


**PLANNING AND DEVELOPMENT DEPARTMENT
MEMORANDUM 15-27**

DATE: August 10th, 2015
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: David Willett, Acting City Manager 
Brook Svoboda, Director of Planning and Development
SUBJECT: CR-108 An IGA between the City of Northglenn and Adams County for Community Development Block Grant funds

BACKGROUND

At the July 13th, 2015 Council Meeting, the City Council approved Council Resolution 88, which approved an Intergovernmental Agreement (IGA) between the City and Adams County involving Community Development Block Grant (CDBG) funds. The ratified IGA was subsequently approved by the Adams County Commissioners and forwarded to Housing and Urban Development (HUD) on July 23, 2015 as part of the County's re-authorization for Urban County designation thus meeting the July 24, 2015 HUD deadline. The designation is what the County's program is based upon and effectively provides for approximately \$1.7 million dollars in CDBG funds per year, approximately \$239k of the \$1.7M is allocated to the City of Northglenn as a sub-recipient.

Adams County Staff was informed by HUD on July 31st, 2015 that HUD was rejecting the IGAs and requesting revised language to be added. I have included the correspondence from HUD as **Attachment 1** to the Staff report. At the end of 2014 HUD updated certain provisions for the re-authorization of the Urban Designation, including but not limited to, updates to the County/City IGAs. Adams County Staff, under new management in January 2015, reviewed these revisions and requested concurrence on these revisions in early 2015. The version provided to Council at the 7/13/15 meeting reflected what the County understood as "approved to form" revisions of the IGA from the HUD – the previous Staff memo included a specific section referencing the HUD requested changes.

County Staff requested multiple times whether HUD wanted to review the IGA between the County and the Cities prior to approval from the Urban County members (cities). HUD advised County Staff that the IGA was between the County and participating municipalities and that as long as the two provisions in the special notice CPD-14-07 were included they should be fine, which were part of the 7/13/15 adopted version of the IGA. The IGAs were submitted to HUD on July 23, 2015. The HUD representative advised that the County needed to provide a Legal Opinion. This was the first time County Staff were made aware of this requirement and asked if there was anything else that would be required. The answer from HUD was no. In a phone conference on July 28, 2015 with HUD and its legal counsel on a separate IGA, County Staff inquired about whether or not there were any issues with the Urban County IGA and was told by HUD's legal counsel that they had not reviewed the document. County Staff advised HUD legal counsel that if there were any issues, it needed to advise county Staff immediately due to the number of parties associated with the Urban County IGA. Subsequently, on July 31, 2015, County Staff received its first formal notification from HUD regarding issues with the IGA. County Staff reached out to Arapahoe County, who also manages CDBG funding, and was advised that it too is dealing with the same issues from HUD, and inconsistencies were noted in what HUD representatives are requiring from their entitlements.

CHANGES TO IGA FROM THE APPROVED 7/13/15 VERSION

Included with the Staff report as **Attachment 2** is the redlined version reflecting the associated changes below. The following modifications were made in response to the Housing and Urban Development’s 7/31/15 correspondence. The key changes are as follows:

- Bullets 1-3: are not applicable to Northglenn’s version of the IGA
- Bullet 4: Item #1 is already a part of the current IGA, item #2 and #3 have been added
- Bullet 5: The current language has been updated from period of time to listing FY 2016 to FY 2018
- Bullet 6: Language has been added
- Bullet 7: Language already exists in current version

RECOMMENDATION

Attached to the memorandum is CR-108, which would repeal Resolution 15-84 dated July 13th, 2015, with this revised Intergovernmental Agreement (IGA) with Adams County for allocation and use of Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Funds for the years 2016, 2017, and 2018. Staff recommends that the Resolution be approved.

STAFF REFERENCE

Brook Svoboda, Director of Planning and Development bsvoboda@northglenn.org or 303.450.8937

ATTACHMENTS

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| ATTACHMENT 1 | 7/31/15 HUD CORRESPONDENCE |
| ATTACHMENT 2 | REDLINE VERSION OF IGA W/ REQUESTED REVISIONS |

ATTACHMENT 1

U. S. Department of Housing and Urban Development



Community Planning and Development

Region VIII, Denver
1670 Broadway Street
Denver, Colorado 80202-4801

Phone: 303-672-5414
Fax: 303-672-5028
Web: www.hud.gov

July 31, 2015

Ms. Joelle S. Greenland
Manager
Community Development
Adams County
4430 South Adams County Parkway
1st Floor
Brighton, CO 80031

Dear Ms. Greenland:

Thank you for your continued interest in participating as an Urban County in the Community Development Block Grant Program. This letter is in response to the documents you submitted pursuant to Adams County's desire to requalify as an Urban County for the Community Development Block Grant (CDBG) program for Federal fiscal years (FYs) 2016 through 2018. We reviewed your submission to determine whether Adams County, Colorado continues to have the authority to carry out essential community development and housing assistance activities within its boundaries so that it may qualify for entitlement status as an "urban county" in the CDBG program as set forth in 24 C.F.R. Part 570, and pursuant to Section IX of the HUD Notice CPD-15-04, *Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FYs) 2016-2018* (Notice).

