

BOULDER COUNTY ADDENDUM
TO
CONTRACT BETWEEN CDBG-DR BENEFICIARY AND DESIGN PROFESSIONAL
FOR
HOME ACCESS PROJECTS PAID FOR WITH CDBG-DR FUNDS

This Addendum to Contract between Boulder County CDBG-DR Beneficiary _____ (“Beneficiary”) and _____ (“Design Professional”) is entered into as of the last date written below on the signature pages.

Recitals

A. Beneficiary applied for home access funding from the Community Development Block Grant – Disaster Recovery (“CDBG-DR”) program, which funds were initially awarded by the State of Colorado to Boulder County. In this Addendum, Boulder County will be referred to as “Grantee.”

B. Based on Grantee’s findings that Beneficiary is eligible for CDBG-DR assistance made available as a result of the September 2013 flooding and related disasters (the “Disaster”), that such assistance is reasonable and necessary, and that such assistance will not exceed the Beneficiary’s unmet need as determined by the State of Colorado’s procedure to prevent duplication of benefits, Grantee approved Beneficiary’s application, contingent on Beneficiary complying with certain conditions including, without limitation, the requirement that any contracts between Beneficiary and third-party vendors (such as Design Professional) to perform work paid for in whole or in part with CDBG-DR funds be made expressly subject to the terms of this addendum (the “Addendum”).

C. Contemporaneously with execution of this Addendum, Beneficiary and Design Professional are entering into a contract for certain home access work (the “Home Access Work”) paid for in whole or in part with CDBG-DR funds (the “Home Access Contract”).

D. Unless otherwise indicated, all capitalized terms in this Addendum are defined in the CDBG-DR Housing Grant Agreement between the State of Colorado, Department of Local Affairs and Boulder County, Contract Encumbrance # H5CDR14085 (“Grantee Contract”), a copy of which is available upon request to Grantee.

NOW THEREFORE, for and in consideration of the mutual promises contained herein, Beneficiary and Design Professional agree as follows:

1. **Plans & Specifications.** When required by the applicable permitting process, construction plans and specifications (the “Plans”) shall be drawn up by a qualified engineer or architect licensed in the State of Colorado or pre-engineered in accordance with Colorado law. When required by the applicable permitting process, all Plans must be stamped by a licensed professional civil engineer in the State of Colorado. When it is not required by the applicable permitting process, work that is not structural in nature and that would not normally require an engineer or architect for permitting, or would require

no permit, is exempt from these requirements. Instead, scaled drawings would be made by staff or other capable individuals identified by Grantee at discretion of Grantee on nonstructural work (“Drawings”).

2. **Construction Standards.** In accordance with HUD guidance on use of CDBG-DR funds, see 79 Fed. Reg. 31972, to the greatest extent feasible all home access projects should apply appropriate construction standards to mitigate risk, which may include: (a) raising utilities or other mechanical devices above expected flood level; (b) wet flood proofing in a basement or other areas below the Advisory Base Flood Elevation/best available data plus one foot; (c) using water resistant paints or other materials; or (d) dry flood proofing non-residential structures by strengthening walls, sealing openings, or using waterproof compounds or plastic sheeting on walls to keep water out.
3. **Mandatory Mitigation Requirements.** If a new construction, reconstruction, or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps. See also 24 CFR 55.2(b)(8). If higher elevations are required by locally adopted code or standards, those higher standards would apply.
4. **Permits Required.** All work funded by CDBG-DR must be appropriately permitted by local, state, and federal agencies, including obtaining floodplain development permits where applicable.
5. **Licenses, Permits, etc.** Design Professional represents and warrants that as of the effective date of this Addendum it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Design Professional warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Home Access Work, without reimbursement by Grantee or other adjustment in contract amounts. Additionally, all employees and agents of Design Professional performing Home Access Work shall hold all required licenses or certifications, if any, to perform their responsibilities. Design Professional, 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 Design Professional to properly perform the Home Access Work shall be deemed to be a material breach by Design Professional and constitute grounds for termination of the Home Access Contract.
6. **Standard and Manner of Performance.** Design Professional shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in the Home

Access Contract and this Addendum. Beneficiary and Grantee shall be the sole judge of the quality of performance.

