

# GRANT AWARD LETTER

## COVER PAGE

<b>State Agency</b> Colorado Department of Education	<b>Grant Amount</b> Grant Amount: \$ Grantee Match Amount:
<b>Grantee</b> Insert Grantee's Full Legal Name.	<b>Award Information</b> Type of Grant: Program Title: Project Title:
<b>Award Period</b> <b>Grant Issuance Date:</b> <b>Grant Expiration Date:</b>	
<b>Grant Description</b> <b>The purpose of the Grant is to provide financial assistance to school districts, charter schools and Boards of Cooperative Educational Services (BOCES) throughout the state that have difficulty financing new capital construction projects and renovating and maintaining existing facilities.</b>	<b>Grant Authority</b> Authority: Authority to enter into this Grant exists in Section 22-43.7-101, et seq., C.R.S.

<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> <li>1. Exhibit A, Grant Award Letter Statement of Work</li> <li>2. Exhibit B, Application Documents and Budget</li> <li>3. Exhibit C, Deliverables and Submittals</li> <li>4. Exhibit D, Grant Funding Change Letter</li> </ol> <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> <li>5. Colorado Special Provisions in §19 of the main body of this Agreement.</li> <li>6. The provisions of the other sections of the main body of this Agreement.</li> <li>7. Exhibit A, Statement of Work.</li> <li>8. Exhibit B, Application Documents and Budget</li> <li>9. Exhibit C, Deliverables and Submittals</li> <li>10. Exhibit D, Grant Funding Change Letter</li> </ol>
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<b>Principal Representatives</b> For the State: <ul style="list-style-type: none"> <li>Name</li> <li>Department Name</li> <li>Address</li> <li>Address</li> <li>City, State Zip</li> <li>Email</li> </ul>	For Grantee: <ul style="list-style-type: none"> <li>Name</li> <li>Company Name</li> <li>Address</li> <li>Address</li> <li>City, State Zip</li> <li>Email</li> </ul>
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**SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT AWARD LETTER**

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

<p><b>GRANTEE</b> INSERT-Legal Name of Grantee</p> <hr/> <p>By: Name &amp; Title of Person Signing for Grantee</p> <hr/> <p>Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> John W. Hickenlooper, Governor Colorado Department of Education Katy Anthes, Ph.D., Commissioner</p> <hr/> <p>By: Katy Anthes, Ph.D., Commissioner</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <hr/> <p>By: Dave Grier, CPA, CDE Controller</p> <p>Effective Date: _____</p>	

SAMPLE

## 1. GRANT

As of the Grant Effective Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter.

## 2. TERM

### A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date listed on the Cover Page of this Grant Award Letter and shall terminate on the Grant Expiration Date listed on the Cover Page of this Grant Award Letter unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration 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, unless included in the Grantee’s Application and approved by the Public School Capital Construction Assistance Board, or be bound by any provision hereof prior to the Effective Date.

### B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

## 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Application”** means the application for financial assistance submitted by the Grantee and approved by the BEST Board to implement the Grantee’s Project.
- B. **“BEST Board”** means the nine-member Public School Capital Construction Assistance Board created pursuant to Section 22-43.7-104, C.R.S.

- C. **“Breach of Agreement”** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against 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 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **“Budget”** means the budget for the Work described in Exhibits A and B.
- E. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- F. **“Division”** means the Division of Public School Capital Construction Assistance at the Colorado Department of Education.
- G. **“Eligible Expenses”** means those expenses directly necessary to complete the Work, subject to Division approval.
- H. **“Goods”** means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.
- I. **“Grant Amount”** means funds available for payment by the State to Grantee pursuant to this Grant.
- J. **“Grantee Adjusted Match %”** means the percentage of matching funds the Grantee is to provide for the total Project cost.
- K. **“Grant Award Letter”** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- L. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- M. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- N. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- O. **“Grantee”** means a school district, Board of Cooperative Educational Services (BOCES), or the Colorado School for the Deaf and Blind that receives financial assistance from a BEST Cash Grant from the Building Excellent Schools Today Program pursuant to 22-43.7-101, *et seq.* C.R.S. Pursuant to 22-43.7-109(3) C.R.S., if financial assistance is awarded for a charter school, the charter school’s authorizer is the Grantee.
- P. **“Exhibits”** means the following exhibits attached to this Grant Award Letter:
- i. **Exhibit A**, Grant Award Letter Statement of Work
  - ii. **Exhibit B**, Application Documents and Budget
  - iii. **Exhibit C**, Deliverables and Submittals
  - iv. **Exhibit D**, Grant Funding Change Letter
- Q. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter

- R. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- S. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- T. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- U. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- V. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- W. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.
- X. **“Program”** means the Building Excellent Schools Today (BEST) grant program established pursuant to Section 22-43.7-101, et seq., C.R.S. that provides the funding for this Grant.
- Y. **“Project”** means the capital construction project submitted by the Grantee in its Application to the BEST Board and approved for Financial Assistance.
- Z. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- AA. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- BB. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- CC. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- DD. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. **“Subcontractor”** also includes sub-grantees.

EE. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.

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

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

#### **4. STATEMENT OF WORK**

Grantee shall complete the Work and its other obligations as described in this Grant Award Letter and in Exhibit A on or before the Project Completion date in Exhibit A. The State may reimburse certain Project Expenses incurred prior to the Effective Date if included in the Grantee’s Application and approved by the BEST Board, but shall otherwise not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant. The State shall have no liability to compensate or reimburse Grantee for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Grant Award Letter. 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.

#### **5. PAYMENTS TO GRANTEE**

##### **A. Maximum Amount**

The maximum amount payable under this Grant to Grantee by the State is the Grant Amount Listed on the first page of this Grant Award Letter, as determined by the State from available funds. If the Project cannot be completed for the Grant Amount, Grantee agrees to provide any additional funds required for the successful completion of the Project. Payments to Grantee are limited to the unpaid, obligated balance of the Grant Amount.

The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount shown on the first page of this Grant Award Letter.

##### **B. Payment**

The Grantee shall submit Form CC-06 Division Funding Request, proof of expenditures and any other requested documentation in accordance with Exhibit A. The Grantee acknowledges that payment will be made only upon Division approval of Grantee’s submission of Form CC-06.

The Grantee acknowledges that:

If the Grant is a BEST Emergency Grant or a BEST Cash Grant, it will be paid on a draw basis as needed to pay current Project invoices no more frequently than once a month.

Any and all Project costs in excess of the Grant Amount are the responsibility of the Grantee.

Grantee shall submit Form CC-06 Fund Requests as incurred, on a monthly basis. All invoices must contain or be accompanied by sufficient detail to verify eligibility of expenses according to the scope and limitations of the Grant.

In conjunction with the final Division Funding Request, the Grantee shall submit to the Division a form CC-05, Capital Construction Project Final Report, to finalize the status of the Project. The Grantee acknowledges that the Division will withhold Grant funds pending receipt and approval of the Request.

C. Grantee Matching Funds

If applicable, Grantee shall provide the Grantee Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Grantee Match Amount"). Grantee shall appropriate and allocate the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the Grantee Match Amount has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account.

D. Advance, Interim and Final Payments

Any advance payment allowed under this Grant as set forth in the Application and approved by the BEST Board 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.

E. Interest

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

D. Reimbursement of Grantee Costs

Grant Funds shall be used only for Eligible Expenses identified herein and/or in the Project costs set forth in the Application. The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: **(i)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; and **(ii)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 90 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice.

## 6. REPORTING – NOTIFICATION

Reports, Evaluations, and Reviews required under this Section 6, shall be in accordance with the procedures of and in such form as prescribed by the State.

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

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

C. Litigation Reporting

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Commissioner of CDE.

D. Performance Outside the State of Colorado and/or the United States

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Grantee shall provide written notice to the State's principal representative, and in a form designated by the State, within 20 days following the earlier to occur of Grantee's decision to perform Services outside of the State of Colorado or the United States, or its execution of an



agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Grantee to provide notice to the State under this section shall constitute a breach of this Agreement. This section shall not apply if the Agreement Funds include any federal funds.

E. Noncompliance

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

F. Contracts and Subgrants

Copies of any and all contracts and 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 contracts and subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such contracts and subgrants be governed by the laws of the State of Colorado.

**7. GRANTEE RECORDS**

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of seven years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

**8. CONFIDENTIAL INFORMATION-STATE RECORDS**

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

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

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Grant Award Letter, Grantee shall provide for the security of such PII, in a form acceptable to the State, including, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall take full responsibility for the security of all PII in its possession or in the possession of its Subcontractors, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

## 9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and 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 under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee shall avoid all conflicts of interest, including but not limited to the following:

1. No employee of the Grantee will perform or provide services for compensation, monetary or otherwise, to a consultant, consultant firm, business entity, contractor or other vendor that has been retained by the Grantee to perform work on the Project.
2. Grantee acknowledges that no person at any time exercising any function or responsibility in connection with the Project on behalf of the Grantee shall have or acquire any personal financial or economic interest, direct or indirect investment interest in the Project or any vendor performing work under the Project:
  - i. A personal financial or economic interest includes, but is not limited to:
    - a. Any business entity in which the person has a direct or indirect ownership or monetary interest.
    - b. Any real property in which the person has a direct or indirect ownership interest.
    - c. Any source of income, loans, or gifts received by or promised to the person within 12 months prior to the execution date of this Agreement or any contract for work on the Project.
    - d. Any business entity in which the person is a director, officer, general or limited partner, trustee, employee or holds any position of management.
  - ii. An indirect investment or interest includes:
    - a. Any investment or ownership interest held by a person's spouse, parent, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law, agent, a general, limited, or silent partner, by any business entity controlled by said person, or by a trust in which he or she has substantial interest. A business entity is controlled by a person if that

person, his or her agent, or a relative as defined above possesses more than 50% of the ownership interest.

## 10. INSURANCE

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

### A. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. Section 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 Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall require each Grant with a Subgrantee that is a public entity providing Goods or Services hereunder, to include the insurance requirements necessary to meet such Subgrantee's liabilities under the GIA. Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State.

### B. 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 as set forth below in this Section 10B. Grantee shall require each grant with Subgrantees other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to those set forth below in this Section 10B.

#### a. Worker's Compensation

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

#### b. 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.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subgrantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

#### c. 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.

d. Grantee Performance and Payment Bonds

Pursuant to the requirements of C.R.S. Sections 38-26-105 and 106, for any Grant exceeding \$50,000, the Grantee shall require each contractor performing work on the Project to provide a performance bond and separate labor and material payment bond which shall be executed by a corporate surety licensed to do business in the State, be in an amount which is at least one-half of the amount payable to the contractor for work under the Project and be payable to the Grantee. The contractors and suppliers shall file notice of final settlement in accordance with C.R.S. Section 38-26-107.

e. Additional Insured

Grantee shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and any Subgrantees hereunder.

f. Primacy of Coverage

Coverage required of Grantee and Subgrantee shall be primary over any insurance or self-insurance program carried by Grantee.

g. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State's principal representative within seven days of Grantee's receipt of such notice.

h. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees 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.

i. Certificates

Upon request by the State at any time during the term of this Grant or any subgrant, Grantee and each contractor, or Subgrantees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

## 11. 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, trade, 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 and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations 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, agents, and Subgrantees 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 is a material breach by Grantee and constitutes grounds for termination of this Grant.