We cannot complete our review until further documentation is submitted and corrections are made to the previously submitted documents.

Pursuant to its desire to qualify as an Urban County, Adams County submitted Intergovernmental Agreements (Agreements) between Adams County and the cities of Northglenn, Federal Heights, Commerce City, Brighton, and Bennett, in addition to other supporting documentation required by the Notice. These Intergovernmental Agreements do not meet all of HUD's requirements specified in the Notice. Highlighted below are the issues that must be corrected in the Agreements before my office can certify that Adams County has met all of the requirements of the Notice.

- The Adams County Attorney's signature on the Intergovernmental Agreement with Northglenn is missing.
- Insert "Bennett" as the city name in the first paragraph of the Agreement between the County and Bennett.

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- Insert “Bennett” as one of the participating jurisdictions in the first paragraph of each Agreement.
 - Per Section (V)(D) of the Notice, the “agreement must state that, by executing the CDBG cooperation agreement, the included unit of general local government understands that it: (1) May not apply for grants from appropriations under the State CDBG Program for fiscal years during the period in which it participates in the urban county’s CDBG program; and (2) May receive a formula allocation under the HOME Program only through the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments; and (3) May receive a formula allocation under the ESG Program only through the urban county.” The Agreements do not have this required language.
 - Per Section V(E) of the Notice, the agreement must specify the three Federal fiscal years covered by the urban county qualification period (e.g., Federal FYs 2016-2018), for which the urban county is to qualify to receive CDBG entitlement funding. The Agreements do not have this required language.
 - Section V(F) of the Notice requires cooperation agreements with automatic renewal provisions include a stipulated requirement to adopt all amendments and that failure to comply will void the automatic renewal for such qualification period. The Agreement is missing a provision that voids the automatic renewal if an entity does not comply with the requirement to adopt all amendments.
 - Section V(M) of the Notice requires the Agreement “include a provision in the cooperation agreement that a unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to another such metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the Act.” The Agreement does not have this provision.

Beyond the changes needed in the Agreements, the following documents must be corrected, as specified below, and resubmitted:

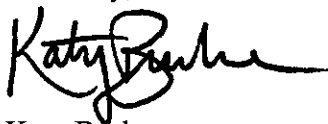
- Resolutions from *each* participating unit of government, authorizing entrance into an Intergovernmental Agreement with Adams County. (Please note that we only received one resolution from Adams County.)
- Per Section V. B., the legal opinion from the county’s counsel must clearly state that “the participating unit of general local government has the authority to undertake, or assist in undertaking, essential community renewal and lower

income housing assistance activities.” There must be explicit language to this effect.

As stated above, we cannot complete our review of your continued qualifications as an urban county for participation in the CDBG program for FYs 2016 through 2018 until we receive the requested documentation, and the Intergovernmental Agreements are made consistent with the Notice. Once we receive the above-mentioned documents, we will promptly complete our review.

We thank you for your time and attention to this matter. Should you or your staff have questions related to any aspect of these determinations and the resulting findings, please feel free to contact me at 303-839-2634 or Kathleen.s.burke@hud.gov.

Sincerely,

A handwritten signature in black ink that reads "Katy Burke". The signature is written in a cursive, flowing style.

Katy Burke
Program Manager

ATTACHMENT 2

**2016, 2017, 2018
INTERGOVERNMENTAL AGREEMENT
WITH THE (Insert Jurisdiction Name)
FOR THE CONDUCT
OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made by and between the Board of County Commissioners of the County of Adams ("COUNTY"), State of Colorado, and the (Insert Jurisdiction), ("TOWN/CITY"), a statutory-rule municipality located in Adams County, State of Colorado. An agreement similar to this one is being executed between the COUNTY and other governmental units within the COUNTY, including the TOWN of Bennett, and the CITIES of Brighton, Commerce City, Federal Heights, and Northglenn that are participating in the Community Development Block Grant (CDBG) as part of the Urban County and Participating Jurisdiction, as further described hereunder. The COUNTY and the TOWN/CITY may be referred to collectively as "PARTIES," and individually as "PARTY."

Commented [A1]: Each municipality to fill in

RECITALS

WHEREAS, in 1974 the U.S. Congress enacted the Housing and Community Development Act of 1974 (Act) thereby permitting and providing for the participation of the Federal government in a wide range of local housing and community development activities and programs, which activities and programs are administered by the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, the primary objective of Title I of the Act ("Act") is the development of viable urban communities by providing decent housing and a suitable living environment and the expansion of economic opportunities, mainly for persons of low and moderate-income. This objective is to be accomplished by providing financial assistance in the form of block grant funds to state and local governments for the conduct and administration of housing and community development activities and programs as contemplated under the Act via the CDBG program; and

WHEREAS, HUD rules and regulations governing the CDBG Program, as published in 24 C.F.R., Volume 3, Subtitle B, Chapter V, Part 570 ("CDBG Regulations"), provide that a county must qualify as an "Urban County," as defined therein, and submit to HUD an annual request for funding in the form of a Five-Year (05) Consolidated Plan ("Con Plan") and an Annual Action Plan ("AAP") or a five (5) year Consolidated Plan with an Annual Action Plan component ("CPAAP"). The cities and units of local government within an Urban County may be included in the Urban County by intergovernmental or cooperative agreement and may thereby be included in the Urban County's CDBG Program; and

WHEREAS, Adams County has qualified as an Urban County since 1986 for Federal fiscal years, 1986-1988, 1989-1991, 1992-1994, 1995-1997, 1998-2000, 2001-2003, 2004-2006, 2007-2009, 2010-2012, 2013-2015 and wishes to retain Urban County classification for 2016 -2018 and future years; and
WHEREAS, rules and regulation to qualify or re-qualify as an Urban County are published annually and the notice for the Federal fiscal years 2016-2018 are published in HUD Notice CPD-11-02, "Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years ("FYs") 2016-2018"; and

WHEREAS, HUD has determined that the COUNTY is authorized to undertake essential community development activities in its unincorporated areas that are necessary to qualify as an Urban County to

receive funds from HUD by annual grant agreement. This determination is based on the authority granted the COUNTY pursuant to §§ 29-3-101 to 123, §§ 30-11-101 to 107; §§ 30-20-301 to 310; and §§ 30-20-401 to 422, Colorado Revised Statutes (C.R.S.), as amended; and

WHEREAS, it is recognized that the COUNTY does not have independent legal authority to conduct some kinds of community development and housing assistance activities within the boundaries of the TOWN and, therefore, its ability to conduct the CDBG Program in the TOWN/CITY is limited. Accordingly, in order for the TOWN/CITY to be considered a part of the Urban County and be included in the County's annual requests to HUD for CDBG Program funds, CDBG regulations require that the TOWN/CITY and the COUNTY enter into a cooperation agreement wherein the TOWN/CITY authorizes and agrees to cooperate with the COUNTY to undertake or to assist in the undertaking of community renewal and lower-income housing assistance activities, essential community development and housing assistance activities within the boundaries of the TOWN, as may be approved and authorized in the COUNTY's annual grant agreements with HUD; and

WHEREAS, the TOWN/CITY also recognizes and understands that a unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

WHEREAS, pursuant to Colo. Const. art. XIV, § 18 and § 29-1-203, C.R.S., as amended, the COUNTY and the TOWN/CITY are expressly authorized to cooperate and contract with each other for any function, service, or facility lawfully authorized to each; and

WHEREAS, the COUNTY and TOWN/CITY have determined that it would be mutually beneficial and in the public interest to enter into this Agreement.

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AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein set forth, the sufficiency of which is hereby acknowledged, the COUNTY and the TOWN/CITY agree as follows:

I. TERM OF THE AGREEMENT

This Agreement covers the CDBG Entitlement program. The three Federal fiscal years covered by the urban county qualification period is FY 2016 to FY 2018. The initial term of this Agreement shall be for three (3) program years, beginning **March 1, 2016**, ending **February 28, 2019**. Funding for this Agreement is based on Federal fiscal years, which begin October 1st and end September 30th of the following year.

This Agreement shall automatically be renewed for an additional three (3) year term unless either party provides written notice that it elects not to participate in a new qualification period. The automatic renewal provision also requires that entities will adopt all amendments and failure to comply will void the automatic renewal for such qualification period. By the date specified in HUD's Urban County qualification notice for the next qualification period, the COUNTY shall provide notice to the TOWN/CITY of its right not to participate in the additional term, pursuant to applicable HUD regulations. Any changes to this Agreement required pursuant to HUD's Urban County Qualification Notice shall be made by written amendment to this Agreement, which shall be mutually agreed upon and executed by both Parties hereto and submitted to HUD.

This Agreement shall remain in effect until the CDBG funds and Program Income ("PI") received with respect to activities carried out during the three-year qualification period and any applicable successive qualification periods pursuant to renewals of the Agreement are expended and the funded activities completed, and the COUNTY and the TOWN/CITY cannot terminate or withdraw from the Agreement while it remains in effect.

II. RESPONSIBILITIES OF THE TOWN

- A. Town and County Cooperation.** The TOWN will cooperate and work with the COUNTY in the preparation of detailed projects and other activities to be conducted or performed within the TOWN/CITY during the Federal fiscal years during which this Agreement is in effect. The TOWN/CITY will also cooperate with the COUNTY, and the COUNTY will cooperate with the TOWN/CITY, to undertake or assist in undertaking community renewal and lower income housing assistance activities, specifically urban renewal and publicly-assisted housing. The finalized projects and activities will be included in the COUNTY's AAP when required, annually. The TOWN/CITY understands and agrees, however, that the COUNTY shall have final responsibility for the selection of all projects and activities to be included in the grant requests and the submission of requests. The TOWN/CITY shall cooperate fully with the COUNTY in all CDBG Program efforts planned and performed hereunder and does hereby allow and permit the COUNTY to undertake or assist in undertaking essential community development and housing assistance activities within the TOWN/CITY as may be approved and authorized in the COUNTY's CDBG Plans, Agreements and/or Contracts, including the AAP, when required.
- B. Delegation of Administrative and Supervisory Control.** The TOWN/CITY acknowledges that the COUNTY is ultimately responsible to HUD for the supervision and administration of any funds received by the Urban County or Participating Jurisdiction under the CDBG Program.

However, to the extent authorized by law, the COUNTY hereby delegates to the TOWN/CITY responsibility for the supervision, administration, and expenditure of any funds it is allocated pursuant to this Agreement. The TOWN/CITY hereby expressly agrees to independently supervise, administer, and spend such funds in compliance with this Agreement, CDBG Regulations, and the AAP.

- C. **Subrecipient Agreements.** Pursuant to CDBG Regulations, as published in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.501(b), the TOWN/CITY is subject to the same requirements applicable to “subrecipients,” including the requirement of a written agreement as set forth in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.503. This Agreement shall be used as the subrecipient agreement for each of the individual projects approved during the time this Agreement is in effect. Additionally, the COUNTY shall use Sub-recipient Agreements for all projects administered on behalf of the TOWN/CITY and shall notify the TOWN/CITY of individual project and/or Activity COUNTY approvals. The Agreements may contain the Project Name, Project Purpose, Scope of Service, Project Description, Performance Measures, Staffing and Description of System Delivery, Project Budget, Time of Performance, Reporting Requirements, Labor Standards requirements (if any), Environmental Review Requirements and other Financial Information. This Agreement shall govern such elements as PI, Reversion of Assets, Records, Reports and Asset Management.
- D. **Project Timelines.** The TOWN/CITY shall submit to the COUNTY, no less frequent than annually, formal TOWN/CITY proposals, including a timeline and budget for each project or activity. The timeline shall specify the length of time needed for each phase through the completion of the project or activity. The TOWN/CITY shall comply and/or require its contractors and/or sub-contractors to comply with the timelines submitted and the TOWN/CITY shall allocate the funds received hereunder accordingly. The TOWN/CITY understands that failure to comply with the timelines may result in cancellation of a project or activity and/or the loss of CDBG funding, unless the COUNTY determines that extenuating circumstances beyond the TOWN's/CITY's control exist, permitting the project to proceed and be completed in a reasonable time. The timeline for a project or activity shall commence when the COUNTY provides written notification to the TOWN/CITY of proposal/project/activity approval and authorization by the COUNTY and/or HUD and a fully executed Agreement. Unobligated or unexpended funds not used by the TOWN/CITY shall be transferred to the allocation formula for redistribution. The COUNTY will review all CDBG projects and activities to determine whether they are being carried out in a timely manner as required by CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.902.
- E. **Payment Process.**
1. **Applications for Funding.** Before the COUNTY distributes any funds to the TOWN/CITY under this Agreement, the TOWN/CITY shall submit to the COUNTY Community Development Division an application for funding, which shall be in the form and format specified by the COUNTY and in compliance with HUD regulations.
 2. **Contract Project Agreement Payments.**
 - a. **Payment and Reimbursement Procedures.** In order to receive payments or expense reimbursements under this Agreement, the TOWN/CITY shall submit to the COUNTY's Community Development Division a request for payment with appropriate documentation (invoices, billings, etc.) specifying the items or services for which

payment is being requested. Payments for eligible expenses or reimbursements shall be made against the line item budgets specified in the Agreements and in accordance with performance thereof. The COUNTY shall process requests for payments or reimbursements within thirty (30) business days and shall forward payments to the TOWN, or the appropriate contractor or vendor as identified through a fully executed Agreement or Contract with the TOWN/CITY, immediately upon the approval of the request. Reimbursements may be delayed for monitoring of activities and/or submission of incomplete documentation.

b. Indirect Costs. If indirect costs are charged, the TOWN/CITY will develop an indirect cost allocation plan for determining the appropriate CDBG share of administrative costs and shall submit such plan to the COUNTY for approval.

F. Non-Appropriation Clauses. The TOWN/CITY agrees that every contract to which it is a party involving the use of CDBG funds allocated hereunder shall include a non-appropriation clause. Such clause shall state that the funding therefore is contingent upon the continuing allocation and availability of CDBG funding and not upon the availability of COUNTY General funds.

1. Accounting Standards. The TOWN's/CITY's financial management system shall be in compliance with the standards specified in OMB Circular A-87. In addition, the TOWN/CITY shall comply with OMB Circular A-110, Attachment F, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

H. Expenditure Restrictions. All CDBG funds approved by HUD for expenditure under the COUNTY's Grant Agreement, including those that are identified for TOWN/CITY projects and activities, shall be allocated to the specific projects and activities described and listed in the TOWN's/CITY's proposal for funding, Agreements, and Contracts; such funds shall be used for no other purposes. No project, activity, or the amount allocated to a given project or activity may be changed without the written concurrence of the COUNTY and/or HUD, as required.

I. Additional Spending Limitations. The TOWN/CITY agrees that no more than two-and-one-half percent (2.5%) of the total funds it receives hereunder shall be used for eligible planning, urban environmental design, and policy-planning-management-capacity building activities, upon formal application and , as defined in under the CDBG Regulations, 24 C.F.R. Subtitle B, Volume 3, Chapter V, Part 570.205. The TOWN/CITY understands that if more than two-and-one-half percent (2.5%) of the funds are otherwise used, the COUNTY may be penalized and the TOWN/CITY shall be required by HUD to reimburse any amounts wrongfully expended in excess of the two-and-one-half percent (2.5%) limit. The TOWN/CITY further agrees that no more that fifteen percent (15%) of its annual allocation hereunder may be spent on community service activities, pursuant to the CDBG Regulations, 24 C.F.R. Chapter 3, Subtitle B, Chapter V, Part 570.201(e).

If the TOWN/CITY wishes to conduct a project or activity that would be in excess of either the two and one-half percent (2.5%) limit or the fifteen (15%) limit, it shall first submit to the COUNTY a written request for a waiver prior to the submission of its project or activity application. The TOWN/CITY understands and agrees that the COUNTY may or may not grant a waiver request regarding these activity limits and that the COUNTY shall have final responsibility for the selection of all projects and activities.

The TOWN/CITY understands that, by executing the CDBG cooperation agreement, the included unit of general local government understands that it: (1) May not apply for grants from appropriations under the State CDBG Program for fiscal years during the period in which it participates in the urban County's CDBG program; and (2) May receive a formula allocation under the HOME Program only through the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments; and (3) May receive a formula allocation under the ESG Program only through the urban county. while this Agreement is in effect, it may not apply for grants under the "Small Cities" or State CDBG Programs for the Federal fiscal years during which it is participating in the Urban County's CDBG Program.

- J. **Cost Overruns.** The TOWN/CITY shall be solely responsible for any financial liability or costs incurred as the result of cost overruns associated with projects or activities within its jurisdiction for which it receives funding under this Agreement.
- K. **Requests for Additional Funding.** Pursuant to CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.504, the TOWN/CITY shall fully expend all CDBG Program funds for the project or activities identified in the applicable Agreement prior to requesting any additional funding from the COUNTY. If the TOWN/CITY terminates its participation in the Urban County, any CDBG Program funds received by the TOWN/CITY thereafter shall be returned to the COUNTY, unless the TOWN/CITY has become an "Entitlement Grantee" and the COUNTY agrees to permit the use of the funds by the TOWN/CITY solely for the purposes permitted under the CDBG Regulations governing Entitlement Grantee Programs.
- L. **Bonds.** The TOWN/CITY shall be solely responsible for procuring from its contractors and/or subcontractors bid guarantees and performance and payment bonds as required by Federal and State law. Pursuant to OMB Circular A-110, Attachment B and Attachment O, Par. 4.C, bid guarantees in the amount of five percent (5%) of the contract price are required for contracts in the amount of one hundred thousand dollars (\$100,000) or more. Performance and payment bonds in the amount of one hundred percent (100%) of the contract price are also required. Such bonds must be issued by corporate sureties approved by the TOWN/CITY, licensed to do business in the State of Colorado, and may only be released upon the written approval of the TOWN/CITY.
- M. **Insurance.** The TOWN/CITY shall be solely responsible for requiring its contractors and/or subcontractors to provide adequate insurance as required by Federal or State law and as appropriate for all projects and activities for which the TOWN/CITY receives funding under this Agreement. The insurance required of the TOWN's/CITY's contractors and/or subcontractors may include, but not be limited to, commercial general liability insurance, automobile insurance, workers' compensation insurance, professional liability insurance, and unemployment insurance. All insurance policies must list both the TOWN/CITY and the COUNTY as "Additional Insureds."

In the event that the TOWN/CITY fails to require its contractors and/or subcontractors to acquire and maintain adequate insurance as required herein, the TOWN/CITY shall, to the extent allowed by law, indemnify the COUNTY for any liability incurred as the result of such failure. The TOWN/CITY shall cure or cause to be cured such failure within ten (10) business days after having received written notice from the COUNTY of the failure. If the insurance requirement(s)

are not met and/or cured within ten (10) business days, the COUNTY may immediately suspend, discontinue, or terminate this Agreement and any program or activity allocations made hereunder.

- N. **Town as Independent Contractor.** The TOWN/CITY shall be responsible for the direct day-to-day supervision and administration of the projects and activities for which it receives funding under this Agreement. As such, the TOWN/CITY shall be deemed to be acting as an independent contractor and not as an employee of the COUNTY. The TOWN/CITY shall be solely and entirely responsible for its acts and omissions, and the acts and omissions of its elected officials, employees, servants, contractors, and subcontractors during the term and performance of this Agreement. No elected official, employee, servant, contractor, or subcontractor of the TOWN/CITY shall be deemed to be an employee, servant, contractor, or subcontractor of the COUNTY because of the performance of any services or work under this Agreement. The TOWN/CITY, at its expense, shall procure and maintain workers' compensation insurance and unemployment compensation insurance as applicable and/or required by law. **Pursuant to the Workers' Compensation Act, § 8-40-202(2)(b)(IV), C.R.S., as amended, the TOWN/CITY understands that it and its elected officials, employees, and agents are not entitled to workers' compensation benefits from the COUNTY. The TOWN/CITY further understands that it is solely obligated for the payment of Federal and State income tax on any moneys earned pursuant to this Agreement,** as applicable.
- O. **Assurances and Certifications.** The TOWN/CITY agrees to comply with the HUD Assurances and Certifications contained in the document attached hereto and incorporated herein by this reference as Exhibit 1.
- P. **Excessive Force.** The TOWN/CITY has adopted and is enforcing:
1. 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;
 2. A policy enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.
- Q. **Record Retention.** The TOWN/CITY shall maintain records and accounts of the funds it receives hereunder in accordance with accepted accounting procedures and any applicable Federal and State laws and regulations. The TOWN/CITY will provide full access to these records to the COUNTY, the Secretary of HUD or the Secretary's designee, the Office of Inspector General, and/or the General Accounting Office, so that compliance may be confirmed regarding the expenditure of funds pursuant to this Agreement. The TOWN/CITY further agrees to provide the COUNTY, upon request, a copy of any audit records pertaining to the TOWN's/CITY's CDBG Program operations during the term of this Agreement. The TOWN/CITY shall retain all records pertaining to this Agreement for a period of ten (10) Federal fiscal years following the termination of this Agreement.
- R. **Termination Asset Management.** If the TOWN/CITY terminates its participation in the Urban County CDBG Program, any assets acquired under this Agreement or from CDBG Program funding shall be managed or disposed of in accordance with 24 C.F.R. Volume 1, Subtitle A, Part 85 and any other applicable HUD and/or Federal regulations.

- S. **Compliance With Local Laws.** All responsibilities of the TOWN/CITY enumerated herein shall be subject to applicable State statutes and regulations and TOWN/CITY ordinances, resolutions, and rules and regulations insofar as they apply to projects or activities located within the TOWN/CITY.

III. RESPONSIBILITIES OF THE COUNTY

- A. **Administrative Oversight.** The COUNTY, as a designated Urban County and Participating Jurisdiction, is ultimately responsible for the administrative oversight and supervision of all funds allocated to the TOWN/CITY hereunder. As such, it is responsible for ensuring that all funds allocated to the TOWN/CITY are expended in accordance with the AAP, all Agreements and/or Contracts, and all applicable Federal, State, and local laws, ordinances, resolutions, regulations, and laws pertaining to this Agreement. It is the intent of the COUNTY to exercise only that degree of administrative and supervisory control concerning TOWN/CITY projects and activities as necessary to comply with such requirements and in accordance with the provisions of this Agreement.
- B. **Distribution of Funds.** The distribution of CDBG funds between the COUNTY and the TOWN/CITY shall be determined as follows:

1. **Administrative Allocation.** The COUNTY shall retain seventeen-and-one-half percent (17.5%) of the total CDBG Program funds allocated to the COUNTY for the purpose of general oversight, management, coordination and related costs. The expenditure of these funds shall be within the sole discretion of the COUNTY for the aforementioned purposes.

In the event the TOWN/CITY does not have appropriate planning activities for any given Federal fiscal year, the COUNTY shall retain the two-and-one-half percent (2 1/2%) Administrative funds for Program operations within the COUNTY Community Development Division.

