

GRANT AGREEMENT

THIS GRANT AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “City”) and **SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO**, also known as **DENVER PUBLIC SCHOOLS**, a body corporate and politic with an address of 1860 Lincoln St., Denver, CO 80203, jointly (“the Parties”).

The Parties agree as follows:

1. PURPOSE:

a. The City and County of Denver (the “City”) acting through the Denver Department of Public Health and Environment (“DDPHE”) has awarded Denver Public Schools (“DPS”) Healthy Food for Denver’s Kids funds to provide healthy food and food-based education primarily to low income and at-risk children in Denver.

b. DPS will use the grant funds to purchase greenhouse kits and offset program evaluation cost for greenhouses that will be located on a 12-acre property owned by DPS at 4900 S. Field Way, Denver, CO 80123. The completed greenhouses will be operated by DPS’s Food and Nutrition Services (“DPS FNS”). Produce grown at the site will be delivered to a central warehouse at 301 Wyandot St., Denver, CO 80223 and distributed to DPS school kitchens and served to DPS students. Once the greenhouse has achieved financial and operational sustainability, DPS FNS will work with the DPS Career Connect team to create an urban agricultural pathway and identify opportunities to invite the community and DPS students to learn, visit and participate in greenhouse initiatives (the “Project”). Additionally, DPS will host at least one site visit during the grant term for the HFDK Commission and staff. Upon substantial completion of the Project, DPS will display signage and/or online banners noting that the program received funding from the Healthy Food for Denver’s Kids Initiative.

2. MAXIMUM GRANT AMOUNT:

a. The City has granted DPS a total of **ONE MILLION FIVE THOUSAND DOLLARS AND NO CENTS (\$1,005,000.00)** for the purposes set forth in this Grant Agreement. The City’s total payment obligation from any source will not exceed this amount unless and until this Grant Agreement is amended in the same manner as the original agreement.

b. \$1,000,000 of the grant funds will be applied towards the purchase of greenhouse kits.

c. \$5,000 of the grant funds will be used to offset program evaluation costs.

d. The City's payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Grant Agreement. The City does not by this Grant Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Grant Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

3. GRANT FUND DISBURSEMENT:

a. Greenhouse Kits: The parties anticipate two disbursement of Greenhouse Kit funds:

(1) Order Deposit – An amount not to exceed \$500,000.00 will be disbursed as required by the greenhouse manufacturer to place the order for the greenhouse kits. DPS will submit to DDPHE a request for this initial disbursement with documentation sufficiently in advance of the need for funds so that DDPHE can evaluate, approve and disburse funds. DPS will coordinate with DDPHE to determine the necessary lead time well in advance of the need for funds.

(2) Remaining Greenhouse Funds – The second disbursement of greenhouse funds will be made after DPS notifies DDPHE, and DDPHE verifies, that substantial completion of installation of the greenhouse kits has been achieved.

(3) Under no circumstances will the total amount disbursed for greenhouse kits exceed \$1,000,000.00.

(4) Subject to the maximum disbursement of \$1,000,000.00 for greenhouse kits, the Executive Director may, in his sole discretion, approve in an alternate disbursement schedule. Any change to the disbursement schedule must be signed by the Executive Director.

b. Program Evaluation Costs: Program Evaluation Funds of \$5,000.00 will be disbursed upon written request after DPS has submitted its 1st year of quarterly reports and its initial Year End Report.

(1) Quarterly Reports: The grantee will be responsible for reporting on

construction progress, process and outcome measures on a quarterly basis. The grantee will provide a one-page update at the end of each quarter that includes the following: 1. restate the total funding and expected date of completion; 2. the total amount of funds raised to date (paid and pledged); 3. any significant changes in project scope and costs and/or adjustments to the overall campaign goal and timeline; 4. any new major contributors to the project and/or pending grants; 5. project or campaign highlights from the previous quarter due one year after the first grant funds are disbursed.

(2) Year End Report: One year following the first disbursement of grant funds, DPS will a written report detailing what has been accomplished with the funds granted. The funds granted may only be expended for the purposes indicated; funds not so spent must be returned to the City unless other arrangements have been approved by the City.

(3) Final Report: A full and final accounting of how grant funds were used and the extent to which Project objects were met when the Project is complete.

c. All requests by DPS for disbursement of grant funds shall be in a form and contain supporting documentation reasonably acceptable to DDPHE.

4. COORDINATION AND LIAISON: DPS shall comply with all requirements of this Grant Agreement and coordinate their compliance with the Executive Director of Denver's Department of Public Health and Environment, ("Executive Director of DDPHE") or, the Executive Director's Designee.

5. TERM: This Grant Agreement will commence on August 1, 2021 and will expire on August 1, 2023 (the "Term").

6. STATUS: This Grant Agreement does not create any employer-employee relationship between the City and DPS. DPS agrees that its employees, consultants, and contractors are not employees of the City. DPS is an independent entity receiving grant funds for the purposes identified in this Grant Agreement and is not retained to perform professional, technical or construction related services. No DPS employees or contractors, consultants or workers retained by DPS for the Project or paid with grant funds are employees or officers of the City for any purpose whatsoever.

7. **CITY NOT RESPONSIBLE FOR CLAIMS:** The City is not responsible for any claims, costs, demands, or liabilities arising out of or related to the Project. DPS is responsible for compliance with all applicable Federal, state, and local requirements.

9. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to DPS's performance pursuant to this Grant Agreement, provision of any goods or services to the City, and any other transactions related to this Grant Agreement. DPS 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.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

11. **INSURANCE:**

a. **General Conditions:** At all times during the term of this Grant Agreement, including any extension by amendment, and continuing until all work is finally complete, DPS shall require that all Contractors and Consultants working on the project maintain the coverage required by this Grant Agreement. DPS shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act ("CGIA"). This obligation shall survive the termination of this Grant Agreement.

b. **Contractors, Subcontractors, Consultants and Subconsultants:** DPS

shall provide a copy of this Grant Agreement to its insurance agent or broker. DPS may not commence services or work relating to the Grant Agreement prior to placement of coverages required under this Grant Agreement. DPS certifies that the certificate of insurance attached as **Exhibit A**, preferably an ACORD certificate, complies with all insurance requirements of this Grant Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Grant Agreement shall not act as a waiver of Contractor's breach of this Grant Agreement or of any of the City's rights or remedies under this Grant Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Auto Liability, and Excess Liability/Umbrella (if required). DPS's Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees, and volunteers as an additional insured.

d. Workers' Compensation/Employer's Liability Insurance: DPS shall ensure that its Contractor(s) 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.

e. Commercial General Liability: DPS shall ensure that its Contractor(s) maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

f. Automobile Liability: DPS shall ensure that its Contractors 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.

12. DEFENSE AND INDEMNIFICATION:

a. DPS is required to defend and indemnify the City only to the extent that such defense and indemnification is permitted by Colorado law.

b. To the extent permitted by law, DPS agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and

against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to this Grant Agreement or any work performed with grant funds, unless such Claims have been specifically determined by the trier of fact to be 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 DPS or its contractors 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.

c. To the extent permitted by law, DPS'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. DPS'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.

d. To the extent permitted by law, DPS 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.

e. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of DPS under the terms of this indemnification obligation. DPS shall obtain, or require that its contractor(s) obtain, any additional insurance that it deems necessary for the City's protection.

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

13. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of this Grant Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in this Grant Agreement gives or allows any claim or right of action to any third person or entity.

14. SEVERABILITY: Except for the provisions of this Grant Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or

unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

15. CONFLICT OF INTEREST: No employee of the City shall have any personal or beneficial interest in the funds dispersed pursuant to this Grant Agreement or the Project described in the Grant Agreement. DPS shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

16. NOTICES: Any notices required by the terms of this Grant Agreement must be mailed by certified mail return receipt requested if by DPS, or mailed via United States mail, postage prepaid, if to DPS at the address first above written, and if to the City at:

Executive Director of Public Health and Environment or Designee
101 W. Colfax Avenue, Suite 800
Denver, CO 80202

With a copy of any such notice to:

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

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

17. DISPUTES: All disputes between the City and DPS arising out of or regarding the 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 as defined in this Agreement.

18. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial

District (Denver District Court).

19. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under the Agreement, the DPS may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The DPS shall insert the foregoing provision in all subcontracts.

20. COMPLIANCE WITH ALL LAWS: DPS shall perform or cause to be performed all services 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.

21. LEGAL AUTHORITY: DPS represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Grant Agreement. Each person signing and executing this Grant Agreement on behalf of DPS represents and warrants that he has been fully authorized by DPS to execute the Grant Agreement on behalf of DPS and to validly and legally bind DPS to all the terms, performances and provisions of the Grant Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Grant Agreement if there is a dispute as to the legal authority of either DPS or the person signing the Grant Agreement to enter into the Grant Agreement.

22. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties and their respective counsel have had the opportunity to review the Grant Agreement, and the Grant Agreement will not be construed against any party merely because any provisions of the Grant Agreement were prepared by a particular party.

23. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Grant Agreement and the exhibits, the language of the Grant Agreement controls.

24. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Grant Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Grant Agreement survive the Grant Agreement and will continue to be enforceable. Without limiting the generality of this provision, the DPS'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.

25. CITY EXECUTION OF GRANT AGREEMENT: The Grant Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

26. GRANT AGREEMENT AS COMPLETE INTEGRATION AMENDMENTS: The Grant Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Grant Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Grant Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Grant Agreement or any written amendment to the Grant Agreement will have any force or effect or bind the City.

27. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: DPS consents to the use of electronic signatures by the City. The Grant Agreement, and any other documents requiring a signature under the Grant Agreement, 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 the Grant 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 the Grant 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

Exhibit A – Certificate of Insurance.

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Contract Control Number: ENVHL-202055481-00
Contractor Name: DENVER PUBLIC SCHOOLS

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:

ENVHL-202055481-00
DENVER PUBLIC SCHOOLS

By:  998C66C85DBC45D...

Name: Theresa Hafner
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/15/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER IMA, Inc. - Colorado Division 1705 17th Street, Suite 100 Denver CO 80202	CONTACT NAME: IMA Denver Team PHONE (A/C, No, Ext): 303-534-4567 E-MAIL ADDRESS: DenAccountTechs@imacorp.com FAX (A/C, No):														
INSURED Denver Public Schools Risk Management 780 Grant Street, Room 319 Denver CO 80203	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Arch Insurance Company</td> <td>11150</td> </tr> <tr> <td>INSURER B : United Educators Ins., RRG</td> <td>10020</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Arch Insurance Company	11150	INSURER B : United Educators Ins., RRG	10020	INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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COVERAGES

CERTIFICATE NUMBER: 956493482

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded: \$250,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			M1976D	7/1/2020	7/1/2021	EACH OCCURRENCE \$ 10,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ Included MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ Included GENERAL AGGREGATE \$ 0 PRODUCTS - COMP/OP AGG \$ 10,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			M1976D	7/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 10,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WCX005713706	7/1/2020	7/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

For Information Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE