

**State of Colorado Loan Agreement
Cover Page**

State Agency Department of Local Affairs for the benefit of the Division of Housing	Agreement Encumbrance Number H#HDGx00000
Borrower Full legal name	CMS Number 000000
Borrower UEI N/A State Funds	Agreement Performance Beginning Date The Effective Date
Agreement Maximum Amount \$000,000.00	Initial Agreement Expiration Date Month Day, Year
	Loan Maturity Date Month Day, Year

Agreement Authority - Authority for this Agreement arises from [INSERT AUTHORITY FROM COMMENT]

Agreement Purpose - [Briefly describe purpose]

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

- Exhibit A – Applicable Laws
- Exhibit B – Statement of Work
- Exhibit C – Reserved.
- Exhibit D – Rent and Income Limits
- Exhibit E – Reserved
- Exhibit F – Use Covenant and Regulatory Agreement
- Exhibit G – Promissory Note
- Exhibit H – Deed of Trust
- Exhibit I – Subordination Agreement(s)
- Exhibit J – Sample Option Letter

In the event of a conflict of inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §19 of the main body of this Agreement.
2. The provisions of the other sections of the main body of this Agreement.
3. Exhibit G – Promissory Note
4. Exhibit H – Deed of Trust
5. Exhibit B – Statement of Work
6. Exhibit F – Use Covenant and Regulatory Agreement
7. Exhibit D – Rent and Income Limits
8. Exhibit A – Applicable Laws
9. Exhibit J – Sample Option Letter
10. Exhibit I – Subordination Agreement(s)

Principal Representatives

For the State:
Tyler Jaeckel, Director
Division of Housing
Department of Local Affairs
1313 Sherman Street, Rm 320
Denver, CO 80203
Tyler.Jaeckel@state.co.us

For Borrower:
[Name, Title]
[Grantee Entity Name]
[Address]
[Address 2]
[City], [State], [Zip]
[Email]

Signature Page

The Parties hereto have executed this agreement.

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

BORROWER

[Entity Name]

DIVISION OF HOUSING

Contract Reviewer

By: [Name, Title]

By: Theresa Cassano, Director, Office of Housing
Finance and Sustainability

Date: _____

Date: _____

STATE OF COLORADO

Jared S. Polis, Governor
DEPARTMENT OF LOCAL AFFAIRS

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: _____

Name: _____

Title: _____

Date: _____

By: Maria De Cambra, Executive Director

Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated above by the State Controller or an authorized delegate.

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1. Parties

This Agreement is entered into by and between Borrower named on the Cover Page for this Agreement (the “Borrower”), and the STATE OF COLORADO (the “State”) acting by and through the Department of Local Affairs (“DOLA”) for the benefit of the Division of Housing (“DOH”). Borrower and the State agree to the terms and conditions in this Agreement.

2. Term and Effective Date

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Loan Funds shall be expended by the Initial Agreement Expiration Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Borrower for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Initial Agreement Expiration Date.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one (1) year or less at the same rates and under the same terms specified in this Agreement (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Borrower in a form substantially equivalent to Sample Option Letter attached to this Agreement. The total duration of this Agreement including the exercise of any options to extend shall not exceed five (5) years from its Effective Date without approval of the Colorado Office of the State Controller.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Borrower as provided in §14, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two (2) months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate

this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Borrower, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Borrower of such termination in accordance with §14. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Borrower shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Borrower an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Borrower for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Borrower which are directly attributable to the uncompleted portion of Borrower's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Borrower hereunder.

F. Grantee's Termination Under Federal Requirements

[Reserved].

3. Definitions

The following terms shall be construed and interpreted as follows:

- A. "Agreement" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. "Award" [Reserved].
- C. "Breach of Agreement" means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Borrower, or the appointment of a receiver or similar officer for Borrower or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, shall also constitute a breach. If Borrower is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. "Budget" means the budget for the Work described in Exhibit B, §5.2.
- E. "Business Day" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.

- F. "CJI" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- G. "CORA" means the Colorado Open Records Act, §§24-72-200.1, et seq., C.R.S.
- H. "Default" means a Breach of Agreement that is not cured within 30 days after the delivery of written notice by the aggrieved Party to the other Party.
- I. "Effective Date" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- J. "End of Term Extension" means the time period defined in §2.D.
- K. "Exhibits" means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- L. "Extension Term" means the time period defined in §2.C.
- M. "Federal Award" [Reserved].
- N. "Federal Awarding Agency" [Reserved].
- O. "Goods" means any movable material acquired, produced, or delivered by Borrower as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Borrower in connection with the Services.
- P. "Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, et. seq., C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.
- Q. "Initial Term" means the time period defined in §2.B.
- R. "Loan Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- S. "Matching Funds" means the funds provided Borrower as a match required to receive the Loan Funds.
- T. "Party" means the State or Borrower, and "Parties" means both the State and Borrower.
- U. "PCI" means payment card information including any data related to credit card holders' names, credit card numbers, or other credit card information as may be protected by state or federal law.
- V. "PII" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment

information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et seq., C.R.S.

- W. “PHI” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- X. “Project” means the overall project described in Exhibit B including, without limitation, the Work and the Services.
- Y. “Subject Property” means real property that Loan Funds are used to acquire; or to which Loan Funds are used to make on-site improvements; or on which Loan Funds are used to construct, rehabilitate, clear or demolish improvements.
- Z. “Recipient” [Reserved].
- AA. “Services” means the services to be performed by Borrower as set forth in this Agreement, and shall include any services to be rendered by Borrower in connection with the Goods.
- BB. “State Confidential Information” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Borrower which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Borrower without restrictions at the time of its disclosure to Borrower; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Borrower to the State; (iv) is disclosed to Borrower, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- CC. “State Fiscal Rules” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- DD. “State Fiscal Year” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- EE. “State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- FF. “Subcontractor” means third-parties, if any, engaged by Borrower to aid in performance of the Work. “Subcontractor” also includes sub-grantees of loan funds.
- GG. “Subrecipient” [Reserved].
- HH. “Tax Information” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related

information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

II. “Uniform Guidance” [Reserved].

JJ. “Work” means the Goods delivered and Services performed pursuant to this Agreement.

KK. “Work Product” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. Statement of Work

Borrower shall complete the Work or cause the Work to be completed as described in this Agreement and in accordance with the provisions of **Exhibit B**. The State shall have no liability to compensate Borrower for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. Payments to Borrower

A. Maximum Amount

Payments to Borrower are limited to the unpaid, obligated balance of the Loan Funds. The State shall not pay Borrower any amount under this Agreement that exceeds the Agreement Maximum shown on the Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Borrower in the amounts and in accordance with the schedule and other conditions set forth in Exhibit B. Satisfactory performance of the terms of this Agreement is a condition precedent to the State’s obligation to pay Borrower.
- b. Borrower shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within forty-five (45) days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Borrower and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Borrower shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within forty-five (45) days of the State’s acceptance

of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of one percent (1%) per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Borrower shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Borrower disputes any calculation, determination or amount of any payment, Borrower shall notify the State in writing of its dispute within thirty (30) days following the earlier to occur of Borrower's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Borrower and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Borrower beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Loan Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Loan Funds, the State's obligation to pay Borrower shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Loan Funds, and the State's liability for such payments shall be limited to the amount remaining of such Loan Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in §2.E.

v. Federal Recovery

[Reserved].

C. Matching Funds

Borrower shall provide Matching Funds as provided in **Exhibit B**. Borrower shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Borrower's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Borrower and paid into Borrower's treasury or bank account. Borrower represents to the State that the amount designated "Borrower's Matching Funds" in **Exhibit B** has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Borrower does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended

to create a multiple-fiscal year debt of Borrower. Borrower shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Borrower's laws or policies.

