

**State of Colorado Loan Agreement
Cover Page**

State Agency

Department of Local Affairs
for the benefit of the Division of Housing

Borrower

Full legal name

Borrower UEI

UEI or "N/A State Funds"

Agreement Maximum Amount

\$000,000.00

Agreement Encumbrance Number

H#HOMx00000

CMS Number

000000

Agreement Performance Beginning Date

The Effective Date

Initial Agreement Expiration Date

Month Day, Year

Loan Maturity Date

Month Day, Year

Catalogue of Federal Domestic Assistance #

14.239

Funding Program: Home Investment Partnership

Funding Source: Federal

Agreement Authority - Authority for this Agreement arises from CRS §24-32-705. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available pursuant to the federal Home Investment Partnership Program and a sufficient unencumbered balance thereof remains available for payment and the required approvals, clearance, and coordination have been accomplished from and with appropriate agencies.

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 Project
- Exhibit C – Federal Provisions
- 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
- Form 1 – Sample Residency Declaration

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

Principal Representatives

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

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

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]

By: _____
[Name, Title]

Date: __

DIVISION OF HOUSING

Contract Reviewer

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

Date: __

STATE OF COLORADO

Jared S. Polis, Governor
DEPARTMENT OF LOCAL AFFAIRS

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 below by the State Controller or an authorized delegate.

STATE CONTROLLER

Robert Jaros, CPA, MBA, JD

By: Beulah Messick, Controller Delegate

Date: __

Loan Agreement
CMS#: 000000

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Options:	1
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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 §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. Borrower's Termination Under Federal Requirements

Borrower may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Loan is terminated in this manner, then Borrower shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

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" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

- 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. “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.
- I. “End of Term Extension” means the time period defined in §2.D.
- J. “Exhibits” means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- K. “Extension Term” means the time period defined in §2.C.
- L. “Federal Award” means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- M. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient. The United States Department of Housing and Urban Development is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. “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.
- O. “Loan Funds” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

- 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. "Matching Funds" means the funds provided Borrower as a match required to receive the Loan Funds.
- S. "Party" means the State or Borrower, and "Parties" means both the State and Borrower.
- T. "PCI" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- U. "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.
- V. "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.
- W. "Project" means the overall project described in Exhibit B including, without limitation, the Work and the Services.
- X. "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.
- Y. "Recipient" means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal Award.
- Z. "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.

- AA. "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.
- BB. "State Fiscal Rules" means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13) (a), C.R.S.
- CC. "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.
- DD. "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.
- EE. "Subcontractor" means third-parties, if any, engaged by Borrower to aid in performance of the Work. "Subcontractor" also includes sub-grantees of Loan funds.
- FF. "Subrecipient" means an entity that receives a sub-award from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Borrower is a Subrecipient.
- GG. "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.
- HH. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to the Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal award specifically indicate otherwise.
- II. "Work" means the Goods delivered and Services performed pursuant to this Agreement.
- JJ. "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 Project

Borrower shall complete the Work 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 for each State Fiscal Year 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

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

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 in Exhibit B and §5.A for all allowable costs 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 §5.3 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. The State shall reimburse Borrower for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit B. 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 and indication that the Federal Award funding is retroactive. 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. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Initial Agreement Expiration Date shown on the Signature and Cover Page for this Agreement due to Borrower's failure to submit required documentation, then Borrower may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

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 and the Federal Awarding Agency, all violations of Federal or State criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency 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 Award 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 Award 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 or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and 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 federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Borrower shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Borrower and this Agreement. 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. Additionally, if Borrower is required to perform a single audit under 2 CFR 200.501, et seq., then Borrower shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

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. Additionally, if Borrower fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, 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)

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and §200.346.