7. **Exclusion, Debarment, and/or Suspension.** Design Professional represents and warrants that neither Design Professional nor any of its subcontractors, employees, or authorized agents are presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a federal payment program by any federal or State of Colorado department or agency. If Design Professional, or any of its subcontractors, employees, or authorized agents, is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of the Home Access Contract, Design Professional will notify Grantee in writing within three days after such event. Upon the occurrence of such event, whether or not such notice is given to Design Professional, Design Professional acknowledges that Grantee, in its sole discretion, reserves the right to immediately cease paying Design Professional without penalty.
8. **Minimum Requirements for Design Professional's Insurance Coverage.** Design Professional warrants and represents that as of the effective date of this Addendum, it carries all of the insurance coverage specified in this section below.
 - a. Workers' Compensation. Workers' Compensation Insurance as required by Colorado statute, and Employer's Liability Insurance covering all of Design Professional and any of its subcontractors, employees, or authorized agents 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: (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.
 - 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. Malpractice/Professional Liability Insurance. Design Professional and any of its subcontractors, employees, or authorized agents shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to the Home Access Contract. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of the Home Access Contract and for at least two years beyond the completion and acceptance of the work under the Home Access Contract, or, alternatively, a two year extended reporting period must be purchased. The Design Professional and any of its subcontractors, employees, or authorized agents shall be responsible for all damages, losses or expenses, including

reasonable attorney's fees, to the extent caused by such party's negligent performance of professional services under the Home Access Contract.

9. **Other Requirements for Design Professional's Insurance Coverage.** Certificates of Insurance and/or insurance policies required are subject to the following stipulations and additional requirements:
- a. Deductible. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Design Professional and any of its subcontractors, employees, or authorized agents.
 - b. In Force. If any of the said policies shall fail at any time to meet the requirements in this Addendum as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the CDBG-DR program, the Design Professional and any of its subcontractors, employees, or authorized agents shall promptly obtain a new policy.
 - c. Insurer. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee.
 - d. Additional Insured. Boulder County and the State of Colorado shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).
 - e. Primacy of Coverage. Coverage required of the Design Professional and any of its subcontractors, employees, or authorized agents shall be primary over any insurance or self-insurance program carried by Grantee or the State.
 - f. Cancellation. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to Grantee. Grantee will forward such notice to the State in accordance with the terms of Grantee Contract.
 - g. Subrogation Waiver. All insurance policies in any way related to the Home Access Work and secured and maintained by the Design Professional and any of its subcontractors, employees, or authorized agents 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.
 - h. Certificates. Design Professional and any of its subcontractors, employees, or authorized agents shall provide certificates showing insurance coverage required hereunder to Beneficiary and Grantee prior to the effective date of this Addendum. Such certificates must be attached to this Addendum as Exhibit A. No later than 15 days prior to the expiration date of any such coverage, the Design Professional and any of its subcontractors, employees, or authorized agents shall deliver to Grantee certificates of insurance evidencing renewals thereof. In

addition, upon request by Grantee at any other time during the term of the Home Access Contract, the Design Professional and any of its subcontractors, employees, or authorized agents shall, within 10 days of such request, supply to Grantee evidence satisfactory to Grantee of compliance with the provisions of this Addendum.

10. Section 3 of the HUD Act of 1968.

- a. Training / Employment for Low and Moderate Income People and Businesses. The CDBG-DR funds used to fund the work on Beneficiary’s property in whole or in part require adherence to the requirements of Section 3 of the HUD Act of 1968 and 24 CFR Part 135. Therefore, to the greatest extent feasible, Design Professional hereby agrees to provide opportunities for training and employment that arise from this HUD-financed project, to give preference in hiring to persons whose income is equal to or less than 80% of Area Median Income (“AMI”), and to give preference in contracting to businesses owned in substantial part by persons, or that substantially employ persons, whose income is equal to or less than 80% of AMI in the Boulder County metropolitan statistical area.
- b. Local Hiring. Design Professional hereby agrees to provide for the hiring of employees who reside in the vicinity or contract with small businesses that are owned and operated by persons residing in the vicinity of such projects, to the maximum extent feasible. This local hiring requirement does not replace the responsibilities of Grantee under Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, except to the extent the obligations may be in direct conflict. For the purposes of this work, “vicinity” is defined as each neighborhood identified by the Grantee and approved by the State as being the areas of greatest need. “Small business” means a business that meets the criteria set forth in §3(a) of the Small Business Act.
- c. Minimum Job Qualifications. Nothing in section shall be construed to require the employment of a person or contracting with a business that does not meet the qualifications for the job.

