revive and amend the agreement to extend the term and revise the scope of work; and

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

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

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

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

“The Agreement will commence on January 1, 2019 and will expire on December 31, 2024 (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

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

“Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed ONE MILLION ONE HUNDRED THIRTY THOUSAND DOLLARS and NO/100 (\$1,130,000.00) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A-1**. Any services performed beyond those in **Exhibit A-1** are performed at Contractor’s risk and without authorization under the Agreement.”

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

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

[SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

Contract Control Number:
Contractor Name:

HOST-202265146-02 / OED-201846549-02
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202265146-02 / OED-201846549-02
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

By: See attached signature page

Name: See attached signature page
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

HOST-202265146-02 / OED-201846549-02
HOUSING AUTHORITY OF THE CITY AND COUNTY
OF DENVER, COLORADO

By: David Nisivoccia
David Nisivoccia (Dec 12, 2022 14:30 MST)

Name: David Nisivoccia
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

SCOPE OF WORK
DEPARTMENT OF HOUSING STABILITY
HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER
HOST-202265146-02
SECOND AMENDMENT

I. INTRODUCTION

Period of Performance Start and End Dates: January 1, 2019 – December 31, 2024

Project Description:

The purpose of this contract amendment is to provide an additional Department of Housing Stability (HOST) grant award in the amount of \$630,000.00 for a total award amount of \$1,130,000.00 and to extend the maturity date from December 31, 2022, to December 31, 2024. These funds will be provided to the Housing Authority of the City and County of Denver through its entity West Denver Renaissance Collaborative (“WDRC”) to be utilized for the creation of 18 additional Accessory Dwelling Units (“ADU”), for a total of 35 ADUs during the pilot phase, increasing the per ADU subsidy from \$30,000 to \$35,000.

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

II. DHA RESPONSIBILITES

DHA, through WDRC, is responsible for providing design and permitting, financing, and construction management services to participants in a manner satisfactory to the City and consistent

with all standards required as a condition of receiving these funds. Additionally, DHA, through WDRC, is responsible for monitoring and compliance of resales and repayments of program income throughout the period of affordability of each unit.

1. Each ADU developed under this agreement must be occupied for residential use. It may not be used as an office, workspace, short-term rental, or other non-dwelling use.
2. The maximum subsidy allowed is \$35,000 per ADU.
3. No fewer than twenty-five (25) ADUs must be built in West Colfax, Sun Valley, Lincoln Park, Villa Park, Barnum, West Barnum, Valverde, Westwood, and Athmar Park.
4. No more than ten (10) ADUs may be built citywide.
5. DHA is responsible for marketing, selection, and income qualification of participants.
6. To receive City funding, participants must complete an income verification process. Either the homeowner or ADU renter must have incomes at or below 80% of the Area Median Income (“AMI”) as determined by the U.S. Department of Housing and Urban Development (“HUD”).
 - a. Homeowners with incomes at or below 80% of the AMI at the time of application may receive City funding. No subsequent income verification of the homeowner is required.
 - b. Homeowners with incomes above 81% of the AMI may receive City funding provided that the ADU is rented to households with initial incomes at or below 80% AMI for 25 years.
7. DHA will provide technical assistance to the participant with securing financing for the development of the ADU.
8. DHA will manage the planning and permitting for participants, including the completion of all due diligence, required or implied, to ensure permitting approval, including but not limited to:
 - a. Environmental studies;
 - b. Appraisal and appraisal review services;
 - c. Physical Needs Assessment;
 - d. Title Services;
 - e. Zoning Compliance;
 - f. Conveyance document preparation;
 - g. Surveys, maps, and legal descriptions;
 - h. Construction bids and drawings; and
 - i. Securing all required permits.
9. DHA, or its designee, will manage the construction of the ADUs on behalf of participants through issuance of Certificate of Occupancy.
 - a. Construction must be performed by licensed general or specialty contractors.
 - b. All City code requirements must be met.
 - c. Upon completion of construction, but prior to occupancy, the ADU must pass a HOST Housing Completion Inspection.
 - d. Upon completion of construction, DHA will provide HOST with a final line-item construction cost for each ADU.

III. REIMBURSEMENT REQUIREMENTS

1. No more than \$35,000 per ADU will be provided to WDRC, through DHA.

2. DHA may request reimbursement after DHA advances the City Funds to the construction escrow account or directly to the escrow once construction costs up to the \$35,000 have been expended. If funds were advanced by DHA, proof of transfer receipt, along with the settlement statement listing all financing sources, recorded Deed of Trust and Covenant, will be required for reimbursement.
3. DHA must record a DHA Deed of Trust on the property covering the amount provided by the City. The Deed of Trust may be subordinate to the lien of the primary and/or other lenders.
4. DHA must record DHA's ADU Pilot Program Affordability Covenant and Restrictions that encumbers the property for twenty-five (25) years.
5. The per unit subsidy level and total units developed may be adjusted upon approval of the Executive Director of HOST, but the Maximum Contract Amount may not be increased without an amendment to the Agreement.

IV. LONG TERM COMPLIANCE

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

qualifications will occur annually, as needed. The documentation must be sufficient to demonstrate that either the homeowner's or ADU renter's household income did not exceed 80% of the HUD AMI based on household size at the time of qualification.

6. Notification of Sale: DHA must provide the City with notification of any sales of properties that received funding pursuant to this agreement semi-annually, along with the amounts paid at each sale under the requirements of Section IV.1. HOST may, at its option, revise the frequency of notifications.

V. EXCLUDED ACTIVITIES FOR CITY FUNDING

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

VI. PERFORMANCE MONITORING

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