AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Grant Agreement between State of Colorado Departme

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC & CO Dpet Local Affairs

Term Begins: 3/01/2015 **Term Ends:** 9/30/2016 **Grant Contract #:**

Summary:

This Community Service Block Grant is to provide emergency services (housing etc.) to low income families and individuals.

Fiscal Impact: $26,344

Submitted by: C Worrall **Submitter's Email Address:** cworrall@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Finance reviewed, no concerns.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/29/2015

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 4/28/15 Please note that in there is an attachment to the "Return Routing Memorandum" that identifies the point of contact for the County to be Renee Brown. I suggest notifying the State in a cover letter in return that the current point of contact should be C Worrall.

Reveiwed by: Discharge Date: 4/28/2015 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/29/2015

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 5/5/2015

Revised April 2015

COLORADO
Department of Local Affairs
Division of Local Government

April 24, 2015

Paula Swenson, Chair, Board of County Commissioners
Gunnison County
200 E. Virginia
Gunnison, CO 81230

RE: CSBG19 – GUNNISON COUNTY

Dear Commissioner Swenson:

Attached is the grant contract packet for the above-referenced Community Services Block Grant project. If the contract is satisfactory to the County as written, please print and execute **three (3) originals** of the contract, signed and dated by an authorized signator (**original signatures only; no photocopies, stamped or e-signatures**). Please note that an authorized signator is a County Chief Elected Official, City/Town Mayor, or District Board President. If any other individual should sign this contract, you must provide a letter from the Chief Elected Official documenting the specific individual's delegated authority to sign.

The following seven (7) documents comprise the complete contract packet. Please note which documents are required to be returned to the State for final execution.

1. Grant Agreement (return 3, each must have original signature by Authorized Official – no photocopies)
2. Exhibit A – Applicable Laws (return 1)
3. Exhibit B – Scope of Project (return 1)
4. Exhibit C – FFATA (return 1)
5. Exhibit G – Option Letter (return 1)
6. Form 1 – Residency Declaration (return 1)
7. Form 2 – FFATA Data Form (return 1, completed and signed)

Please send these documents along with the return routing memo (see below) to:

Department of Local Affairs
ATTENTION: Diane Von Dollen
1313 Sherman Street, Room 521
Denver, CO 80203

If you have any questions, please call Quinn Fairchild at (303) 864-7748 or me at (303) 864-7731.

Sincerely,

Beth Lipscomb
Contracts Specialist
Department of Local Affairs

Enclosures

RETURN ROUTING MEMORANDUM

TO: Diane Von Dollen

THROUGH: Renee Brown, Director, Gunnison County Department of Health and Human Services

FROM: Beth Lipscomb

DATE: April 24, 2015

RE: Contract Approvals

FOR FINAL APPROVAL ROUTING (3 COPIES ENCLOSED):

RE: CSBG19 – Gunnison County

__√__ Contractor's Federal I.D.# on file with Accounting

_____ Form sent to Contractor to complete

Quinn Fairchild, CSBG Program Assistant

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

GUNNISON COUNTY

Summary			
Form of Financial Assistance:	☒ Grant ☐ Loan	Award Amount:	$26,344.00
Agreement Identification:			
Contract Encumbrance #:	L15CSBG19	*(DOLA's primary contract identification #)*	
Contract Management System #:	79051	*(State of Colorado's contract tracking #)*	
Project Information:			
Project/Award Number:	CSBG19		
Project Name:	GUNNISON COUNTY		
Performance Period:	Start Date: 03/01/15	End Date: 09/30/18	
Brief Description of Project / Assistance:	GUNNISON COUNTY will deliver services and/or provide assistance to low income families and individuals.		
Program & Funding Information:			
Program Name	Community Services Block Grant		
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds):		93.569	
Funding Account Codes:			

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EXHIBIT E – Reserved.
EXHIBIT F – Reserved.
EXHIBIT G – FORM OF OPTION LETTER
EXHIBIT H – Reserved.
FORM 1 – RESIDENCY DECLARATION
FORM 2 – FFATA DATA REPORT FORM

1. PARTIES

This grant agreement (hereinafter called "Grant") is entered into by and between **GUNNISON COUNTY** (hereinafter called "Grantee"), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the "State" or "DOLA").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to *(see checked option(s) below):*

A. ☐ The Effective Date.

B. ☐ The later to occur of the Effective Date or the date of a separate letter issued by DOLA ("Release of Funds Letter") notifying Grantee of the completion of a satisfactory environmental review and authorizing Grantee to obligate or use Grant Funds.

C. ☒ The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after March 1, 2015, may be submitted for reimbursement as if incurred after the Effective Date.

D. ☐ insert date for authorized Pre-agreement Costs (as such term is defined in **§4)**. Such costs may be submitted for reimbursement as if incurred after the Effective Date.

E. ☐ The Effective Date; provided, however, that the costs identified in the checked subsections below may be submitted for reimbursement as if incurred after the Effective Date *(see checked suboption(s) below)*:

i. ☐ All Project costs, if specifically authorized by the funding authority, incurred on or after insert federal grant's effective date; and

ii. ☐ Pre-award costs for insert purpose, if any, incurred on or after **insert starting date allowed under the federal award for pre-award costs**.

F. ☐ The Effective Date; provided however, that all or some of the costs or expenses incurred by Grantee prior to the Effective Date which have been or will be paid with non-federal and/or non-State funds may be included as a part of Grantee's non-federal match requirement, set forth herein and in **Exhibit B**, Statement of Project, if such costs or expenses are properly documented as eligible expenses in accordance with insert reference to proper documentation.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority to enter into this Grant exists in CRS §24-32-106 and funds have been budgeted, appropriated and otherwise made available pursuant to CRS §24-32-106 and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant 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.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B.**

B. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

i. Exhibit A (Applicable Laws)
ii. Exhibit B (Statement of Project)
iii. Exhibit C (Supplemental Provisions for Federal Funding Accountability and Transparency Act)
iv. Exhibit G (Form of Option Letter)
v. Form 1 (Residency Declaration)
vi. Form 2 (FFATA Data Report Form)

C. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

D. Grant

"Grant" means this grant agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

E. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

F. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

G. Pre-agreement costs

"Pre-agreement costs", when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

H. Project

"Project" means the assistance or services provided by Grantee from the list of federal objective(s) for the Community Services Block Grant ("CSBG") program, which includes employment, education, income management, housing, emergency services, linkages, self-sufficiency, health and nutrition, and is further described in **Exhibit B**.

I. Budget

"Budget" means the budget described in **Exhibit B**.

J. Program

"Program" means the grant program specified on the first page of this Grant that provides the funding for this Grant.

K. Program Year

"Program Year" means the period beginning on March 1 and ending on September 30 of the following year; however, for Grant Funds being carried forward from a previous grant agreement between the State and Grantee, the Program Year shall be the period beginning when such Grant Funds are encumbered under this Grant and ending on September 30 of 2015, which shall be called "Program Year 0". Grant Funds for a Program Year which remain unexpended will expire at the end of such Program Year and no longer be available.

L. Review

"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B.**

M. Services

"Services" means the required services to be performed by Grantee pursuant to this Grant.

N. Subgrantee

"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

O. Work

"Work" means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibits B and C**, including the performance of the Services and delivery of the Goods.

P. Work Product

"Work Product" means the tangible or intangible results of Grantee's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

Unless otherwise permitted in **§2** above, the Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **September 30, 2018** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16,** may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF PROJECT

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibits B and C** on or before **September 30, 2018**, unless sooner terminated or further extended as specified elsewhere herein. Except as expressly permitted in this Grant, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this **§7**, pay Grantee in the following amounts and using the methods set forth below:

A. Option Letter/Maximum Amount

The maximum amount payable under this Grant to Grantee by the State for Work performed is limited solely to the amount specified below as Grant Funds, and only up to the unpaid obligated balance of Grant Funds that have not expired. Grantee agrees to provide any additional funds required for the successful completion of the Work.

Program Years:	**Grant Funds***	**Option Letter Amounts****
Year 1 – 3/1/15 through 9/30/16	$26,344.00	
Option Years:		
Year 0 – 3/1/14 through 9/30/15	$0	$_____***
Year 2 – 3/1/16 through 9/30/17		$_____
Year 3 – 3/1/17 through 9/30/18		$_____

* Grant Funds for a Program Year which remain unexpended will expire at the end of such Program Year and will no longer be available. Grant Funds for any Program Year may be increased by Option Letter as specified under Footnote ** below.

**Option Letter amounts are estimated prior to the Effective Date of the Grant, and are subject to adjustment and encumbrance by Option Letter as follows:

i. Upon State's receipt of funding levels from the federal government for a Program Year (each "Funding Level"), the State will give Grantee written notice of such Funding Level within **15** calendar days of State's receipt of such notice. The Parties acknowledge that a Funding Level may: 1) be new funding for a Program Year that may increase or a decrease the estimated Option Letter amount; or 2) increase already encumbered Grant Funds for such Program Year.

ii. Grantee shall submit to the State a signed Project Budget for the applicable Program Year within **30** calendar days of Grantee's receipt of the State's notice (each a "Budget Proposal"). Each Budget Proposal shall constitute an offer from the Grantee for providing Services pursuant to the Budget Proposal up to the amount of unpaid obligated Grant Funds that have not expired.

iii. Upon State's receipt of the Budget Proposal, and if the State accepts the Budget Proposal, State shall prepare and unilaterally execute an Option Letter in a form substantially equivalent to **Exhibit G**, which shall for the Program Year: include the Budget Proposal as an attachment; adjust the Option Letter amounts to the amount received from the federal government; and encumber the Option Letter amount as Grant Funds for the applicable Program Year. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

***The Option Letter amount for Program Year 0, if any, will not be known until the previous grant agreement between the State and Grantee containing such funds is closed out. Such Option Letter amounts are subject to encumbrance under this Grant by Option Letter as specified under Footnote ** above.

B. Payment

i. Advance, Interim and Final Payments

Any payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§8** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§19**, if applicable.

A. Performance, Progress, Personnel, and Funds

The State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in **Exhibit B.**

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§8** may result in the delay of payment of funds and/or termination as provided under this Grant.

D. Subgrants

Copies of any and all subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee 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. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

(i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or

(ii) for such further period as may be necessary to resolve any pending matters, or

(iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B.**

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions on this **§10** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative. Except as otherwise provided in this Grant, Grantee shall keep all patient and offender information confidential.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§10.**

E. Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DOLA is not a covered entity under HIPAA for purposes of this Grant. If the Grantee is a covered entity under HIPAA, it shall comply with the requirements of HIPAA, and in all instances shall comply with all other federal and state laws protecting the confidentiality of patient information.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee 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 apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all

required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in **§13(B)** with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** $1,000,000 each occurrence; **(b)** $1,000,000 general aggregate; **(c)** $1,000,000 products and completed operations aggregate; and **(d)** $50,000 any one fire.

iii. Automobile Liability

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.

iv. Malpractice/Professional Liability Insurance

This section ☐ shall | ☒ shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of $1,000,000 per occurrence and $1,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding $10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in **§13B(i)-(iv)** 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 Grantee, Subgrantee 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.

vi. Property Insurance

This subsection shall apply if Grant 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 Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor 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**.**

vii. 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 **§vi** 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.

viii. Builder's Risk Insurance

This subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee 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.

a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.

b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed $10,000.

c) 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 Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.

d) Builders Risk coverage shall include partial use by Grantee and/or property owner.

e) 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, Subgrantee and 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.

ix. Pollution Liability Insurance

This subsection shall apply if Grant Funds are provided for the construction or rehabilitation of real property.

If Grantee and/or its Subgrantee or 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. 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 Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

i. Deductible. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,

ii. In Force. If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.

iii. Insurer. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,

iv. Additional Insured

Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with **§16** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§13**.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§16**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§15**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to **§15(B)**, the State shall have the remedies listed in this **§15** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§14(B**), if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant’s terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State’s property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee'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 the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State’s damages, until

such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by **§15(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in **§15(A)(i)**.

iii. Payments

If this Grant is terminated by the State pursuant to this **§15(B)**, Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

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

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option **(a)** obtain for the State or Grantee the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or,

(c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, room 521
Denver, CO 80203
Email: chantal.unfug@state.co.us

B. Grantee:

Paula Swenson, Chair, Board of County Commissioners
200 E. Virginia
Gunnison, CO 81230
Email: pswenson@gunnisoncounty.org

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section ☐ shall ☒ shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than $100,000 either on the Effective Date or at anytime thereafter, this **§19** applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at

intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.
Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from bidding on future Grants. Grantee may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section ☒ shall ☐ shall not apply to this Grant.
Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

A. Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.

B. Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating

i. That he or she is a United States citizen or legal permanent resident; or

ii. That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].
Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§21(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

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

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees,

agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee 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. Grantee also shall require compliance with such laws and regulations by Subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section ☐ shall | ☒ shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS - TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

a) Approval by Division Director

The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in **§3 of Exhibit B** and the Principal Representative in **§16**.

b) Approval by DOLA Controller

The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law

This Grant 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 Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Exhibit C (Supplemental Provisions for Federal Funding Accountability and Transparency Act)
ii. Exhibit A (Applicable Laws)
iii. Colorado Special Provisions
iv. The provisions of the main body of this Grant (excluding the cover page)
v. Any executed Option Letter (in the form of Exhibit G)
vi. Exhibit B (Scope of Project)
vii. The cover page of this Grant

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Grants except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**
   This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).**
   Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.**
   No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR**
   Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee 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 Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.**
   Grantee shall strictly 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.
6. **CHOICE OF LAW.**
   Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. 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 Grant, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED**.
   The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**
   State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.
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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.
[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.
[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

12. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.
Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Colorado Special Provisions - effective 1/1/09)

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

GRANTEE
GUNNISON COUNTY

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

_____
*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
DEPARTMENT OF LOCAL AFFAIRS

By:_____
Executive Director

Date: _____

PRE-APPROVED FORM CONTRACT REVIEWER

By:_____
Rachel Harlow-Schalk, Financial Assistance Director

Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By:_____
Janet Miks, CPA, Controller Delegate

Date:_____

EXHIBIT A – APPLICABLE LAWS

Federal laws and regulations incorporated into this Grant include, without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634
3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.
4. Equal Pay Act of 1963, 29 U.S.C. 206(d)
5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b
6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794
7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d
8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e
9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.
10. Section 24-34-302, et seq., Colorado Revised Statutes 1997, as amended
11. The applicable of the following:
- **11.1.** Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87);
- **11.2.** Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);
- **11.3.** Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and
- **11.4.** Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq, C.R.S., and State implementing rules and regulations.

12. Prohibition Against use of Federal Funds for Lobbying, 31 U.S.C. 1352
13. Privacy Act of 1974, 5 U.S.C. S 5529 and Regulations adopted thereunder
14. Drug Free Workplace Act
15. U.S. Department of Health & Human Services regulations:
- **15.1.** Procedures of the Departmental Grant Appeals Board, 45 CFR Part 16;
- **15.2.** Claims Collection, 45 CFR Part 30;
- **15.3.** Debarment and Suspension from Eligibility for Financial Assistance (Nonprocurement), 45 CFR Part 76; No organization may participate in this project in any capacity or be a recipient of Federal funds designated for this project if the organization has been debarred or suspended or otherwise found to be ineligible for participation in Federal assistance programs. CSBG Recipient Agencies, prior to subawards or contracts under this Grant, must consult the ineligible parties list to ensure that organizations under funding consideration are not ineligible. The list is available on the Web at http://www.epls.gov.
- **15.4.** Public Law, 103-333 Section 507- Buy American-To the greatest extent practicable, all equipment and products purchased with funds made available in the Grant should be American-made.
- **15.5.** Public Law, 103-333 Section 508-Request for Proposal (RFP) and Bid Solicitations-When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or part with Federal money, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of the Federal funds for the project or program, and (3) the percentage and dollar amount of the total cost of the project or program that will be financed by nongovernmental sources,
- **15.6.** Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964, 45 CFR Part 80;
- **15.7.** Practice and Procedure for Hearings Under Part 80 of this Title, 45 CFR Part 81;
- **15.8.** Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance, 45 CFR Part 84;
- **15.9.** Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 45 CFR Part 86;
- **15.10.** Equal Treatment for Faith-Based Organizations, 45 CFR Part 87;
- **15.11.** Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 91;
- **15.12.** New Restrictions on Lobbying, 45 CFR Part 93;
- **15.13.** Block Grants, 45 CFR Part 96;
- **15.14.** Consolidation of Grants to the Insular Areas, 45 CFR Part 97;
- **15.15.** Intergovernmental Review of Department of Health and Human Services Programs and Activities, 45 CFR Part 100.

15.16. Uniform administrative requirements for grants and cooperative agreements to State, local, and tribal governments, 45 CFR Part 92.

16. Community Services Act, Public Law 105-285, Title II, and 42 U.S.C. 9901-9923

17. Certification required by 29 CFR Part 98, "Government Debarment and Suspension"

18. Environmental Tobacco Smoke Certification, also known as the Pro-Children Act of 1994, Public Law 103-227.

19. (Part of CSBG Act) Programs and activities under this Act are considered to be programs receiving federal financial assistance and are subject to all provision of EEO, except for those Grantees who are under Section 679 of the CSBG Act, religious organization's exempt from Section 702 of the Civil rights Act of 1964 (42 U.S. C. 2003-1) regarding employment practices

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EXHIBIT B – SCOPE OF PROJECT (SOP)
Community Services Block Grant

1. PROJECT DESCRIPTION

Grantee, itself or through subawards, shall provide assistance or services from the following list of Federal Objective(s) for the CSBG program *(mark all that apply):*

☐ Employment ☐ Education ☐ Income Management ☐ Housing ☒ Emergency Services

☐ Linkages ☐ Self-Sufficiency ☐ Health ☐ Nutrition

1.1 Gunnison County (Grantee). Grantee shall provide services and activities that address the Federal Objective **Emergency Services** by providing emergency assistance, through the Department of Health and Human Services, to promote household stability and self-sufficiency.

1.1.1 Eligible expenses are: mortgage/rental assistance, motel vouchers, household utilities (natural gas, water, electricity, propane, wood or pellets), gas vouchers, bus passes/tokens, tires and minor auto repairs up to $500, medical, dental, behavioral health, vision care, child care, pharmaceutical assistance, and administrative expenses which include a portion of salary and benefits and the costs of legal notice publication.

1.2 Service Area. The performance of the Services described within this Grant shall be located in Gunnison and Hinsdale counties.

2. DEFINITION

All terms not defined in this **Exhibit B** shall have the meaning given in the main body of the Grant.

2.1 CSBG Recipient Agency means any Colorado agency which receives CSBG funding from the State or from an Eligible Entity.

2.2 Eligible Entity means a Governor designated, non-profit or public agency or a community action agency that receives Grant Funds from the State.

2.3 Income Eligible means the total household income has been determined to be at or below 125% of the most current Department of Health and Human Services issued poverty guideline.

2.4 Household means any individual or group of individuals who are living together in a dwelling unit as one economic unit.

2.5 Subgrantee means a recipient that is subject to OMB A-133 (if it meets the following conditions):

2.5.1 Determines who is eligible to receive Federal financial assistance;

2.5.2 Has its performance measured against whether the objectives of the Federal program are met;

2.5.3 Has responsibility for programmatic decision making;

2.5.4 Has responsibility for adherence to applicable Federal program compliance requirements; and

2.5.5 Uses the Federal funds to carry out a program of the organziation as compared to providing goods or services for a program of the pass-through entity.

2.6 Tripartite Board. Section 676B of the Community Services Block Grant Reauthorization Act of 1998 (the "CSBG Act"), requires that, as a condition of designation, private nonprofit entities and public organizations administer their CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities.

3. PERSONNEL

3.1 Replacement. Grantee shall immediately notify DOLA if any key personnel specified in **§3** cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify DOLA and seek its approval, which shall be at the DOLA's sole discretion, as the State issued this Grant in part reliance on Grantee's representations regarding key personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct Grantee to suspend work on the Project until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with **§16** of the Grant.