**12. BREACH OF AGREEMENT**

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §13 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Grantee is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

**13. REMEDIES**

**A. State’s Remedies**

If Grantee is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §12, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees 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 as if this Agreement had been terminated in the public interest under **§2.B**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold 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 Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in

accordance with the State's directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

SAMPLE



## **14. REMEDIES**

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

## **15. DISPUTE RESOLUTION**

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

## **16. NOTICES AND REPRESENTATIVES**

Each Party's principal representative is listed on the first page of this Grant Award Letter. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16.

## **17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

In the event that Grantee creates Work Product pursuant to this Grant Award Letter, Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise make full use of and derive benefit from all intellectual property, or Work Product, created by Grantee or any Subcontractors or Subgrantees pursuant to the Grant Award Letter and paid for with Grant Funds provided by the State pursuant to this Grant.

## **18. GENERAL PROVISIONS**

### **A. Assignment**

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

### **B. Captions and References**

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

### **C. Entire Understanding**

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

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. In addition, the State may modify the Current Award Amount listed in the coversheet by issuance of a Grant Funding Change Letter. The State, at its discretion, may unilaterally increase or decrease the Current Award Amount listed in the coversheet available under this Grant, the funds available under the Grant during any year or the funds available for any specific line item described in this Grant using the Grant Funding Change Letter. In order to exercise this right, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit D. The exercise of this right shall not be valid until it has been approved by the State Controller or designee.

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

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

F. Digital Signatures

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

G. Severability

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

H. Survival of Certain Grant Award Letter Terms

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

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. 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.

J. Waiver

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

K. Debarred or Suspended Entities

Grantee shall not enter into any grant or subgrant in connection with this Grant with a party that has been debarred or suspended from granting with the Federal Government or the State of Colorado.

L. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Grantee. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Grantee for such taxes.

M. Indemnification

To the extent permitted by law, Grantee shall 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, Subcontractors, 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 Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., as applicable, as now or hereafter amended.

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

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

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. **INDEPENDENT CONTRACTOR**

Grantee shall perform its duties hereunder as an independent contractor 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 shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **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. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. **COMPLIANCE WITH LAW.**

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. **CHOICE OF LAW, JURISDICTION, AND VENUE.**

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

G. **PROHIBITED TERMS.**

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Agreement that limits Grantee's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Agreement, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Agreement.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Agreement 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 Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. 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.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

*[Not applicable to intergovernmental agreements]* Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

*[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 will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (i) shall not use E-Verify Program or

the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting 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 Department program. If Grantee fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Grantee shall be liable for damages.

L. **PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Grantee (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Agreement.

## EXHIBIT A, STATEMENT OF WORK

### I. Project Summary

Name of Grantee/Applicant: **GRANTEE NAME**

Name of Project: **PROJECT DESCRIPTION**

CDE Accounting PO Number: \_\_\_\_\_

Grantee Adjusted Match %: **MATCH PERCENT**

	CDE Portion	Grantee Match Portion	Total Project Cost
Grant Amount	<b>\$BEST PORTION</b>	<b>\$GRANTEE MATCH</b>	<b>\$TOTAL PROJECT</b>

Anticipated Project Completion Date: **COMPLETION DATE**

### II. GRANTEE'S OBLIGATIONS

#### A. Responsibilities of the Grantee

1. The Grantee shall use any Grant Amount and Grantee matching funds in accordance with the Integrated Program Plan Data set forth in the Application. The Grantee acknowledges that any modification of the implementation of the Project must receive prior written approval of the Division of Public School Capital Construction Assistance (the "Division").
2. The Grantee shall follow the Project Schedule and detailed Project Management Plan attached to the Application. The Grantee acknowledges that any deviation from the detailed Project Management Plan and/or the Project Schedule may impact future funding of the Project.
3. The Grantee acknowledges that the cost of the Project (the "Project cost") includes the cost of project management.
4. The Grantee acknowledges that cost overruns are the responsibility of the Grantee.
5. The Grantee shall budget and expend sufficient funds to satisfy any costs of design, management, permitting, abatement, repair, renovation, demolition, construction, or provision of technology or utility infrastructure not included within the Grant Amount but necessary to complete the Project.

6. The Grantee shall complete, or have made substantial progress towards completion of, the Project by the Project Completion Date set forth in the Application. The Grantee acknowledges that the Grant may be withdrawn and closed out after one year unless the Grantee provides adequate justification for an extension.
7. The Grantee acknowledges that the Grant does not obligate the Division, Colorado Department of Education or the State of Colorado to any future grant awards. If the Grantee contemplates grant funding of any future phases related to the Project, the Grantee acknowledges that any such future grant funding would be contingent upon approval of an additional application, appropriation of additional funds, and award of an additional grant by the BEST Board.
8. The Grantee acknowledges that if the Grant Amount is not fully expended upon completion of the Project, the Grantee will forfeit any remaining BEST Grant funds.
9. The Grantee shall ensure that the condition of the structures adjacent to the Project will not have adverse impacts upon the Project.
10. The Grantee acknowledges that it has reviewed its Asbestos Hazard Emergency Response Act (AHERA) plan to determine the presence of asbestos containing material on the site of the Project and that any asbestos issues were disclosed in the Application and will be remediated in the Project, or are above and beyond costs included in the Project Costs.
11. The Grantee acknowledges that it will obtain all necessary and proper permits and approvals to complete the Project.
12. The Grantee acknowledges that failure to complete any portion of the Project as defined by the Application may constitute a material breach of this Grant Award Letter. Reductions in scope will require written Division approval and forfeiture of the associated cost from the Grant Amount.
13. The Grantee acknowledges that if the Project as defined by the Application includes full demolition, partial demolition, or divestment of any structure for replacement, failure to fully divest such structures may constitute a material breach of this Grant Award Letter.

B. Oversight

1. The Grantee acknowledges that the Division may, but is not obligated to, provide assistance by:
  - a. Reviewing any Project planning documents and methods for conformity with applicable standards, manuals and guidelines.



- b. Making site visits as determined necessary by the Division before, during, and/or after the conclusion of the Project to provide on-site technical advice, to monitor progress and to confirm conformance with the Application.
2. The Grantee acknowledges that the Division encourages open and competitive bidding in vendor selection for work on the Project. Unless specifically stated in the Application, or approved in advance by the Division, the Grantee agrees to comply with the Division's competitive selection process for vendors as outlined in the grant Application.

The Grantee acknowledges that if the Grant is a BEST Emergency Grant or a BEST Cash Grant and the property or improvements impacted by the Grant is sold, abandoned, demolished, or extensively renovated in a manner that makes the Project work obsolete within a five-year period after completion of the Project, the Grant will be recaptured as follows: if the property is sold, abandoned, demolished or extensively renovated in a manner that makes the Project work obsolete within the first year after completion, 100% of the Grant shall be returned to the State of Colorado, with a 20% reduction per year thereafter.

C. Reporting

1. Final Report: CC-05 – Due upon completion and prior to final payment of CDE's portion of the Grant.
2. Additional Reporting: The Grantee shall provide the Division the following, with additions or adjustments as indicated in Exhibit C: Deliverables and Submittals
  - a. Written progress reports detailing project progress, evidence of site visits, and areas of concern and proposed solutions.
  - b. Documentation demonstrating that key quality processes such as design review, inspections, permitting, and quality testing have been completed.
  - c. Line Item Budgets with the following parameters.
    - 1) A column displaying the final Grant Application project budget with line items matching those submitted in Exhibit B.
    - 2) A column displaying the budget as revised during the design stage.
    - 3) A column displaying the final approved budget at the time of Guaranteed Maximum Price or Bid, following review with Division Staff.
    - 4) An adjustment column displaying any changes from the final approved budget.

- 5) All contingencies and allowance line items, identified separately, with all changes approved by Division staff in advance of cost commitment.
- d. All furniture, fixture and equipment (FF&E) budgets, technology budgets, and add alternatives lists need to be approved by the Division prior the Grantee incurring expenses. All expenses in these categories must be pre-approved by the Division.