11. Minority and Women Business Enterprises. To the greatest extent feasible, Design Professional will take affirmative steps to assure that minority business and women’s business enterprises have an equal opportunity to obtain or compete for subcontracts to be paid with CDBG-DR funds. See 24 CFR 570.506(g)(6).

12. Cooperation. Design Professional acknowledges that this work is funded in whole or in part with federal funds. Design Professional agrees to cooperate with Beneficiary, Boulder County, the State of Colorado, and the U.S. Department of Housing & Urban Development, and their agents, successors, and assigns regarding compliance with all applicable local, state, and federal laws related to use of these public funds.

13. Payment Process. To the extent the Home Access Work is funded in whole or in part by CDBG-DR funds, Design Professional acknowledges that it must submit invoices for completed work to both Beneficiary and to Grantee. Upon approval of the invoice by both Beneficiary and Grantee, Grantee will remit payment within 30 days to Design

Professional on Beneficiary's behalf, up to the maximum amount of CDBG-DR funds awarded to Beneficiary. Grantee reserves the right to require Design Professional to submit fully executed mechanics' lien waivers in a form acceptable to Grantee in its sole discretion. In Grantee's sole discretion and to the extent reasonable given the relationship of Design Professional's work to subsequent construction work by one or more builders, Grantee may withhold payment of Design Professional's final invoice until completion of a successful final inspection.

14. Inspections / Oversight.

- a. Design Professional acknowledges that, under the terms of Beneficiary's agreement with Grantee, the U.S. Department of Housing and Urban Development, the State of Colorado, Grantee, any inspector appointed by Grantee, and any other agent or representative of Grantee, have the right to enter the Property for the purpose of inspection of the Home Access Work to ascertain compliance with CDBG-DR program rules. Design Professional agrees to allow reasonable access to the Subject Property to facilitate such inspections.
- b. These same parties have the right to review and examine any drawings, contracts, books and records relating to the Home Access Work or this Agreement. When requested, Design Professional agrees to cooperate with Beneficiary to provide Grantee with copies of any of the foregoing that may be reasonably requested by Grantee, provided such inspections shall occur at reasonable times and shall be conducted so as not to unreasonably interfere with the work or business of Design Professional and Beneficiary. Any inspection of the Work shall be solely for the benefit of the person or persons conducting or contracting for such inspection; neither Beneficiary nor Design Professional nor any third person shall be entitled to obtain any benefit therefrom or to rely thereon or to claim any loss or damages as a result of, or in any way based on or made in connection with, any inspection or the failure to make any such inspection. This provision does not impose on Grantee any obligation or liability whatsoever, including without limitation, any obligation to inspect, to correct any defects discovered, or to notify Beneficiary or Design Professional or any other person with respect thereto.
- c. Home Access Work must be built to the approved Plans and/or Drawings, as applicable. When required by the applicable permitting process, Design Professional acknowledges that Grantee may in its discretion hire a professional engineer licensed in the State of Colorado to design and inspect work to ensure quality and conformance with all CDBG-DR program requirements. When an engineer is required, the engineer shall provide stamped documents stating work performed has been done satisfactorily or dictate corrections.

15. No Warranty by Grantee. Beneficiary and Design Professional acknowledge that Grantee makes no representations and assumes no duties or obligations as to Beneficiary, as to Design Professional, nor as to third persons concerning the quality of the construction of the Work or the absence therefrom of defects.

16. Representations and Warranties. All of the representations and warranties made by Design Professional in this Addendum are relied on by Beneficiary.

17. **Legal Authority to Sign.** Design Professional warrants that it possesses the legal authority to enter into this Addendum and that it has taken all actions required by its procedures, by-laws, and all other applicable laws to exercise that authority and to lawfully authorize its undersigned signatory to execute this Addendum and bind Design Professional to its terms. If requested by Grantee, Design Professional shall provide Grantee with proof of Design Professional's authority to enter into this Addendum within 15 days of receiving such request.

18. **Notices.** For purposes of the notices required to be provided under this Addendum, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, or hand-delivered to the following representatives of the parties at the following addresses:

a. For Beneficiary: _____

b. For Design Professional: _____

c. For Grantee: Boulder County Transportation Department
Attn: CDBG-DR Home Access Program
P.O. Box 471
Boulder, CO 80306

d. In the event a notice is mailed pursuant to the provisions of this paragraph, the time periods specified in this Addendum shall commence to run on the day after the postmarked date of mailing.