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 its 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

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. If the entity with whom Borrower enters into a subcontract or subgrant would also be considered a Subrecipient, then the subcontract or subgrant entered into by Borrower shall also contain provisions permitting both Borrower and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Binding Effect

Except as otherwise provided in §17.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 Project (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

Borrower shall comply with all applicable State and Federal Law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

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), 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

Exhibit B, Statement of Project

Exhibit C, Federal Provisions

1. Applicability of provisions.

- 1.1. The Grantee to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. Definitions.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below. For a full list of definitions (as of October 1, 2024) under the Uniform Guidance, see 2 CFR 200.1.
 - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. “Entity” means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a non-profit organization or for profit organization;
 - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
 - 2.1.4. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
 - 2.1.5. “Grant” means the Grant to which these Federal Provisions are attached.
 - 2.1.6. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached. Grantee also means Subrecipient.
 - 2.1.7. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
 - 2.1.8. “Nonprofit Organization” organization, that:
 - 2.1.8.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.8.2. Is not organized primarily for profit; and
 - 2.1.8.3. Uses net proceeds to maintain, improve, or expand the organization’s operations; and
 - 2.1.8.4. Is not an IHE.

- 2.1.9. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.10. “Pass-through Entity” means a recipient or subrecipient that provides a Subaward to a Subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the Subaward agreements between the pass-through entity and subrecipient.
- 2.1.11. “Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.12. “Subaward” means an award provided by a pass-through entity to a Subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. The term does not include payments to a contractor, beneficiary or participant.
- 2.1.13. “Subrecipient” means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency. Subrecipient also means Grantee.
- 2.1.14. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.15. “Total Compensation” means the cash and noncash dollar value an Executive earns during the entity’s preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).
- 2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. “Unique Entity ID” (UEI) is the universal identifier for federal financial assistance applicants, as well as recipients and their direct subrecipients (first tier subrecipients).
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. Compliance.

- 3.1. Subrecipient shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. System for Award Management (SAM) and Unique Entity ID Requirements.

- 4.1. SAM. Subrecipient must obtain a UEI but are not required to fully register in Sam.gov. Subrecipient shall maintain the currency of its information in SAM until the Subrecipient submits the final financial report required under the Award or receives final payment, whichever is later. Subrecipient shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. Unique Entity ID. Subrecipient shall provide its Unique Entity ID to its Recipient, and shall update Subrecipient's information at <http://www.sam.gov> at least annually after the initial registration, and more frequently if required by changes in Subrecipient's information.

5. Total Compensation.

- 5.1. Subrecipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Subrecipient received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. Reporting.

- 6.1. Pursuant to the Transparency Act, Subrecipient shall report data elements to SAM and to the Recipient as required in this Exhibit. No direct payment shall be made to Subrecipient for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Subrecipient's obligations under this Grant.

7. Effective Date and Dollar Threshold for Reporting.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements.

- 7.2. The procurement standards in §9 below are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. Subrecipient Reporting Requirements.

- 8.1. Subrecipient shall report as set forth below.

8.1.1. To Recipient. A Subrecipient shall report the following data elements in *for each* Federal Award Identification Number (FAIN) assigned by a Federal agency to a Recipient no later than the end of the month following the month in which the Subaward was made:

- 8.1.1.1. Subrecipient Unique Entity ID;
- 8.1.1.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.1.3. Subrecipient parent's organization Unique Entity ID (if applicable);
- 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.1.6. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8.1.2. The Recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at <http://www.fsr.gov>.

9. Procurement Standards.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 9.4. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never contract with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 9.5. Prohibition on certain telecommunications and video surveillance equipment or services (2 CFR 200.216). Subrecipient is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

10. Access to Records.

- 10.1. A Subrecipient shall permit Recipient and its auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Modification to period of performance), 2 CFR 200.337 (Access to Records) and Subpart F-Audit Requirements of the Uniform Guidance.
- 10.2. A Subrecipient must collect, transmit, and store information related to this Subaward in open and machine-readable formats (2 CFR 200.336).

11. Single Audit Requirements.

- 11.1. If a Subrecipient expends \$1,000,000 or more in Federal Awards during the Subrecipient’s fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$1,000,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. Required Provisions for Subrecipient with Subcontractors.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Recipient, Subrecipients shall include all of the following applicable provisions;
 - 12.1.1. For agreements with Subrecipients – Include the terms in the Grant Federal Provisions Exhibit (this exhibit)
 - 12.1.2. For contracts with Subcontractors – Include the terms in the Contract Federal Provisions Exhibit.