D. Administrative Requirements

1. Accounting

- a. At all times from the Effective Date of this Grant until completion of the Project, Grantee shall maintain properly segregated books of State Grant Funds, matching funds, and other funds associated with the Project.
- b. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the Project Budget set forth in Exhibit B and the line item budget maintained per II.C.2.c.

2. Monitoring

- a. The State shall monitor this Project on an as-needed basis. The State may choose to audit the business activities performed under this Grant. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Grant. Such books and records shall contain documentation of the participant's pertinent activity under this Grant in a form consistent with good accounting practice.

E. Compliance with Laws and Regulations

Grantee shall comply with all applicable laws and regulations, including but not limited to:

1. Section 22-43.7-109(4)(d)(I), C.R.S., 1 C.C.R. 303-3, 5.2.4 and the representations in Grantee's Application (regarding maintenance of the Project).
2. Sections 25-7-504 and 25-7-507, C.R.S. (regarding asbestos abatement and related certifications).
3. Section 22-32-124, C.R.S. (regarding building codes, zoning, and planning).

4. Section 22-43.7-106(2)(i)(I)(c), C.R.S. and 1 C.C.R. 303-3, 8.2.6 (regarding the permanent sign to be affixed to the Project facility that says: “Funding for this school was provided through the Building Excellent Schools Today Program from School Trust Lands”).
5. Sections 8-17-101, et seq., C.R.S., the Keep Jobs in Colorado Act of 2013.
6. Sections 8-19-104 and 8-19-105, C.R.S. (regarding bidding preferences on public works contracts).
7. Sections 24-92-103.5 and 24-92-103.7, C.R.S. (regarding competitive sealed best value bidding).
8. Sections 24-102-206 and 24-102-206.5, C.R.S. (regarding contract performance outside the United States or Colorado).
9. Section 24-103-210, C.R.S. (regarding use of foreign-produced goods - iron, steel, and related manufactured products).
10. 1 C.C.R. 303(1) and 1 C.C.R. 303-3 (regarding the Building Excellent Schools Today program and the construction guidelines).
11. The Occupational Safety and Health Act of 1970 (P.L. 91-576), or state and local codes to the extent they are more stringent.
12. 40 C.F.R. Part 763 (regarding plans, inspections, and trainings under the Asbestos Hazard Emergency Response Act of 1986).
13. The State Historical Register Act, sections 24-80.1-101 et seq., C.R.S. (regarding registered historical buildings and buildings 50 years or older).
14. The State Architect’s High Performance Certification Program pursuant to C.R.S. 24-30-1305(9)(b).
15. All applicable accessibility requirements (including ANSI 1998 A 117.1 with the 2006 International Building Code or 2003 A 117.1 with the 2006 International Code when adopted by the State of Colorado, Department of Public Safety, Division of Fire Safety, Public School and Junior College Construction and Inspection, Public Schools, and including any updates to these codes, acts, or standards).
16. All other applicable state and local construction codes (including building, fire, electrical, mechanical, plumbing, and any other applicable type).
17. All other applicable state and local operation and maintenance requirements.

## EXHIBIT B, APPLICATION DOCUMENTS AND BUDGET

Name of Grantee/Applicant: \_\_\_\_\_

Name of Project: \_\_\_\_\_

**YES**   **NO**

 

Capital Construction Assistance Grant Application (Form CC-03)

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Signed by:

Person who prepared the grant: Name & Title

School District Superintendent: Name & Title

Designated Board Officer: Name & Title

Charter School Director (if applicable): Name & Title

Revisions – If any, please list below:

1) Revision description

2) Revision description

3) Revision description

4) Revision description

 

Detailed Project Budget

 

Area Map

 

Photos – If yes, how many submitted: List#

 

Proposed timeline for the start and completion of the project

 

Detailed Project Management Plan

 

Supporting Letters

If yes, provide:

The date, who it is from, and a brief description

 

Facility Master Plan – If yes, Date of Master Plan name of preparer

- Supplemental Information  
If yes, please list below:
  - 1) Type of information and date
  - 2) Type of information and date
- Plans and Specifications
- Waiver Request
- Other revisions – If yes, please list below:

- 1) Date, document revised and revision description
- 2) Date, document revised and revision description
- 3) Date, document revised and revision description
- 4) Date, document revised and revision description
- 5) Date, document revised and revision description

- Other information:

- 1)
- 2)
- 3)
- 4)
- 5)

SAMPLE

## EXHIBIT C, DELIVERABLES AND SUBMITTALS

Name of Grantee/Applicant:

Name of Project:

<u>Deliverable or Submittal</u>	<u>Frequency</u>
Cash Grant Contract	Prior to first invoice
Finalized Line Item Budget	Initial at design phase, Final at GMP or bid, updates with each Fund Request
Master Budget to include Soft/ Hard Costs	Submit with each Fund Request (CC06)
Project Directory	Initial at design phase, updated as needed
Fund Requests (CC-06) with backup documentation	Monthly
Procurement documents and decision memoranda	Within 1 week of each procurement
Field Observation Reports including progress, testing and inspection results, photos, and corrective actions – Roof Consultant	Monthly minimum
Design phase meeting minutes	as produced
Project Schedule	Initial and as revised
Vendor/ Consultant Contracts	Prior to Execution for review and final for files.
Electronic copies of contract documents	100% SD, 100% DD, 100% CD, and as-built following completion
OAC Meeting Minutes	as produced
Change Order Requests and Logs, with detailed backup	Prior to signing Change Order
Vendor Certificates of Insurance required by Contract	Prior to start of construction, and annual until occupied
Final Report (CC-05)	At closeout of the grant
Warranty in place and warranty process established	Provide at the close of construction
Certificate of Occupancy	Upon receipt

## Exhibit D, GRANT FUNDING CHANGE LETTER

<b>State Agency</b> Colorado Department of Education	<b>Action</b>
<b>Grantee</b> Insert Grantee's Full Legal Name.	<b>Award Information</b> Type of Grant: Program Title: State Grant Code: State Awarding Agency: Authority: Grantee Match Amount:
<b>Award Period</b> State Funding Period: Performance Period: State Award Date:	
<b>Grant Description</b> <b>The purpose of the Grant is to provide financial assistance to school districts, charter schools and Boards of Cooperative Educational Services (BOCES) throughout the state that have difficulty financing new capital construction projects and renovating and maintaining existing facilities.</b>	<b>Grant Amount</b> Current Award Amount: \$ Previous Cumulative Amount: \$ <b>Cumulative Amount: \$</b>

**1. GRANT FUNDING CHANGE**

In accordance with §16D of the Original Grant referenced above, the State Agency listed above commits the following funds to the grant:

- A. The funding available is Increased/Decreased by \$Amount of Change, because Insert Reason For Change.
- B. The total funding available for all years as of the effective date of this Grant Funding Change Letter is shown as the current Agreement maximum above.

**2. TERMINOLOGY**

All terminology used in this Grant Funding Change Letter shall be interpreted in accordance with the Original Grant referenced above.

**3. NO ORDER FOR WORK**

This Grant Funding Change Letter modifies the available funding only and does not constitute an order or authorization for any specific services or goods under the Grant.

**4. GRANT FUNDING CHANGE LETTER EFFECTIVE DATE:**

The effective date of this Grant Funding Change Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

**STATE OF COLORADO**  
 John W. Hickenlooper, Governor  
 Colorado Department of Education  
 Katy Anthes, Ph.D., Commissioner

\_\_\_\_\_  
 By: Katy Anthes, Ph.D., Commissioner

Date: \_\_\_\_\_

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

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_  
Dave Grier, CPA, CDE Controller

Grant Funding Change Letter Effective Date: \_\_\_\_\_

SAMPLE