3.2 Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of **Joni Reynolds (jreynolds@gunnisoncounty.org),** an employee or agent of Grantee, who is hereby designated as the responsible administrator of this Project.

3.3 Other Key Personnel. None.

4. FUNDING

4.1 Match. Matching funds are not required for this Grant.

4.2 Budget Flexibility. Eligible Entity may adjust individual budgeted expenditure amounts without approval of the State; provided that:

4.2.1 There is no increase to the indirect operating and personnel costs line; and

4.2.2 The cumulative budgetary line item changes do not exceed fifteen percent (15%) of the total budgeted amount of the line item.

4.2.3 All other budgetary modifications shall require the State's approval in accordance with the **Modification** subsection of the **General Provisions** of the Grant.

5. PAYMENT

5.1 Payment Schedule. Grantee shall submit a request for reimbursement for grantee and all sub-grantees, at a minimum, on a monthly basis. All requests shall be for eligible expenses, as described in detail in **§1**, Project Description, and in accordance with **§7**, Project Budget, using the State-provided form and accompanied by supporting documentation equal to 100% of reimbursement request.

5.2 Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with **§16** of the Grant:

Gunnison County 200 E. Virginia Ave. Gunnison, CO 81230-2248

6. ADMINISTRATIVE REQUIREMENTS

6.1 Accounting. CSBG Recipient Agencies shall maintain properly segregated accounts of Grant Funds and other funds associated with the Project and make those records available to the State upon request. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the Project Description and Budget.

6.2 Audit Report. CSBG Recipient Agencies are required to submit to DOLA any audit performed for any fiscal year covering a portion of the term of this Grant or any other grants/contracts with DOLA. Such audits include but not limited to financial statement audit, single audit, program specific audit, and performance audit. A single audit or program specific audit in accordance with the Office of Management and Budget's (OMB) Circular A-133 is required when non-Federal entities expend

$500,000 or more in Federal awards in the entity's fiscal year. CSBG Recipient Agencies shall insure that audits required are performed and submitted to DOLA within 6 months of Recipient Agency's fiscal year-end. The final audit report shall be sent to dola.audit@state.co.us, or:

Department of Local Affairs
Accounting & Financial Services
1313 Sherman Street, Room 323
Denver, CO 80203

6.3 Applicant/Participant Privacy. CSBG Recipient Agencies must establish internal policies to protect the privacy of applicants and participants. Paper records must be secured and access to records limited to appropriate staff. Electronic records must also be protected with access limited to appropriate staff.

6.4 Fraud. The U.S. Government Accountability Office (GAO) maintains FraudNet, a system for reporting allegations of fraud, waste and abuse under Federal grants and cooperative agreements. To report the possible misuse of Federal funds, the e-mail address is fraudnet@gao.gov, the fax number is 202-512-3086 and the mailing address is GAO, FraudNet, 441 G Street N.W., Washington, D.C. 20548.

6.5 Grant Modification. Any changes during the term of this Grant may require a public hearing and submission of a new application and plan. Any modifications of this Grant shall be in accordance with **§§7(A)** and **21(A)** Modification of the Grant.

6.6 Income Eligibility Procedures. CSBG Recipient Agencies are required to conduct eligibility screening as part of their client intake process. Grantee must implement written policies and procedures for each CSBG program they administer to insure that CSBG funds are only used to support individuals and families that meet the income eligibility requirement which has been determined to be at or below 125% the of Federal Poverty Guideline. Annual recertification must be performed if CSBG assistance is on-going in accordance with DOLA policy.

In determining household income, self declaration of income shall be used only as a method of last resort except in the case of shelter residents, emergency food bank users and participants provided limited services such as one-time bus tokens. If the self-declaration method is used, notation must be on file stating the reason(s) why other verification methods could not be used. The signature of the applicant/participant and identification of the intake worker must appear on the self-declaration statement.

6.7 Poverty Guidelines. CSBG Recipient Agencies shall use the most current "Federal Poverty Guideline" issued each year by the Department of Health and Human Services to establish financial eligibility.