13. Certifications.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.415. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. Exemptions.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Subrecipient with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. Event of Default and Termination.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - 15.2.3. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
 - 15.2.4. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award

16. Additional Federal Requirements.

- 16.1. Whistle Blower Protections

An employee of a subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

Federal Funding Accountability and Transparency Act (FFATA) Data Report Form
(For Grantee Completion)

Reporting is required for initial awards of \$25,000 or more or award modifications that result in a total award of \$25,000 or more.

Information Field (Definitions can be found in Exhibit C)	Response
1. Agency or Jurisdiction UEI Number:	
2. Subrecipient Name Receiving Award:	
3. Subrecipient Parent UEI Number: (Report if different from subrecipient number)	
4. Location of Entity Receiving Award: (Full street address)	
5. Primary Location of Performance of the Award: (City, State and Congressional District)	
	Answer True or False
6. In the preceding fiscal year, Grantee received:	
a. \$25,000,000 or more in annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
b. 80% or more of its annual gross revenues from federal procurement contracts/subcontracts and/or federal financial assistance awards or subawards subject to the Transparency Act.	
c. The public does not have access to information about the compensation of its five most highly compensated Executives through periodic reports filed through the Securities Exchange Act of 1934 or the IRS.	

Note: An answer to question 7 is required ONLY when all answers to question 6 are true.

7. Names and total compensation of the five (5) most highly compensated Executives for the preceding fiscal year:

Print Name	Compensation Amount
_____	_____
_____	_____

By signing below, I certify the information contained in this report is complete and accurate to the best of my knowledge.

_____ DATE ____
 Signature of Responsible Administrator

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 Agreements

Exhibit J, Sample Option Letter

State Agency
 Department of Local Affairs,
 for the benefit of the Division of Housing

Existing CMS Numbers
 000000, 000000 (A1), 000000 (OL1)
(Previous) Agreement Maximum Amount
 \$0,000,000.00

(Previous) Initial Agreement Expiration Date
 \$0,000,000.00

(Previous) Loan Maturity Date
 Month XX, 202X(No change)

Borrower
 [Name]
Encumbrance #
 HxAAA00000
New CMS #
 000000
(New) Agreement Maximum Amount
 \$00,000,000.00 (No change)
(New) Initial Agreement Expiration Date
 \$0,000,000.00 (No change)
(New) Loan Maturity Date
 Month XX, 202X(No change)

Options:

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

Required Provisions:

1. **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.
2. **For use with Options 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.
3. **For use with Option 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.
4. **For use with Option 1(D):** The Project Budget in §5.2 of the **Statement of Project (Exhibit B)**, as amended, is deleted and replaced with the following:

5.2 Project Budget

Budget Item	Amount
[Insert]	[Insert]
Total	[Insert]

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

6.1 Payment Schedule

Payment	Amount	Timing
[Insert]	[Insert]	[Insert]
Total	[Insert]	[Insert]

6. **For use with Option 1(F):** The **Milestones** in §3.2 of the **Statement of Project (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
[Insert]	[Insert]
Total	[Insert]

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

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

8. **For use with Option 1(H):** The **Responsible Administrator** in §4.2 of the **Statement of Project (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.

9. **For use with Option 1(I):** the **Remittance Address** in §6.2 of the **Statement of Project (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 Loan:

[Borrower Name]
 [Street Address]
 [City, State, Zip]

Option Effective Date:

The effective date of this Option Letter is upon approval of the State Controller or [Enter date], whichever is later.

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

STATE OF COLORADO
Governor
Department of Local Affairs

By: Executive Director

Date: __

STATE CONTROLLER

By: Controller Delegate

Option Effective Date: _____

Form 1, Sample Residency Declaration

In order to be eligible to receive the assistance you seek, you, as an applicant must be lawfully within the United States. Please read this Declaration carefully. Please feel free to consult with an immigration lawyer or other expert of your choosing.

I, _____, swear or affirm under penalty of perjury that (check one):

- I am a United States citizen, or
- I am a non-citizen national of the United States, or
- I have an immigration status that makes me a "qualified alien."

I hereby agree to provide any documentation which may be required pursuant to Federal law, Interim Guidelines published by the United States Department of Justice (62 FR 61344) or, if applicable, Colorado laws and regulations, if the Colorado laws are not inconsistent with Federal law.

I acknowledge that making a false, fictitious, or fraudulent statement or representation in this Declaration is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statutes §18-8-503 and shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Name (please print)

Signature

Date