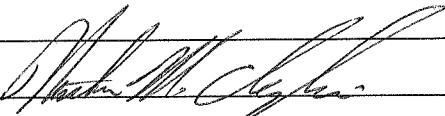


**COUNCIL COMMUNICATION**

|                            |   |  |
|----------------------------|---|--|
| <b>DATE:</b> 4 August 2010 | <b>AGENDA NO.</b> VIII C. 8. e.   | <b>SUBJECT:</b> Agree to act as Fiscal Agent for a CDBG grant to assist La Puente. |
| <b>Department Head:</b>    |   |  |
| <b>City Manager:</b>       |  |  |
|                            | Nathan M. Cherpeski   |  |
| <b>PRESENTED BY:</b>       | Nathan M. Cherpeski   |  |

**Recommendation**

It is recommendation of staff to adopt Alternative 1, agreeing to continue to act as fiscal agent for La Puente for an additional year but asking that La Puente look at transferring that responsibility to the Council of Governments in future years.

**Background**

For the last couple of years, the City has acted as La Puente’s fiscal agent for its shelter grants. These grants are used for their basic operation. The City receives all funds and passes those on to La Puente. The City is responsible for filing all reports and tracking. While La Puente’s staff does much of the work, it still requires substantial staff time to accomplish the City’s responsibilities. We receive an administrative portion to offset this time and the additional costs for the audit.

**Issue Before the Council**

Does the City Council wish to continue for an additional year as the fiscal agent for this grant?

**Alternatives**

1. Authorize the Mayor to sign the attached grant agreement so the City can continue to serve as the fiscal agent.
2. Decline to act at this time and give staff further direction.

**Fiscal Impact**

The net impact in staff time costs and additional audit costs should be off-set by the administrative fee portion of the grant.

**Legal Opinion**

City Attorney will be present for any comments.

**Conclusion**

Continuing to serve as the fiscal agent for this grant, while taking staff time, should not be overly burdensome. Staff continues to explore the option of letting the COG serve in this capacity as they would be better suited to do so.

# STATE OF COLORADO

**DEPARTMENT OF LOCAL AFFAIRS**  
**Executive Director's Office**

1313 Sherman Street, Suite 500  
Denver, Colorado 80203  
Phone: (303) 866-4904  
FAX: (303) 866-4317  
TDD: (303) 866-5300



Bill Ritter, Jr.  
Governor

Susan E. Kirkpatrick  
Executive Director

July 30, 2010

The Honorable Kathy Rogers, Mayor  
City of Alamosa  
Post Office Box 419  
Alamosa, Colorado 81101

RE: CDBG #10-061 (La Puente Home)

Dear Mayor Rogers:

The emergency shelter services committee has reviewed your application and recommended approval of the funding for La Puente Home. I concur with the recommendation and am offering to enter into a contract for a grant in the amount of \$52,000 for the following activities:


|                                |          |
|--------------------------------|----------|
| La Puente Home                 | \$46,000 |
| TuCasa Domestic Violence       | \$ 3,000 |
| City of Alamosa administration | \$ 3,000 |

These funds may not be obligated before a grant contract is fully executed. Expenditures made prior to the full execution of the contract cannot be reimbursed by the State. Additionally, it is the finding of the Department of Local Affairs that the activities are exempt as defined under 24 CFR 58.34 of the Environmental Review Procedures for the CDBG program.

Please contact Shannon Picaso at (303) 866-5306 for information on how to proceed.

Again, congratulations on the receipt of this award, and best wishes to you on the successful completion of your project.

Sincerely

  
Susan E. Kirkpatrick  
Executive Director

cc: Representative Ed Vigil  
Senator Gail Schwartz  
Nathan Cherpeski, Alamosa City Manager  
Lance Cheslock, La Puente Home

|                    |
|--------------------|
| Contract Routing # |
|                    |
| CFDA # 14.228      |

**CONTRACT**

**THIS CONTRACT**, made by and between the State of Colorado, for the use and benefit of The Department of Local Affairs, 1313 Sherman Street, Denver, CO 80203 hereinafter referred to as the State, and City of Alamosa, Post Office Box 419, Alamosa, Colorado, 81101, hereinafter referred to as the Contractor,

**WHEREAS**, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number \_\_\_\_\_ Appropriation Code Number \_\_\_\_\_, Org. Unit \_\_\_\_\_ GBL \_\_\_\_\_, Contract Encumbrance Number H1CDB10061; and

**WHEREAS**, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

**WHEREAS**, the United States Government, through the Housing and Community Development Act of 1974 ("the Act"), Pub. L. No. 93-383, as amended, has established a Community Development Block Grant ("CDBG") program and has allowed each state to elect to administer such federal funds for its nonentitlement areas, subject to certain conditions, including a requirement that the state's program give maximum feasible priority to activities which will benefit very low-, low-, and moderate-income families or aid in the prevention or elimination of slums or blight; the state's program may also include activities designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Additionally, the state's program is subject to a federal requirement that not less than seventy percent (70%) of the aggregate amount of CDBG funds received by the state shall be used for the support of activities that benefit persons of very low-, low-, and moderate-income; and

**WHEREAS**, the State of Colorado has elected to administer such federal funds for its nonentitlement areas through the Colorado Department of Local Affairs ("Department"), pursuant to C.R.S. 1973, 24-32-106(1) (d), 24-32-304(2) (j) and 24-32-705(1) (i); and

**WHEREAS**, the Department has received applications from political subdivisions in Colorado for allocations from the federal CDBG funds available to Colorado; and

**WHEREAS**, the Contractor is one of the eligible political subdivisions to receive CDBG funds; and

**WHEREAS**, the Department has approved the proposed Project of the Contractor;

**NOW, THEREFORE**, it is hereby agreed that:

1. Scope of Services. In consideration for the monies to be received from the State, the Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Service", set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and is hereinafter referred to as the "Project". Work performed prior to the execution of this Contract shall not be considered part of this Project.

2. Responsible Administrator. The performance of the services required hereunder shall be under the direct supervision of Nathan Cherpeski, an employee or agent of Contractor, who is hereby designated as the responsible administrator of this Project. At any time the Contractor wishes to change the responsible administrator, the Contractor shall propose and seek the State's approval of such replacement responsible administrator. The State's approval shall be evidenced through a Contract Amendment to this contract initiated by the State as set forth in paragraph 16.b) of this Contract. Until such time as the State concurs in the replacement responsible administrator, the State may direct that Project work be suspended.

3. Time of Performance. This Contract shall become effective upon proper execution of this Contract by the State Controller or designee. The Project contemplated herein shall commence as soon as practicable after the execution of this Contract and shall be undertaken and performed in the sequence set forth in the attached Exhibit A, Scope of Services. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract, and that completion of the Project shall occur not later than the termination date set forth in the Scope of Services.

4. Eligibility and National Objectives. All project activities shall be eligible under Section 105 of the Act, as amended, and all related regulations and requirements. Furthermore, project activities shall meet the following indicated (with a "X") broad national objective(s), as set forth in Section 104(b)(3) of the Act, as amended, and all related regulations and requirements:

- Benefit persons of very low-, low-, and moderate-income;
- Prevent or eliminate slums or blight;
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

5. Obligation, Expenditure and Disbursement of Funds.

a) Prior Expenses. Expenses incurred by the Contractor in association with said Project prior to execution of this Contract are not eligible CDBG expenditures and shall not be reimbursed by the State.

b) Environmental Review Procedures. Funds shall not be obligated or utilized for any activities requiring a release of funds by the State under the Environmental Review Procedures for the CDBG program at 24 CFR Part 58 until such release is issued in writing. Administrative costs, reasonable engineering and design costs, and costs of other exempt activities identified in 24 CFR 58.34(a)(1) through (8) do not require a release of funds by the State. For categorically excluded activities listed in 58.35(a) determined to be exempt because there are no circumstances which require compliance with any other Federal laws and authorities cited at 58.5, the Contractor must make and document such a determination of exemption prior to incurring costs for such activities.

c) Community Development Plan Requirement. Prior to receiving disbursements of CDBG funds from the State, the Contractor shall identify its community development and housing needs, including the needs of very low-, low-, and moderate-income persons, and the activities to be undertaken to meet such needs.

6. Definition of Very low-, Low- and Moderate-Income Persons. Very low-, low-, and moderate-income persons are defined, for the purposes of this Contract, as:

- Those persons who are members of very low-, low-, and moderate-income families as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, or as subsequently promulgated in writing by the State, or
- Those persons who have been determined by HUD, based upon most recent Census data, to be very low-, low-, and moderate-income persons.
- Those persons belonging to clientele groups who are generally presumed by HUD to be principally very low-, low-, and moderate-income persons.
- Not applicable to this project.

7. Citizen Participation. The Contractor shall provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of CDBG funds from one eligible activity to another by following the same citizen participation procedures required for the preparation and submission of its CDBG application to the State. The Contractor shall also comply with the procedure set forth herein regarding the modification and amendment of this Contract.

Additionally, the Contractor shall have and follow a Citizen Participation Plan (CPP) which includes the six elements specified in Section 104(a)(3) the Act. The CPP must include a provision for at least one public hearing during the course of the Project to allow citizens to review and comment on the Contractor's performance in carrying out the Project.

8. Residential Antidisplacement and Relocation Assistance Plan. The Contractor shall follow a residential antidisplacement and relocation assistance plan which, should displacement occur, provides that:

a) governmental agencies, non- and for-profit organizations, or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and

provide that such replacement housing may include existing housing assisted with project based assistance provided under Section 8 of the United State Housing Act of 1939;

b) such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for ten (10) years from the time of initial occupancy;

c) relocation benefits shall be provided for all low-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses; including any interim living costs; and, in the case of displaced persons of low- and moderate-income, provided either:

i) compensation sufficient to ensure that, for a five-year (5-year) period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds thirty percent (30%); or

ii) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (i) to permit the household to secure participation in a housing cooperative or mutual housing association;

d) Persons displaced shall be relocated into comparable replacement housing that is:

i) decent, safe, and sanitary;

ii) adequate in size to accommodate the occupants;

iii) functionally equivalent; and,

iv) in an area not subject to unreasonably adverse environmental conditions.

Persons displaced shall have the right to elect, as an alternative to the benefits under this paragraph, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if such persons determine that it is in their best interest to do so; and, where a claim for assistance under subparagraph (d) is denied by the Contractor, the claimant may appeal to the State, and that the decision of the State shall be final unless a court determines the decision was arbitrary and capricious.

The Contractor shall follow the Residential Antidisplacement and Relocation Assistance Plan except that paragraphs a) and b) shall not apply in a case in which the Secretary of the U. S. Department of Housing and Urban Development finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low-, and moderate-income persons. A determination under this paragraph is final and nonreviewable.

9. Affirmatively Furthering Fair Housing. The Contractor shall affirmatively further fair housing in addition to conducting and administering its Project in conformity with the equal opportunity requirements of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, as required herein.

10. Recovery of Capital Costs of Public Improvements. The Contractor shall not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of very low-, low-, or moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless;

a) CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than the CDBG program, or

b) for the purposes of assessing any amount against properties owned and occupied by persons of moderate income who are not persons of very low- or low-income, it certifies that it lacks sufficient CDBG funds to comply with the requirements of subparagraph (a) hereinabove.

11. Compensation and Method of Payment. The State agrees to pay to the Contractor, in consideration for the work and services to be performed, a total amount not to exceed **\$52,000.00**. The method and time of payment shall be made in accordance with the "Payment Schedule" set forth herein in

EXHIBIT A. Any State funds not required for completion of the Project will be deobligated by the State through the processing of a bilateral amendment.

Unless otherwise provided in the Scope of Services:

a) The Contractor shall periodically initiate all reimbursement requests by submitting to the Department a written request using the State-provided form, for reimbursement of actual and proper expenditures of State CDBG funds plus an estimation of funds needed for a reasonable length of time.

b) The State may withhold any payment if the Contractor has failed to comply with the State CDBG program objectives, contractual terms, or reporting requirements.

c) The State may withhold the final payment until the Contractor has submitted and the Department has accepted, all required quarterly Financial Status Report and Performance Report information.

12. Financial Management and Budget. At all times from the effective date of this Contract until completion of this Contract, the Contractor shall comply with the administrative requirements, cost principles and other requirements set forth in the State's Financial Management Guide and the Financial Management Section of the State CDBG Guidebook. Contractor may adjust individual budgeted expenditure amounts without approval of the State provided that no budget transfers to or between administration budget categories are proposed and provided that cumulative budgetary line item changes do not exceed Twenty Thousand Dollars (\$20,000.00), unless otherwise specified in the "Budget" section of Exhibit A. Any budgetary modifications that exceed these limitations must be approved by the State through a Contract Amendment as set forth in Paragraph 16. c).

13. Audit.

a) Discretionary Audit. The State, through the Executive Director of the Department, the State Auditor, or any of their duly authorized representatives, including an independent Certified Public Accountant of the State's choosing, or the federal government or any of its properly delegated or authorized representatives shall have the right to inspect, examine, and audit the Contractor's (and any subcontractor's) records, books, accounts and other relevant documents. Such discretionary audit may be requested at any time and for any reason from the effective date of this Contract until five (5) years after the date final payment for this Project is received by the Contractor, provided that the audit is performed during normal business hours.

b) Mandatory Audit. Whether or not the State calls for a discretionary audit as provided above, the Contractor shall include the Project in its annual audit report as required by the Colorado Local Government Audit Law, C.R.S. 1973, 29-1-601, et seq and the Single Audit Act of 1996, Pub. L. 104-156, and Federal and State implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor or Federal Agency related to the relevant audit report. If the audit reveals evidence of non-compliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings notwithstanding any other judicial or administrative actions filed pursuant to C.R.S. 1973, 29-1-607 or 29-1-608.

14. Contract Suspension. If the Contractor fails to comply with any contractual provision, the State may, after notice to the Contractor, suspend the Contract and withhold further payments or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision to terminate in accordance with provisions herein. The State may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided such costs were necessary and reasonable for the conduct of the Project.

15. Contract Termination. This contract may be terminated as follows:

a) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated with federal CDBG funds provided to the State for the purpose of contracting for the services provided for herein or with program income, and therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to compensation arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend this Contract.

b) Termination for Cause. In accordance with 24 CFR Part 85.44, suspension or termination may occur if the Contractor materially fails to comply with any term of the Contract, or, in the State's discretion, the Contract may be terminated for convenience. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) Termination for Convenience. The State may terminate this Contract at any time the State desires. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. All finished or unfinished documents and other materials as described in subparagraph 16.b) above shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made: Provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the Contractor, subparagraph 16.b) hereof relative to termination shall apply.

16. Modification and Amendment.

a) Modification by Operation of Law. This Contract is subject to such modifications as may be required by changes in federal or state law or regulations. Any such required modifications shall be incorporated into and be part of this Contract as if fully set forth herein.

~~b) Unilateral Amendment. The State may unilaterally modify the following portions of this Contract when such modifications are requested by the Contractor or determined by the State to be necessary and appropriate. In such cases, the Amendment is binding upon proper execution by the Executive Director of the Department and State Controller's designee and without the signature of the Contractor:~~

- ~~i) Paragraph 2. of this Contract, "Responsible Administrator";~~
- ~~ii) Paragraph 3. of Exhibit A, Scope of Services "Time of Performance";~~
- ~~iii) Paragraph 4 of Exhibit A, Scope of Services "Remit Address";~~
- ~~iv) Paragraph 5 of Exhibit A, Scope of Services "Payment Schedule".~~

~~Contractor must submit a written request to the Department if modifications are required. Amendments to this Contract for the provisions outlined in this Paragraph 16 b. i) through iv): Responsible Administrator, Time of Performance, Remit Address, or Payment Schedule can be executed by the State (Exhibit C4).~~

~~c) Bilateral Amendment. In the following circumstances, modifications shall be made by an Amendment signed by the Contractor, the Executive Director of the Department and the State Controller's designee. Such Amendments must be executed by the Contractor then the State and are binding upon proper execution by the State Controller's designee.~~

- ~~i) unless otherwise specified in the "Budget" section of Exhibit A, when cumulative budgetary line item changes exceed Twenty Thousand Dollars (\$20,000.00);~~
- ~~ii) unless otherwise specified in the "Budget" section of Exhibit A, when any budget transfers to or between administration budgetary categories are proposed;~~

- ~~iii) when any other material modifications, as determined by the State, are proposed to Exhibit A or any other Exhibits;~~
- ~~iv) when additional or less funding is needed and approved and modifications are required to Paragraph 5 of this Contract, Compensation and Method of Payment as well as to Exhibit A "Budget" and "Payment Schedule";~~
- ~~v) when there are additional federal statutory or regulatory compliance changes in accordance with Paragraph 20 of this Contract.~~

~~Such Bilateral Amendment may also incorporate any modifications allowed to be made by Unilateral Amendment as set forth in subparagraph 16.b) of this paragraph.~~

~~Upon proper execution and approval, such Amendment (Exhibit C2) shall become an amendment to the Contract, effective on the date specified in the amendment. No such amendment shall be valid until approved by the State Controller or such assistant as he may designate. All other modifications to this Contract must be accomplished through amendment to the contract pursuant to fiscal rules and in accordance with subparagraph 16.d).~~

d) Other Modifications. If either the State or the Contractor desired to modify the terms of this Contract other than as set forth in subparagraphs 16.b) and 16.c) above, written notice of the proposed modification shall be given to the other party. No such modification shall take effect unless agreed to in writing by both parties in an amendment to this Contract properly executed and approved in accordance with applicable law. Any amendment required per this subparagraph will require the approval of other state agencies as appropriate, e.g. Attorney General, State Controller, etc.

Such Amendment may also incorporate any modifications allowed to be made by Unilateral and Bilateral Amendment as set forth in subparagraphs 16.b) or 16.c) of this paragraph.

17. Integration. This Contract, as written, with attachments and references, is intended as the complete integration of all understanding between the parties at this time and no prior or contemporaneous addition, deletion or amendment hereto shall have any force or effect whatsoever, unless embodied in a written authorization or contract amendment incorporating such changes, executed approved pursuant to applicable law.

18. Reports.

a) Financial Reports. The Contractor shall submit to the Department quarterly financial status reports in the manner and method set forth in the Reporting Section of the State CDBG Guidebook.

b) Performance Reports. The Contractor shall submit to the Department quarterly performance reports and a project completion report in a manner and method prescribed by the Department in the Reporting Section and Close-Out Section of the State CDBG Guidebook.

19. Conflict of Interest.

a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by the Contractor and its subcontractors, no employee, officer or agent of the Contractor or its subcontractors shall participate in the selection or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of the Contractor and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing rehabilitation assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or

agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure for one year thereafter.

i) Persons Covered. The conflict of interest provisions of this subparagraph 19.b) apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Contractor or of any designated public agencies or subcontractors receiving CDBG funds.

ii) Threshold Requirements for Exceptions. Upon the written request of the Contractor, the State may grant an exception to the provisions of this subparagraph 19.b) when it determines that such an exception will serve to further the purposes of the CDBG program and the effective and efficient administration of the Contractor's Project. An exception may be considered only after the Contractor has provided the following:

- a) A disclosure of the nature of the conflict, accompanied by an assurance that:
  - i. there has been or will be a public disclosure of the conflict and a description of how the public disclosure was or will be made; and
  - ii. the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific CDBG-assisted activity in question; and
- b) An opinion of the Contractor's attorney that the interest for which the exception is sought would not violate State or local law; and
- c) A written statement signed by the chief elected official of the Contractor holding the State harmless from all liability in connection with any exception which may be granted by the State to the provisions of this subparagraph 19.b);

iii) Factors to be Considered for Exceptions. In determining whether to grant a requested exception after the Contractor has satisfactorily met the requirements of subparagraph 19.b) ii) above, the State shall consider the cumulative effect of the following factors, where applicable:

- a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Project which would otherwise not be available;
- b) Whether an opportunity was provided for open competitive bidding or negotiation;
- c) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be beneficiaries of the CDBG-assisted activity, and the exception will permit such person to receive generally the same benefits as are being made available or provided to the group or class;
- d) Whether the interest or benefit was present before the affected person was in a position as described in this subparagraph 19.b);
- e) Whether undue hardship will result either to the Contractor or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and
- f) Any other relevant considerations.

20. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor and any subcontractors shall strictly adhere to all applicable Federal and State laws, orders, and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. The applicable Federal laws and regulations include:

a) National Environmental Policy Act of 1969 (42 USC 4321 et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500-1508) providing for establishment of national policy, goals, and procedures for protecting, restoring and enhancing environmental quality.

b) National Historic Preservation Act of 1966 (16 USC 470 et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.

c) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.

d) The Archaeological and Historical Data Preservation Act of 1974, amending the Reservoir Salvage Act of 1960 (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities.

e) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et seq.) prohibits undertaking certain activities in floodplains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.

f) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.) requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided unless it is determined that there is no practical alternative to such construction and that the proposed action includes all practical measures to minimize potential damage.

g) Safe Drinking Water Act of 1974 (42 USC 201, 300f et seq., 7401 et seq.), as amended, prohibiting the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.

h) The Endangered Species Act of 1973 (16 USC 1531 et seq.), as amended, requiring that actions authorized, funded, or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of the habitat of such species which is determined by the Department of the Interior, after consultation with the State, to be critical.

i) The Wild and Scenic Rivers Act of 1968 (16 USC 1271 et seq.), as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.

j) The Clean Air Act of 1970 (42 USC 1857 et seq.), as amended, requiring that federal assistance will not be given and that license or permit will not be issued to any activity not conforming to the State implementation plan for national primary and secondary ambient air quality standards.

k) Flood Disaster Protection Act of 1973 (42 USC 4001), placing restrictions on eligibility and acquisition and construction in areas identified as having special flood hazards.

l) HUD Environmental Criteria and Standards (24 CFR Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

m) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 -- Title III, Real Property Acquisition (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal or federally-assisted programs and establishing uniform and equitable land acquisition policies for federal assisted programs. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedure for selecting contract appraisers and contract negotiations, furnishing to owners of property to be acquired a written summary statement of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation.

n) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 -- Title II, Uniform Relocation Assistance (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for fair and equitable treatment of all persons displaced as a result of any federal or federally-assisted program. Relocation payments and assistance, last-resort housing replacement of displacing agency, and grievance procedures are covered under the Uniform Act. Payments and assistance will be made pursuant to State or local law, or the grant recipient must adopt a written policy available to the public describing the relocation payments and assistance that will be provided. Moving expenses and up to \$22,500 or more for each qualified homeowner or up to \$5,250 or more for each tenant are potential costs.

o) Section 104(d) of the Housing and Community Development Act of 1974, (42 USC 5301 as amended and implementing regulations at 24 CFR Part 570) providing for the replacement of all low- and moderate-income dwelling units that are demolished or converted to another use as a direct result of the use of CDBG funds, and which provides for relocation assistance for low- and moderate-income households so displaced.

p) Davis-Bacon Fair Labor Standards Act (40 USC 276A -276a-5) requiring that, on all contracts and subcontracts which exceed \$2,000 for federally-assisted construction, alteration or rehabilitation, laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if such property is designed for use of eight or more units.) The requirements set forth in this subparagraph are inapplicable to individuals who volunteer their services under circumstances set forth in 24 CFR Part 70.

Assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any subcontractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

q) Contract Work Hours and Safety Standards Act of 1962 (40 USC 327 et seq.) requiring that mechanics and laborers employed on federally-assisted contracts which exceed \$2,000 be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work week.

r) Copeland "Anti-Kickback" Act of 1934 (40 USC 276 (c)) prohibiting and prescribing penalties for "kickbacks" of wages in federally-financed or -assisted construction activities.

s) The Lead-Based Paint Poisoning Prevention Act -- Title IV (42 USC 4831) prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance, and requiring notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning.

t) Unless otherwise provided for in EXHIBIT A, Scope of Services, this contract is subject to the following: Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701 (u)), as amended.

- i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to very low- and low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the persons) taking applications for each of the positions; and the anticipated date the work shall begin.

- iv) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 ((Paragraph 23 t)i) - 23 t)vii) of this contract)), and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
- vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations, and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
- u) Section 109 of the Housing and Community Development Act of 1974 (42 USC 5309), as amended, providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.
- v) Title IV of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 USC 2000 (d)) prohibiting discrimination on the basis of race, color, and incorporates laws prohibiting age or handicap or religious affiliation, or national origin discrimination in any program or activity receiving federal financial assistance.
- w) The Fair Housing Act (42 USC 3601-20), as amended, prohibiting housing discrimination on the basis of race, color, religion, sex, national origin, handicap and familial status.
- x) Executive Order 11246 (1965), as amended by Executive Orders 11375 and 12086, prohibiting discrimination on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally-assisted contracts in excess of \$2,000.
- y) Executive Order 11063 (1962), as amended by Executive Order 12259, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.
- z) Section 504 of the Rehabilitation Act of 1973 (29 USC 793), as amended, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded for participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.
- aa) Age Discrimination Act of 1975 (42 USC 6101), as amended, providing that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

ab) Fire Administration Authorization Act of 1992 (P.L. 102-522), prohibiting the use of housing assistance in connection with certain assisted and insured properties, unless various protection and safety standards are met.

ac) Excessive Force. In accordance with Section 519 of Public Law 101-144, the HUD Appropriations Act, Section 906 of Cranston-Gonzalez Affordable Housing Act of 1990, the Contractor has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction.

ad) Lobbying. The Contractor assures and certified that:

- i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of a federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an offer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- iii) It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- iv) It understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

21. Monitoring and Evaluation. The State will monitor and evaluate the Contractor for compliance with the terms of the contract, and the rules, regulations, requirements and guidelines which the State has promulgated or may promulgate, including the State CDBG Guidebook. The Contractor may also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

22. Severability. To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term nor as waiver of a subsequent breach of the same term.

23. Binding on Successors. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.

24. Subletting, Assignment or Transfer. Neither party nor any subcontractors hereto may sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its rights, title, interest or duties therein, without the prior written consent of the other party. No subcontract or transfer of Contract shall in any case release the Contractor of liability under this Contract.

25. Non-Discrimination. The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws and requirements with respect to discrimination and unfair employment practices.

26. Applicant Statement of Assurances and Certifications. The Contractor has previously signed an "Applicant Statement of Assurances and Certifications" which is hereby incorporated and made a part of this Contract by reference.

27. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable to the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

28. Order of Precedence. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions
- B. Contract
- C. The Scope of Services, Exhibit A

29. Insurance

29.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance, covering all of the contractor's employees acting within the course and scope of their employment.
- b. 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:
  - i. \$1,000,000 each occurrence;
  - ii. \$1,000,000 general aggregate;
  - iii. \$1,000,000 products and completed operations aggregate; and
  - iv. \$50,000 any one fire.

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

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

29.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

29.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

29.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

29.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

29.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

29.7 Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

### 30. Legal Resident

Contractor must confirm that any individual natural person eighteen years of age or older 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 Contract by requiring the applicant to:

- (a) Produce:
  - I. A valid Colorado driver's license or a Colorado identification card; issued pursuant to article 2 of title 42, C.R.S.; or
  - II. A United States military card or a military dependent's identification card; or
  - III. A United States Coast Guard Merchant Mariner card; or
  - IV. A Native American tribal document; and
- (b) Execute an affidavit herein attached as Exhibit E, Affidavit of Legal Residency, 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.

### 31. Indemnification.

- i. Intergovernmental Grants  
If this is an intergovernmental Grant, 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, CRS 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.
- ii. Non-Intergovernmental Grants  
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.

### 32. Statewide Contract Management System.

[This section shall apply when the State funds provided under this contract is \$100,000 or higher]

By entering into this Grant, the 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 contracts and inclusion of contract performance information in a statewide contract management system. The Grantee's performance shall be evaluated 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 of the Grantee's performance shall be part of the normal contract administration process and the Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of 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 the Statement of Project of this Grant. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Grant term. The Grantee shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance evaluation determine that the Grantee demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the DOLA, and showing of good cause, may debar the Grantee and prohibit the Grantee from bidding on future contracts. The Grantee may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)); or (ii) 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 the Grantee, by the Executive Director, upon showing of good cause.

## SPECIAL PROVISIONS

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

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be 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 contract 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.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor 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 Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor 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.** Contractor 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 contract. 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 contract, 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 contract 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 contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF 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 contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor 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 CONTRACTS 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]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor 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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
- 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, 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 contract.

Revised 1-109

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

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

|   |  |
|---|--|
| <p align="center"><b>CONTRACTOR</b><br/>City of Alamosa</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p> | <p align="center"><b>STATE OF COLORADO</b><br/><b>Bill Ritter, Jr., GOVERNOR</b><br/>DEPARTMENT OF LOCAL AFFAIRS</p> <p>By: _____</p> <p align="center">Susan E. Kirkpatrick, Executive Director</p> <p>Date: _____</p> <p align="center">PRE-APPROVED FORM CONTRACT REVIEWER</p> <p>By: _____</p> <p align="center">Alison A. George, Housing Programs Manager</p> <p>Date: _____</p> |
|---|--|

**ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER**

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

|  |
|--|
| <p><b>A. STATE CONTROLLER</b><br/>David J. McDermott, CPA</p> <p>B. By: _____</p> <p align="center">Barbara M. Casey, Controller Delegate</p> <p>Date: _____</p> |
|--|

**EXHIBIT A**  
**SCOPE OF SERVICES**

**EXHIBIT A  
SCOPE OF SERVICES  
COLORADO DIVISION OF HOUSING**

---

**City of Alamosa – H1CDB10061**

1. **PROJECT DESCRIPTION, OBJECTIVES, AND REQUIREMENTS.**
  - A. **Project Description.** The City of Alamosa on behalf of La Puente Home, Inc. and TuCasa Domestic Violence Shelter received a grant in the amount of \$52,000. This grant will support Homeless services in the non-entitlement county of Alamosa County. Services include homeless shelter operations and essential services, plus administration for the City of Alamosa. The City of Alamosa will serve as the principle contractor and subcontract with La Puente Home, Inc.
  - B. **Form of Subsidy.** \$52,000 in CDBG funds will be used for homeless services and administration.
2. **ADMINISTRATIVE REQUIREMENTS.**
  - A. **Administrative Requirements.** These funds will be administered in accordance with the requirements of this contract, Division of Housing (DOH) Revolving Loan Policies and the Project Performance Plan (Exhibit D). The Contractor shall comply with the administration requirements set forth in the most recent Community Development Block Grant Guidebook, or such requirements as may be subsequently issued by the State. The Contractor shall be responsible for administration of the contract and will enter into contracts with La Puente Home, Inc. (Subgrantee) who shall be responsible for the provision above mentioned services
  - B. **Section 3 Requirements.** This project is not subject to Section 3 Requirements
3. **ELIGIBLE BENEFICIARIES** The prospective household must have a gross income that does not exceed 80% of the AMI. A listing of the incomes for all family household sizes is attached as Exhibit B.
4. **PROPERTY STANDARDS.** Not applicable.
5. **NATIONAL OBJECTIVE. Limited Clientele Activities:** This project meets the national objective of benefit to low and moderate-income persons as required in §570.483(b)(2)(A).
6. **TIME OF PERFORMANCE.** The Project shall commence upon the full and proper execution of this Contract and the completion of the appropriate environmental review, and shall be completed on or before June 30, 2011. However, the Project time of performance may be extended by amendment, subject to mutual agreement of the State and Contractor. To initiate this process, a written request shall be submitted to the State by the Contractor at least sixty (60) days prior to June 30, 2011, and shall include a full justification for the extension request.

7. **BUDGET.** Funds from sources other than CDBG shall not be considered matching funds subject to federal audit requirements.

| Project Activities                  | Project Cost    | CDBG Funds      | Other Funds | Source |
|-------------------------------------|-----------------|-----------------|-------------|--------|
| La Puente Operations                | \$45,000        | \$45,000        |             |        |
| La Puente HMIS                      | \$1,000         | \$1,000         |             |        |
| TuCasa Domestic Violence Operations | \$3,000         | \$3,000         |             |        |
| City of Alamosa Administration      | \$3,000         | \$3,000         |             |        |
| <b>TOTAL</b>                        | <b>\$52,000</b> | <b>\$52,000</b> |             |        |

8. **PAYMENT SCHEDULE.** Payments shall be made in accordance with the provisions set forth in Paragraph 11. within the main body of this Contract.

\$52,000 Interim Payment-Paid upon receipt and approval of written requests from the Contractor for funds to meet immediate cash needs.

REMITTANCE ADDRESS

City of Alamosa  
Post Office Box 419  
Alamosa, CO 81101

9. **CONTRACT MONITORING.** The Colorado Department of Local Affairs, Division of Housing shall monitor this Contract in accordance with the provisions set forth in Paragraph 21 within the main body of this Contract.

10. **REPORTING SCHEDULE.** The Contractor shall provide the following reports to the Department of Local Affairs, Division of Housing in accordance with the provisions set forth in Paragraph 18 within the main body of this contract:

- A. Financial Reports. One copy of the quarterly Financial Status Report shall be submitted within 20 calendar days of the end of the calendar quarter. This report must be submitted on forms provided by the Division of Housing. No requests for payments shall be processed if the Contractor has not submitted this quarterly report.
- B. Narrative Reports. One copy of the quarterly Narrative Performance Report shall be submitted within 20 calendar days of the end of the calendar quarter. This report may be submitted on forms provided by the Division of Housing. No requests for payments shall be processed if the Contractor has not submitted this quarterly report.
- C. Project Completion Report. Within 30 days after the completion of the Project or the final draw, whichever is later, the Contractor shall submit 1 copy of the Project Completion Report, 2 copies of the Final Financial Status Report, and 2 copies of the combined Beneficiary Report on forms provided by the Division of Housing.

11. **INTEREST.** The Contractor shall expend the CDBG funds within 15 days of receipt and shall not earn interest on the funds prior to expenditure.

**EXHIBIT C**  
**INCOME AND RENT CHART**

Colorado Division of Housing  
 Income & Rent Tables for 30%-120% of  
 Median Income for Colorado Counties for 2010

| County |      | MAXIMUM RENTS |        |        |        | INCOME LIMITS |          |          |          |          |          |          |          |          |
|--------|------|---------------|--------|--------|--------|---------------|----------|----------|----------|----------|----------|----------|----------|----------|
|        |      | 0 BDRM        | 1 BDRM | 2 BDRM | 3 BDRM | 4 BDRM        | 1 PERSON | 2 PERSON | 3 PERSON | 4 PERSON | 5 PERSON | 6 PERSON | 7 PERSON | 8 PERSON |
| *Other | 120% | 1,185         | 1,270  | 1,524  | 1,761  | 1,965         | 47,400   | 54,240   | 60,960   | 67,680   | 73,200   | 78,600   | 84,000   | 89,400   |
| *Other | 100% | 987           | 1,058  | 1,270  | 1,467  | 1,637         | 39,500   | 45,200   | 50,800   | 56,400   | 61,000   | 65,500   | 70,000   | 74,500   |
| *Other | 80%  | 790           | 846    | 1,015  | 1,173  | 1,308         | 31,600   | 36,100   | 40,600   | 45,100   | 48,750   | 52,350   | 55,950   | 59,550   |
| *Other | 65%  | 641           | 688    | 825    | 953    | 1,064         | 25,675   | 29,380   | 33,020   | 36,660   | 39,650   | 42,575   | 45,500   | 48,425   |
| *Other | 60%  | 592           | 635    | 762    | 880    | 982           | 23,700   | 27,120   | 30,480   | 33,840   | 36,600   | 39,300   | 42,000   | 44,700   |
| *Other | 55%  | 543           | 582    | 698    | 807    | 900           | 21,725   | 24,860   | 27,940   | 31,020   | 33,550   | 36,025   | 38,500   | 40,975   |
| *Other | 50%  | 493           | 529    | 635    | 733    | 818           | 19,750   | 22,600   | 25,400   | 28,200   | 30,500   | 32,750   | 35,000   | 37,250   |
| *Other | 45%  | 444           | 476    | 571    | 660    | 736           | 17,775   | 20,340   | 22,860   | 25,380   | 27,450   | 29,475   | 31,500   | 33,525   |
| *Other | 40%  | 395           | 423    | 508    | 587    | 655           | 15,800   | 18,080   | 20,320   | 22,560   | 24,400   | 26,200   | 28,000   | 29,800   |
| *Other | 30%  | 296           | 317    | 381    | 440    | 491           | 11,850   | 13,550   | 15,250   | 16,900   | 18,300   | 19,650   | 21,000   | 22,350   |

**EXHIBIT D**  
**PROJECT PERFORMANCE PLAN**

**EXHIBIT D PROJECT PERFORMANCE PLAN**

Quarterly Reports: 1st – July -Sept      2nd Oct -Dec      3rd Jan -Mar.      4<sup>th</sup> April -June

|   |   |   |  |  |
|---|---|---|--|--|
| Contract H1CDB10061   |   | City of Alamosa – La Puente Home, Inc.  |  | Monitoring Level – Occasional<br>Explanation: Existing grantee   |
| TARGET: Grantee will provide services to homeless persons.  |   |   |  | DOH Staff:<br>Asset Manager<br>Justine Willman<br>(303) 866-5154 |
| <b>MILESTONES</b> – Grantee shall...  | <b>CAPACITY</b>   | <b>STATE ROLE</b> - CDOH shall...   | <b>PROGRESS</b> - reported quarterly (include date and description)                                      |  |
| Provide documentation of signatory authority prior to or with Grantee executed contracts<br>by: <u>1st Quarter 2010.</u>  | Grantee is authorized to enter into a legally binding contract.                     | Review copy of Documents prior to reimbursement of funds to Grantee.  | ACHIEVED:    /    / 200  |  |
| Provide certificates of insurance coverage required by this contract prior to receiving signed executed contracts<br>by: <u>1<sup>st</sup> Quarter 2010.</u>  | Grantee has adequate insurance coverage per the terms of the Contract.              | Review copy of Documents prior to reimbursement of funds to Grantee.  | ACHIEVED:    /    / 200  |  |
| <u>Submit Sponsorship Agreement</u> * between the City of Alamosa and La Puente Home, Inc.(subgrantee) to CDOH<br>by: <u>1<sup>st</sup> Quarter 2010.</u>   | Grantee must enter into Sponsorship Agreement to perform Scope of work in contract. | CDOH Developer assists Grantee and local government in obtaining executed. Review copy of Agreement prior to reimbursement of funds to Grantee. | ACHIEVED:    /    / 200  |  |
| Provide certification of matching funds commitment for HMIS and source from sub-grantee to CDOH By: <u>1st quarter 2010</u>   | Grantee has funding commitments totaling 100% of project costs.                     | Track funding commitments, and will not release funds before other funds are 100% committed.  | ACHIEVED:    /    / 200  |  |
| The City of Alamosa receives pay request prepared by sub-grantee; then signs and submit request for reimbursement to CDOH on behalf of the sub-grantee agency.<br>by: <u>1st Quarter 2010.</u><br>by: <u>2nd Quarter 2010</u><br>by: <u>3rd Quarter 2011</u><br>by: <u>4th Quarter 2011</u> | Grantee shall ensure that no costs were encumbered prior to contract execution.     | Review backup documentation prior to approving pay request.   | ACHIEVED:    /    / 200<br>ACHIEVED:    /    / 200<br>ACHIEVED:    /    / 200<br>ACHIEVED:    /    / 200 |  |

|   |   |   |   |
|---|---|---|---|
| <p>The City of Alamosa tracks and verify matching fund expenditures by sub-grantee agency and report to CDOH on behalf of the sub-grantee agency.<br/> by: 1st Quarter 2010<br/> by: 2nd Quarter 2010<br/> by: 3<sup>rd</sup> Quarter 2011<br/> by: 4th Quarter 2011</p>  | <p>Grantee shall review matching fund expenditures when preparing financial status reports.</p> | <p>Asset Manager provides technical assistance as needed.</p>   | <p>ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u></p>   |
| <p>The City of Alamosa receives and approves sub-grantee quarterly reports and submits signed copies to CDOH within 20 calendar days after each quarter. Reports include Project Performance Plan accomplishments and Financial Status Report<br/> by: 1st Quarter 2010.<br/> by: 2nd Quarter 2010<br/> by: 3<sup>rd</sup> Quarter 2011<br/> by: 4th Quarter 2011</p> | <p>Local government is familiar with the quarterly financial and narrative reports.</p>         | <p>Asset Manager provides technical assistance as needed.</p>   | <p>ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u><br/> ACHIEVED: <u>    </u> / <u>200</u></p> |
| <p>The City of Alamosa will provide verification of CDBG Pre and Post Award Public Hearings will be submitted to CDOH by:<br/> by: 4th Quarter 2011.</p>  | <p>Local government follows CDBG hearing requirements</p>                                       | <p>CDOH Developer attends hearing/s. Asset Manager receives documentation.</p>  | <p>ACHIEVED: <u>    </u> / <u>200</u></p>   |
| <p>Submit, on a monthly, quarterly or as-needed basis, pay requests and supporting documentation of expenses</p>  | <p>Grantee shall ensure that no costs were encumbered prior to contract execution.</p>          | <p>Review backup documentation prior to approving pay request.</p>  | <p>ACHIEVED: <u>    </u> / <u>200</u></p>   |
| <p>Receive and review CDOH Monitoring Documents<br/> by: 3rd Quarter 2010.</p>  | <p>Grantee has experience with CDOH reporting documents.</p>                                    | <p>Provide forms to Grantee within 30 days of contract execution. Respond to a request for training within 10 days.</p>                     | <p>ACHIEVED: <u>    </u> / <u>200</u></p>   |
| <p>Submit the Project Completion Report (PCR) to CDOH 1 month after expiration of contract</p>  | <p>Grantee and subgrantee has experience with PCR forms and procedures.</p>                     | <p>CDOH will respond to a request for training within 10 days. CDOH will process the PCO within 30 days of receiving a complete report.</p> | <p>ACHIEVED: <u>    </u> / <u>200</u></p>   |