D. Reimbursement of Borrower Costs

Only with prior written approval, the State shall reimburse Borrower's allowable costs, not exceeding the maximum total amount described on the Cover Page, as described in this Agreement and shown in the Budget in Exhibit B, except that Borrower may adjust the amounts between each line item of the Budget as provided for in §5.4 of Exhibit B, without formal modification to this Agreement as long as the Borrower provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. However, any costs incurred by Borrower prior to the Effective Date shall not be reimbursed absent specific allowance of pre-agreement costs pursuant to §5.2.4 of Exhibit B. Borrower's costs for Work performed after the Initial Agreement Expiration Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Borrower (i.e. the price paid minus any items of value received by Borrower that reduce the cost actually incurred).

E. Close-Out

DOLA shall not release final payment until Borrower has met its close-out obligations, which include, without limitation, completion of the Project, and compliance with all monitoring reporting requirements. Borrower shall close out this Award within forty-five (45) days after the Initial Agreement Expiration Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Borrower shall submit to the State all deliverables (including documentation) as defined in this Agreement and Borrower's final reimbursement request or invoice. The State will withhold up to 10% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. Reporting - Notification

A. Periodic Reports

In addition to any reports required pursuant to §§6, 7 & 16 of this Agreement, Borrower shall comply with all reporting requirements of **Exhibit B**.

B. Litigation Reporting

If Borrower is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Borrower's ability to perform its obligations under this Agreement, Borrower shall, within ten (10) days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page.

C. Performance and Final Status

Borrower shall submit all financial, performance and other reports to the State as provided in §7 of **Exhibit B** and no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Borrower's performance and the final status of Borrower's obligations hereunder.

D. Violations Reporting

Borrower shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery or gratuity violations potentially affecting this Agreement. The State may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. Borrower Records

A. Maintenance

Borrower shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Borrower shall maintain such records for a period (the "Record Retention Period") of three (3) years following the date of submission to the State of the final expenditure report, or if this Agreement is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Agreement starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State. The State may notify Borrower in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Borrower shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Borrower Records during the Record Retention Period. Borrower shall make Borrower Records available during normal business hours at Borrower's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Borrower's performance of its obligations under this Agreement using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Borrower's performance in a manner that does not unduly interfere with Borrower's performance of the Work.

D. Final Audit Report

Borrower shall promptly submit to the State a copy of any final audit report of an audit

performed on Borrower's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Borrower or a third party.

8. Confidential Information-State Records

A. Confidentiality

Borrower shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Borrower shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Borrower shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Borrower or any of its Subcontractors will or may receive the following types of data, Borrower or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Agreement as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Agreement, if applicable. Borrower shall immediately forward any request or demand for State Records to the State's Principal Representative.

B. Other Entity Access and Nondisclosure Agreements

Borrower may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Borrower shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Borrower shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Borrower shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Borrower shall provide the State with access, subject to Borrower's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Borrower shall return State Records provided to Borrower or destroy such State Records and certify to the State that it has done so, as directed by the State. If Borrower is prevented by law or regulation

from returning or destroying State Confidential Information, Borrower warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Borrower becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Borrower can establish that none of Borrower or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Borrower shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Borrower shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Borrower shall make all modifications as directed by the State. If Borrower cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Borrower shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Borrower or any of its Subcontractors will or may receive PII under this Agreement, Borrower shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Borrower shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101, et seq., C.R.S. In addition, as set forth in § 24-74-102, et seq., C.R.S., Borrower, including, but not limited to, Borrower's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Borrower is given direct access to any State databases containing PII, Borrower shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit __ on an annual basis Borrower's duty and obligation to certify as set forth in Exhibit __ shall continue as long as Borrower has direct access to any State databases containing PII. If Borrower uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Borrower shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. Conflicts Of Interest

A. Actual Conflicts of Interest

Borrower shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Borrower under this Agreement. Such a conflict of interest would arise when a Borrower or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Borrower acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Borrower shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Borrower's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Borrower is uncertain whether a conflict or the appearance of a conflict has arisen, Borrower shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

D. Ethical Principals

Borrower acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Borrower further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement.

10. Insurance

Borrower shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State. Borrower may determine and require a higher limit of subcontractors or not require certain insurance in this §10 that does not directly apply to the work of any subcontractors.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Borrower or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one (1) fire.

C. Automobile Liability

If applicable, automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Cyber/Network Security and Privacy Liability

This section shall | shall not apply to this Agreement.

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. Professional Liability Insurance

This section shall | shall not apply to this Agreement.

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance coverage for financial loss of State or Federal Funds for causes including, but not limited to, theft, forgery, embezzlement and funds transfer fraud with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Borrower and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§10.A** through **§10.E** above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Borrower and Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

H. Property Insurance

If Loan Funds are provided for the acquisition, construction, or rehabilitation of real property, insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Properties, and to be in an amount at least equal to the replacement cost value of the Subject Property. Borrower will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property. This insurance requirement shall only apply to the owner of the Subject Property or assignee as required by this Agreement.

I. Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §10.H above, or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

J. Builder's Risk Insurance

This section shall | shall not apply to this Agreement.

Borrower and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- i. The insurance shall include interests of the property owner, Borrower, and Subcontractors in the Project as named insureds.
- ii. All associated deductibles shall be the responsibility of the Borrower, and Subcontractor. Such policy may have a deductible clause but not to exceed \$25,000.
- iii. Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Borrower's and Subcontractor's services and expenses required as a result of such insured loss.
- iv. Builders Risk coverage shall include partial use by Borrower and/or property owner.
- v. The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

K. Pollution Liability Insurance

If Borrower and/or its Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. The Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Borrower's Subcontractor.

L. Additional Insured

The State shall be named as additional insured on all commercial general liability policies

(leases and construction contracts require additional insured coverage for completed operations) required of Borrower and Subcontractors.

M. Primacy of Coverage

Coverage required of Borrower and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Borrower or the State.

N. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Borrower and Borrower shall forward such notice to the State in accordance with §14 within seven (7) days of Borrower's receipt of such notice.

O. Subrogation Waiver

All commercial insurance policies secured or maintained by Borrower or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Borrower or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

P. Public Entities

If Borrower is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, et seq., C.R.S. (the "GIA"), Borrower shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Borrower shall ensure that the Subcontractor maintain at all times during the terms of this Borrower, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

Q. Certificates

For each commercial insurance plan provided by Borrower under this Agreement, Borrower shall provide to the State certificates evidencing Borrower's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Borrower shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Borrower's subcontract is not in effect as of the Effective Date, Borrower shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Borrower's execution of the subcontract. No later than fifteen (15) days before the expiration date of Borrower's or any Subcontractor's coverage, Borrower shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Borrower shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. Breach of Agreement

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of

Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party except that, at the aggrieved Party's sole discretion, the thirty (30) day period may be extended. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Borrower is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect. If the State gives written notice of Breach of Agreement to the Borrower, the State shall, as a courtesy, concurrently send a copy of such notice to the [Entity name] ("Investor Member") at the address shown below, provided, however, that any failure to provide a copy of such notice to the Investor Member shall not affect the validity of any notice provided by the State to the Borrower. The State, in its discretion, may elect to extend an opportunity to cure a Breach of Agreement to Investor Member in accordance with such terms and conditions as the State may determine. In the event the State elects to extend an opportunity to cure to the Investor Member, the State shall do so by written notice to Borrower as provided in §14 with a copy of such notice to the Investor Member. The State's grant of an opportunity to cure shall not confer any third party rights to the Investor Member.

Investor Member: [Entity Name, Address]

12. Remedies

A. State's Remedies

If Borrower is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Borrower's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Borrower shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Borrower shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Borrower shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Borrower shall assign to the State all of Borrower's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Borrower shall take timely, reasonable and necessary action to protect and preserve property in the possession of Borrower but in which the State has an interest. At the State's request, Borrower shall return materials owned by

the State in Borrower's possession at the time of any termination. Borrower shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Borrower for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Borrower was not in breach or that Borrower's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Borrower shall remain liable to the State for any damages sustained by the State in connection with any breach by Borrower, and the State may withhold payment to Borrower for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Borrower is determined. The State may withhold any amount that may be due Borrower as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Borrower's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Borrower to an adjustment in price or cost or an adjustment in the performance schedule. Borrower shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Borrower after the suspension of performance.