6.8 Records. CSBG Recipient Agencies shall maintain records in accordance with **§9** of the Grant.

6.9 Results Oriented Management Accountability (ROMA). Implementation of the ROMA-approach to program management is required of all CSBG Recipient Agencies.

6.10 Reporting. Grantees shall submit the following reports, and any other reports requested to DOLA using the State-provided reporting forms.

Report Period	Report Type	Due Date
March 1 – May 31	Quarterly Financial & Progress	June 30
June 1 – August 31	Quarterly Financial & Progress	September 30
September 1 – November 30	Quarterly Financial & Progress	December 31
December 1 – February 28	Quarterly Financial & Progress	March 31
March 1 – February 28	Final (IS) Report D, E, F, G and NPI's: (2.3, 3.1, 3.2, 4.1, 5.1, 6.2)	March 31

6.11 Unexpended Balance. Grantee shall inform DOLA no later than 30 days prior to the termination date of the status of the Grant budget and any potential unexpended balance.

6.12 Monitoring. The State shall monitor this Grant through review of submitted reports, sub-awards, and other documents as necessary or may also conduct on-site monitoring of the Grantee and/or Subgrantee, if applicable, to determine whether performance goals, administrative standards, financial management and other requirements of the CSBG Act and this Grant have been met.

6.13 Subgrantee Monitoring. Grantee shall monitor Subgrantee(s), at least once during the term of this Grant. Documentation of monitoring results must be forwarded to DOLA within 60 days of the monitoring review.

6.14 Mileage Reimbursement Protocol. Mileage reimbursements, when allowable by the Scope of Project, is capped at the per-mile rate approved by the IRS at the time of travel.

6.15 Mandatory Training Attendance. Grantee attendance at webinars and trainings conducted by DOLA to enhance the administration of the CSBG program is required. Grantee will be notified of all such training at least 30 days in advance.

6.16 Tripartite Board. Grantee is required to have a governing board or in the case of a public entity, an advisory board. To receive CSBG funds, eligible entities must comply with Federal and State requirements pertaining to board composition and operation.

6.16.1 Grantee's tripartite board shall meet a minimum of twice annually within the CSBG program year. Formal board minutes of each meeting shall be taken and provided to DOLA with the applicable quarterly performance report.

6.16.2 Tripartite boards serving more than one county must have board composition that ensures adequate representation of all counties served.

6.16.3 Grantee shall establish written procedures under which low income individuals, community organizations, religious organizations, or representatives of low income individuals may petition the agency for representation on the tripartite board.

7. PROJECT BUDGET

Pursuant to **§ 7(A)** of the Grant, the maximum amount payable under this Grant to Grantee by the State for Work performed is limited solely to the amount specified in **§ 7(A)** as Grant Funds; however, the Parties acknowledge that Grant Funds for a Program Year which remain unexpended will expire at the end of such Program Year and no longer be available. While the State's obligation is limited to the unpaid obligated Grant Funds amount that has not expired, the Grantee may use such Grant Funds for any of the Services specified in this Project Budget up to the maximum amount specified for such activity on this Project Budget.

1. Year 1

Budget Category	Amount
Direct Operating and Personnel Costs	$26,344.00
Indirect Operating and Personnel Costs	$0
Subgrantee Costs	$0
TOTAL	$26,344.00

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EXHIBIT C – Supplemental Provisions for FFATA

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental 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 Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. "Award" means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;
1.1.2. Contracts;
1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
1.1.4. Loans;
1.1.5. Loan Guarantees;
1.1.6. Subsidies;
1.1.7. Insurance;
1.1.8. Food commodities;
1.1.9. Direct appropriations;
1.1.10. Assessed and voluntary contributions; and
1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award ***does not*** include:

1.1.12. Technical assistance, which provides services in lieu of money;
1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
1.1.14. Any award classified for security purposes; or
1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. "Contract" means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

1.3. "Contractor" means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

- **1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;
- **1.5.2.** A foreign public entity;
- **1.5.3.** A domestic or foreign non-profit organization;
- **1.5.4.** A domestic or foreign for-profit organization; and
- **1.5.5.** A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.

1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.

1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.

1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.

1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

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.