2. **Allocations to Jurisdictions.** The funds remaining after the subtraction of the administrative allowance outlined above shall be made available to the respective jurisdictions based on an analysis of the percentage that each jurisdiction's population and low income population represents in comparison of the total population of the Urban County. This formula will reflect the information provided in the most recent decennial United States Census.
3. **Application Compliance.** All applications for funds must comply with all applicable Federal laws and regulations before any funds may be distributed.
4. **Benefit to Low and Moderate Income Residents.** CDBG National Objectives require that at least seventy (70%) of CDBG funds utilized must principally benefit low-to-moderate-income residents. The COUNTY and the TOWN/CITY agree to utilize their CDBG Program allocations each year in accordance with CDBG Program National Objective requirements by allocating at least seventy (70%) percent of their funds toward projects or activities that principally benefit low-to-moderate income residents. In preparing applications for funding, the TOWN/CITY shall also take into consideration provisions for the elimination of slums or blight and provisions to meet urgent community development needs that are a threat to public health and safety and have become known or serious within the last eighteen (18) months, which are also part of the CDBG Program National Objectives.

5. **Community Service Activities Spending Cap.** The TOWN/CITY agrees that no more than fifteen percent (15%) of its annual allocation hereunder may be spent on community service activities, pursuant to CDBG Regulations, 24 C.F.R. Chapter 3, Subtitle B, Chapter V, Part 570.201(e). No carry-over of community service activities will be allowed. Community service activities funds not fully expended within the specified timeframe must be recaptured and reprogrammed as part of the next annual funding cycle.

6. **Reallocation of Funds.** Should any one participating TOWN/CITY be unable for any reason to spend its allocated funds within the timeframes needed for reporting and timeliness, Urban County participants will be notified of the unspent allocation and allowed to propose a project or program that could use those funds quickly and efficiently. Proposals must demonstrate the ability of that project or program to use the funds in a timely manner, as deemed by the COUNTY. Such proposals would be considered and voted upon by the County and all participating jurisdictions. A majority vote would decide distribution of these unspent funds. A record of these distributions will be kept by the County for the County and all participating jurisdictions to review when deciding future allocations to ensure that no single member is receiving the greatest benefit of CDBG funding.

If, for any reason, the Participating TOWN/CITY cannot comply with any applicable Federal laws and regulations, the funds for which the Participating TOWN/CITY was eligible under this Agreement shall not be paid to that TOWN/CITY and shall be reallocated as described above.

7. **Non-Use of Funds.** Parties agree the TOWN may elect not to apply for the funds for which it is eligible, in which case such funds shall be reallocated as described under the reallocation section above.

IV. MUTUAL RESPONSIBILITIES

A. **Compliance With Federal Laws and Regulations.** The PARTIES shall take all actions to do all things that are appropriate and required to comply with the applicable provisions of the grant agreements received from HUD by the COUNTY in which the TOWN/CITY is included. These include but are not limited to: the Act, as most recently amended, including all associated regulations, rules, guidelines, and circulars promulgated by the Federal departments, agencies, and commissions relating to the CDBG Program; the Davis-Bacon Act, as applicable; Section 3, as applicable; Minority-Owned Businesses/Women-Owned Businesses, as applicable; the Contract Work Hours and Safety Standards Act; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Housing and Community Development Act of 1974; The Fair Housing Act; the Uniform Federal Accessibility Standards (UFAS); the Americans With Disabilities Act (ADA); and the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended, and any associated regulations and rules. Additionally, in accordance with 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570, no employee, official, agent or consultant of the TOWN/CITY shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise. The PARTIES shall take all actions necessary to assure compliance with the COUNTY's Urban County certification required by section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights

Act of 1964, the Fair Housing Act, section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.

- B. Governmental Immunity.** The COUNTY and the TOWN/CITY are “Public Entities” as defined under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended. Nothing in this Agreement shall be construed to waive or in any manner limit any of the protections or immunities afforded thereunder.
- C. Fair Housing.** The COUNTY is prohibited from funding activities that do not comply with HUD’s policies and regulations concerning fair housing. The TOWN/CITY agrees not to take any actions pursuant to funding it receives under this Agreement that would result in the COUNTY being in noncompliance with its Fair Housing Certification. The TOWN/CITY acknowledges that noncompliance by the TOWN/CITY may constitute noncompliance by the COUNTY, which may provide cause for funding sanctions or other remedial actions by HUD. Urban County funding shall not be used for activities in, or in support of, any locality that does not affirmatively further fair housing within its own jurisdiction or that impedes the COUNTY’s actions to comply with the County’s Fair Housing Certification.
- D. Reporting.** The TOWN/CITY will file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the COUNTY and HUD. This includes providing to the COUNTY information necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER) in a timely fashion. Requirements will be specified in individual Agreements and/or Contracts. The COUNTY shall be responsible for confirming the compliance of TOWN/CITY projects with applicable Federal laws and regulations. The COUNTY shall further be responsible for maintaining proper documentation of the COUNTY’s administrative expenses and for determining that all necessary reports and information are filed with HUD and other applicable Federal agencies in a timely fashion.
- 1. Support of Nonprofit Organizations.** The COUNTY recognizes nonprofit organizations as being valuable partners in addressing the needs of low and moderate-income citizens. The TOWN/CITY is encouraged to provide financial support utilizing its General funds, CDBG funds, and other available funds to support nonprofit organizations that serve low-income residents within the Urban County and/or the TOWN/CITY. CDBG funds are limited to fifteen percent (15%) annually for community service activities. CDBG funds should supplement activities above and beyond what local TOWN/CITY funds normally support; they are not meant to displace use of local support.
 - 2. Termination.** This Agreement may only be terminated as provided herein or as otherwise provided by Federal, State, or local law, ordinance, resolution, regulation, or rule.