b. Withhold Payment

Withhold payment to Borrower until Borrower corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Borrower's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Borrower's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the

State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Borrower shall, as approved by the State **(i)** secure that right to use such Work for the State and Borrower; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

f. Collection of Unallowable Costs (2CFR 200.410)

[Reserved].

g. Technical Assistance

State may elect to conduct on-site monitoring and work closely with Borrower until the Project is back on schedule. State shall provide prior written notice to Borrower if it elects to conduct on-site monitoring, which shall be conducted during normal business hours and shall not unduly disrupt Borrower's business operations.

B. Borrower's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Borrower, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. Dispute Resolution

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Borrower for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within ten (10) Business Days, Borrower shall submit any alleged breach of this Agreement by the State to the Procurement Official of the Department of Local Affairs as described in §24-101-301(30), C.R.S. for resolution following the same resolution of controversies process as described in §24-106-109, C.R.S. and §§24-109-101.1 through 24-109-505, C.R.S. (the "Resolution Statutes"), except that if Borrower wishes to challenge any decision rendered by the Procurement Official, Borrower's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Borrower pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. Notices and Representatives

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall

be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice. If the State gives written notice of Breach of Agreement to the Borrower, the State shall, as a courtesy, concurrently send a copy of such notice to the Investor Member at the address shown in §11, provided, however, that any failure to provide a copy of such notice to the Investor Member shall not affect the validity of any notice provided by the State to the Borrower.

15. Rights in Work Product and Other Information

A. Work Product

i. Copyrights

[Reserved].

ii. Patents

[Reserved].

iii. Assignments and Assistance

Whether or not Borrower is under contract with the State at the time, Borrower shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Borrower assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Borrower shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Borrower's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Borrower shall provide all

Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Borrower

Borrower retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Borrower including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Borrower under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Borrower Property"). Borrower Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. Statewide Contract Management System

If the maximum amount payable to Borrower under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Borrower agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of Agreement performance information in the State's Agreement management system ("Contract Management System" or "CMS"). Borrower's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. Restrictions on Public Benefits

This section shall | shall not apply to this Agreement.

Borrower shall confirm that any individual natural person is lawfully present in the United States pursuant to 8 U.S.C. §§1601 *et seq.* when such individual applies for public benefits provided under this Agreement by requiring the applicant to:

- A. Produce a verification document in accordance with 62 Fed. Reg. 221 (November 17, 1997), pp. 61,363 - 61,371; and,
- B. Execute a Residency Declaration, attached as Form 1, or a substantially similar form as determined by the State.

18. General Provisions

A. Applicable Laws

At all times during the performance of this Agreement, Borrower shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended including, without limitation, those set forth on **Exhibit A**, Applicable Laws. Borrower also shall require compliance with such laws and regulations by Subcontractors under subcontracts permitted by this Agreement.

B. Assignment

Borrower's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at

assignment or transfer without such consent shall be void. Any assignment or transfer of Borrower's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

C. Subcontracts

Borrower shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Borrower shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Borrower in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

D. Binding Effect

Except as otherwise provided in **§18.B** and **Exhibit B**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

E. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

F. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

G. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

J. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of

Colorado. Exclusive venue shall be in the City and County of Denver, except as otherwise required by Colorado law.

K. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

i. By the Parties

The State, at its discretion, shall have the option to unilaterally extend the Initial Agreement Expiration Date, change the Agreement Maximum Amount, and in the Statement of Work (Exhibit B), adjust the Project Budget, modify the Service Area, the Milestones, the Responsible Administrator, the Payment Schedule, and the Remittance Address through an Option Letter in a form substantially similar to Exhibit G, properly executed and approved in accordance with applicable State laws, regulations, and policies. Modifications other than by Option Letter shall not take effect unless agreed to in writing by both parties in an amendment to this Agreement properly executed and approved in accordance with State laws, regulations, and policies.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

iii. Items not Requiring Modification - Consents

Where the terms of this Agreement require the Borrower to obtain the consent of the Division of Housing, the Division Director or their delegate shall be authorized to provide such consent.

L. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

M. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Borrower's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

N. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

O. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

P. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Borrower. Borrower shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Borrower may wish to have in place in connection with this Agreement.

Q. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§18.B**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

R. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

S. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

T. Standard and Manner of Performance

Borrower shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Borrower's industry, trade, or profession.

U. Licenses, Permits, and Other Authorizations

Borrower shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

V. Indemnification

i. General Indemnification

Borrower shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Borrower, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Borrower in violation of §8 may be cause for legal action by third parties against Borrower, the State, or their respective agents. Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Borrower, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Borrower shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

iv. Accessibility Indemnification

Borrower shall indemnify, save, hold harmless, and assume liability on behalf of the State, its officers, employees, agents and assignees (collectively the “Indemnified Parties”), for any and all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and other amounts incurred by any of the Indemnified Parties in relation to Borrower’s noncompliance with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103, C.R.S. State employees are considered third parties for the purposes of this section.

W. Compliance with State and Federal Law, Regulations, and Executive Orders
[Reserved].

X. Accessibility

i. Borrower shall comply with the Accessibility Standards for Individuals with a Disability, as adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S.

ii. The State may require Borrower’s compliance with the Accessibility Standards for Individuals with a Disability adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask the Borrower to review the selection of the third party. Borrower shall be responsible for all costs associated with the third-party vendor’s assessment. If Borrower is not in compliance as determined by the third-party vendor, at the State’s request and at the State’s direction, Borrower shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

- A. **Statutory Approval.** §24-30-202(1), C.R.S.
This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S. then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.
- B. **Fund Availability.** §24-30-202(5.5), C.R.S.
Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. **Governmental Immunity.**
Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq., C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
- D. **Independent Contractor.**
Borrower shall perform its duties hereunder as an independent contractor and not as an employee. Neither Borrower nor any agent or employee of Borrower shall be deemed to be an agent or employee of the State. Borrower shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Borrower and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Borrower or any of its agents or employees. Borrower shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Borrower shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.
- E. **Compliance with Law.**
Borrower shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- F. **Choice of Law.**
Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate

this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

Choice of Law, Jurisdiction and Venue.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Prohibited Terms.

Any term included in this Agreement that requires the State to indemnify or hold Borrower harmless; requires the State to agree to binding arbitration; limits Borrower's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. Software Piracy Prohibition.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Borrower hereby certifies and warrants that, during the term of this Agreement and any extensions, Borrower has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Borrower is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Borrower has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Borrower's services and Borrower shall not employ any person having such known interests.

J. Vendor Offsets and Erroneous Payments. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Borrower in

error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Borrower by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Borrower, or by any other appropriate method for collecting debts owed to the State.

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Exhibit A, Applicable Laws

Laws, regulations, and authoritative guidance applicable to this Agreement may include, without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, et seq.
3. Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.
4. Equal Pay Act of 1963, 29 U.S.C. 206(d)
5. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, implementing regulations at 24 CFR Part 8
7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.
8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq.
9. Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq.
10. §24-34-301, *et seq.*, C.R.S. (Colorado Civil Rights)
11. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, implementing regulations at 24 CFR Part 135
12. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, et seq., implementing regulations at 49 CFR Part 24
13. Davis-Bacon Act, 40 U.S.C. 3141, et seq., implementing regulations at 29 CFR Parts 1, 3, 5, 6, and 7.
14. Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701, et seq., implementing regulations at 29 CFR Part 5.
15. Colorado Local Government Audit Law, §29-1-601, et seq., C.R.S.
16. Colorado Housing Act of 1970, §24-32-701, *et seq.*, C.R.S.
17. §24-75-601, *et seq.*, C.R.S. (Funds – Legal Investments)
18. McKinney–Vento Homeless Assistance Act of 1987 (Pub. L. 100-77, July 22, 1987, 101 Stat. 482, 42 U.S.C. § 11301 et seq.).
19. HOME Investment Partnerships Program Final Rule at 24 CFR Part 92.