1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

- **1.15.1.** Salary and bonus;
- **1.15.2.** Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
- **1.15.3.** Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
- **1.15.4.** Change in present value of defined benefit and actuarial pension plans;
- **1.15.5.** Above-market earnings on deferred compensation which is not tax-qualified;
- **1.15.6.** Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

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. The Transparency Act also is referred to as FFATA.

1.17 **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. Compliance. Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.

3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. Total Compensation. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

4.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

4.2. In the preceding fiscal year, Contractor received:

4.2.1. 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

4.2.2. $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

4.3. 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.

5. Reporting. Contractor shall report data elements to SAM and to the Prime Recipient as required in **§7** below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in **§7** below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in **§2** above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

6. Effective Date and Dollar Threshold for Reporting. The effective date of these Supplemental Provisions applies to new Awards as of October 1, 2010. Reporting requirements in **§7** below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the

Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7. Subrecipient Reporting Requirements. If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;
7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
7.1.3 Subrecipient Parent DUNS Number;
7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in **§4** above are met; and
7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in **§4** above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in SAM**.**
7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental 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.

8.2 A Contractor 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.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section **1.1** of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract 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 Contract, at law or in equity.

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EXHIBIT G

OPTION LETTER, Number

To

GRANT AGREEMENT

Between

STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS

And

Insert Grantee's Full Legal Name (Capitalized)

SAMPLE

Summary

Form of Financial Assistance: ☐ Grant ☐ Loan

This Option Letter Amount: _____
Revised Total Award Amount: _____

Agreement Identification:

Contract Encumbrance #: _____ *(DOLA's primary contract identification #)*
Contract Management System #: _____ *(State of Colorado's contract tracking # for this*
Original Grant's CMS #: _____ *option letter and for the original grant agreement)*

Project Information:

Project/Award Number: _____
Project Name: _____
Performance Period: Start Date: _____ End Date: _____
Brief Description of Change(s) in this Option Letter: _____

Program & Funding Information:

Program Name _____
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): _____
Funding Account Codes: _____
_____

EXHIBIT G

Date: _____

1) **OPTIONS:**
   - **a.** Option to accept Budget Proposal. (*Use for all options*)
   - **b.** Option to adjust Option Letter amounts to the Funding Level amount from the federal government and encumber Grant Funds for a Program Year.
   - **c.** Option to increase Grant Funds for a Program Year to the Funding Level amount from the federal government for such Program Year.

2) **REQUIRED PROVISIONS**.

   a. For use with all Options: In accordance with **Section 7(A)** of the original grant agreement ("Grant") between the State of Colorado, Department of Local Affairs**,** and Contractor's Name, the State hereby exercises its option to approve the attached Budget Proposal for Program Year No. _____ from 3/1/_____ through 9/30/_____, which is attached hereto as Exhibit _____ and incorporated by reference herein (the "Budget Proposal").

   b. For use with Option 1(b): In accordance with **Section 7(A)** of the Grant, the State hereby exercises its option to ☐ increase, ☐ decrease the Option Letter amount of _____ for Program Year No. _____from 3/1/_____ through 9/30/_____ and to encumber such funds, which shall be Grant Funds under the Grant. The table in **Section 7(A)** is hereby modified accordingly.

   c. For use with Option 1(c): In accordance with **Section 7(A)** of the Grant, the State hereby exercises its option to increase Grant Funds by _____ for Program Year No. _____from 3/1/_____ through 9/30/_____ for a new Grant Funds total of _____ for such Program Year. The table in **Section 7(A)** is hereby modified accordingly.

   d. For use with all Options: The aggregate maximum amount of Grant Funds in the Grant is hereby ☐ increased, ☐ decreased to a new Grant Funds value of $**Insert New $ Amt** as consideration for Work ordered under the Grant. The State's obligation is limited to the unpaid obligated Grant Funds amount that has not expired.

3) **Effective Date**. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS	PRE-APPROVED FORM CONTRACT REVIEWER
By:_____ Executive Director	By:_____ Rachel Harlow-Schalk, Financial Assistance Director
Date: _____	Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Option Letter is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By:_____
Janet Miks, CPA, Controller Delegate

Date:_____

SAMPLE