19. **Order of Precedence.** In the event of conflicts or inconsistencies between this Addendum and the Home Access Contract, this Addendum controls.

20. **Amendments.** This Addendum may be altered or amended only with written consent of Grantee.

21. **Assignment.** This Addendum shall not be assigned by Design Professional without prior written consent by Grantee. Upon consent and assignment, this Addendum shall bind successors and assigns.
22. **Prevention of Fraud.** Beneficiary and Design Professional acknowledge that any individual who fraudulently or willfully misstates any fact in connection with this Addendum may be subject to a fine or imprisoned for not more than five years or both, as provided under 18 U.S.C. § 1001 et seq. Beneficiary and Design Professional understand that Grantee will fully investigate all allegations of fraud and, where appropriate, refer cases to the Boulder County District Attorney's Office for prosecution. Beneficiary and Design Professional hereby agree to indemnify and hold harmless Grantee, its elected and appointed officials, and its employees, agents and representatives ("Indemnified Parties"), from any and all liability, damages, losses, costs or expenses, including but not limited to reasonable attorneys' fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent actions or omissions of Beneficiary and Design Professional, their agents or representatives, or other persons acting under their direction or control.
23. **Information and Reports.** Beneficiary and Design Professional agree to provide to authorized governmental representatives, including those of Boulder County, Boulder County Housing Authority, the State of Colorado, and the federal government, all information and reports related to this CDBG-DR award which they may require for any purpose authorized by law. Beneficiary and Design Professional will permit such authorized governmental representatives access to Beneficiary's and Design Professional's facilities, books, records, accounts, and any other relevant sources of information, including copies of all contracts with third parties executed to secure performance of work funded with CDBG-DR funds. Where any information required by any such authorized government representative is in the exclusive possession of a person other than Beneficiary or Design Professional, then Beneficiary or Design Professional, as applicable, shall so certify to Grantee and shall explain what efforts it has made to obtain the information.
24. **Breach.** Any waiver of a breach of this Addendum shall not be held to be a waiver of any other or subsequent breach of this Addendum. Any remedies afforded in this Addendum shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.
25. **Severability.** If any provision of this Addendum or the Home Access Contract is found to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
26. **Statutory Requirements.** Beneficiary and Design Professional acknowledge that Grantee's performance under this Addendum, specifically any obligation to remit payments for Home Access Work to Design Professional on Beneficiary's behalf, is subject to all statutory and other legal requirements that are or may become applicable to counties or political subdivisions of the State of Colorado. By way of example only, any financial obligations of Grantee payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Grantee is prohibited by law from making financial commitments beyond the term of its

current fiscal year. Grantee has contracted with the State of Colorado for the funds necessary to operate the home access program addressed by this Addendum and the Home Access Contract and has reason to believe that sufficient funds will be available for the full term of the Home Access Contract. Where funds are not allocated for any fiscal period beyond the one in which this agreement is entered into, Grantee shall have the right to terminate any obligations it has by providing seven days written notice to Beneficiary and Design Professional and will be released from any and all obligations hereunder. If Grantee terminates its obligations for this reason, the parties hereto shall be released from all obligations hereunder as of the date of termination, and this Addendum shall cease to be of any further force and effect, with the exception of any remedies specified herein or otherwise available to the parties under the law.

27. **Governmental Immunity.** Notwithstanding any other provision herein, nothing in this Addendum shall be construed in any way to be a waiver of either Boulder County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.
28. **Execution by Counterparts.** This Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
29. **Electronic Signatures.** The Parties approve the use of electronic signatures for execution of this Agreement. Only the following forms of electronic signatures shall be permitted to bind the Parties: (1) electronic or facsimile delivery of a fully executed copy of a signature page; (2) the image of the signature of an authorized signer inserted onto PDF format documents; or (3) electronic signature generated through the use of software such as DocuSign. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 et seq.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties affix their signatures. This Agreement is made effective as of the last date written below on these signature pages.

BENEFICIARY

Printed name: _____

Date: _____

DESIGN PROFESSIONAL

Printed name: _____

Date: _____

Exhibit A

Certificate of Insurance

(reflecting compliance with all requirements of this Addendum)