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Exhibit B, Statement of Work

Exhibit C, Reserved

Exhibit E, Reserved

Exhibit F, Use Covenant and Regulatory Agreement

Exhibit G, Promissory Note

Exhibit H, Deed of Trust

Exhibit I, Subordination Agreement(s)

Exhibit J, Sample Option Letter

State Agency	Borrower
Department of Local Affairs, for the benefit of the Division of Housing	[Name]
Existing CMS Numbers 000000, 000000 (A1), 000000 (OL1)	Encumbrance # HxAAA00000
(Previous) Agreement Maximum Amount \$0,000,000.00	New CMS # 000000
(Previous) Initial Agreement Expiration Date \$0,000,000.00	(New) Agreement Maximum Amount \$ (No change)
(Previous) Loan Maturity Date Month XX, 2024	(New) Initial Agreement Expiration Date \$ (No change)
	(New) Loan Maturity Date Month XX, 2024 (No change)

OPTIONS: *(Select all that are applicable.)* In accordance with **§18K** of the Original Agreement referenced above, as amended, the State hereby exercises its option to modify the following:

- A. Initial Agreement Expiration Date.
- B. Loan Maturity Date.
- C. Agreement Maximum Amount.
- D. Project Budget.
- E. Payment Schedule.
- F. Milestones.
- G. Service Area.
- H. Responsible Administrator.
- I. Remittance Address.

REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** The Initial Agreement Expiration Date, shown on the Cover Page of the Agreement, as amended, is hereby deleted and replaced with the (New) Initial Agreement Expiration Date shown in the table above.
- B. **For use with Option 1(B):** The Loan Maturity Date, shown on the Cover Page of the Agreement, as amended, is hereby deleted and replaced with the (New) Loan Maturity Date shown in the table above.
- C. **For use with Options 1(C):** The Agreement Maximum Amount shown on the Cover Page of the Agreement referenced above, as amended, is hereby deleted and replaced with the (New) Agreement Maximum Amount shown in the table above.
- D. **For use with Option 1(D):** The Project Budget in **§5.2** of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

5.2 Project Budget

Source	Amount
[Activity]	
[Activity]	
Total	\$ 0.00

- E. **For use with Option 1(E):** The **Payment Schedule** in §6.1 of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

6.1 Payment Schedule

Payment	Amount	Timing
Interim Payment(s)	\$0.00	Paid upon receipt of actual expense documentation and written Pay Requests from the Borrower for reimbursement of eligible approved expenses.
Final Payment	\$0.00	Paid upon Substantial Completion of the Project (as determined by the State in its sole discretion), provided that the Borrower has submitted, and DOLA has accepted, all required reports.
Total	\$0.00	n/a

- A. **For use with Option 1(F):** The **Milestones** in §3.2 of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

3.2. Performance Milestones. Borrower shall achieve each of the following Milestones by the Date shown.

Milestone	Date
[Milestone]	[Date]
[Milestone]	[Date]

- B. **For use with Option 1(G):** The **Service Area** in §3.3 of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

3.3. Service Area. The services described within this Agreement may be provided in [Area], State of Colorado.

- C. **For use with Option 1(H)**: The Responsible Administrator in §4.2 of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

4.2. Responsible Administrator. Borrower's performance hereunder shall be under the direct supervision of [Name, Title, email address] who is hereby designated as the responsible administrator of this Project.

- D. **For use with Option 1(I)**: the Remittance Address in §6.2 of the **Statement of Work (Exhibit B)**, as amended, is deleted and replaced with the following:

6.2 Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with §14 of the Agreement:

[Borrower Name]

[Street Address]

[City, State Zip Code]

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SIGNATURE PAGE

STATE OF COLORADO

Governor
DEPARTMENT OF LOCAL AFFAIRS

By: Executive Director

Date: _

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER

By: Controller Delegate

Date: _