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IN WITNESS WHEREOF, the COUNTY and the TOWN/CITY have duly executed this Agreement, which shall become effective as of the latest date written below.

**BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO**

Charles Tedesco, Chairman

Date

ATTEST:
Stan Martin
CLERK AND RECORDER

APPROVED AS TO FORM:

Deputy Clerk

Adams County Attorney's Office

**[Insert Jurisdiction]
ADAMS COUNTY, COLORADO**

[Name/Title]

Date

ATTEST:
[Insert Jurisdiction]

APPROVED AS TO FORM:

[Clerk]

Town/City Attorney

EXHIBIT 1
CERTIFICATIONS

The TOWN/CITY certifies that:

- a. It possesses legal authority to make a grant request, and to execute a community development and housing program, and to contract with Adams County for such assistance.
- b. The TOWN/CITY governing body will duly adopt or pass as an official act, a resolution, motion or similar action authorizing the person identified as the Official Representative of the TOWN/CITY to submit TOWN/CITY funding proposals and all understandings and assurances contained therein, and directing and authorizing the person identified as the Official Representative of the TOWN/CITY to act in connection with the submission of proposals and to provide such additional information as may be required.
- c. As part of the COUNTY's Citizen Participation Plan, the TOWN/CITY will hold a public hearing at least ten (10) days prior to submitting funding proposals to the COUNTY and will:
 1. Provide citizens with estimated amounts of CDBG funds proposed to be used for activities that will benefit persons of low and moderate-income; and
 2. The TOWN will prepare proposals of community development on the projected use of funds in accordance with Section 570.301(a) (3).
- d. CDBG funds/projects/programs will be conducted and administered in compliance with:
 1. Title VI of the Civil Rights Act of 1964 (Pub.L. 88-352; 2 U.S.C. § 2000d *et seq.*);
 2. Title VIII of the Civil Rights Act of 1968 (Pub.L. 90-284; 42 U.S.C. § 3601 *et seq.*); and
 3. Federal Fair Housing Requirements.
- e. The TOWN/CITY will develop proposals of projected use of funds in which at least seventy percent (70%) of the funds are utilized on activities or projects that principally benefit low and moderate-income families. Remaining funds may be used on activities or projects that address other National Objectives, in compliance with HUD requirements, including activities or projects that eliminate slum or blight, as identified in a HUD-approved Slum/Blight Plan, or projects that meet an urgent need, as defined by HUD;
- f. The TOWN/CITY will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under Section 206 of the Act or with amounts resulting from guarantee under Section 108 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
 1. Funds received under Section 108 of the Act are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act; or
 2. For purposes of assessing any amount against properties owned and occupied by persons of moderate-income, the TOWN/CITY certifies to the Secretary that it lacks sufficient funds received under Section 108 of the Act to comply with the requirements of subparagraph (1) above.
- g. When appropriate for TOWN/CITY projects, notifications, inspections, testing, and abatement procedures concerning lead-based paint will comply with Section 570.608.
- h. The TOWN/CITY will comply with the other provisions of the Act and with other applicable laws.
- i. The TOWN/CITY agrees to administer, in good faith, a policy designed to ensure that the activities and facilities are free from illegal use, possession, or distribution of drugs and alcohol by its beneficiaries and is in compliance with drug-free work place policies.

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-108
Series of 2015

Series of 2015

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ADAMS COUNTY BOARD OF COUNTY COMMISSIONERS AND THE CITY OF NORTHGLENN FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the Adams County Board of County Commissioners and the City of Northglenn for the conduct of the Community Development Block Grant Program, attached hereto as **Exhibit 1**, is hereby approved and the Mayor is authorized to execute same on behalf of the City.

Section 2. Resolution No. 15-84, Series of 2015, dated July 13, 2015, is hereby repealed.

DATED at Northglenn, Colorado, this _____ day of _____, 2015.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

2016, 2017, 2018
INTERGOVERNMENTAL AGREEMENT
WITH THE (Insert Jurisdiction Name)
FOR THE CONDUCT
OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made by and between the Board of County Commissioners of the County of Adams ("COUNTY"), State of Colorado, and the City of Northglenn, ("CITY"), a statutory-rule municipality located in Adams County, State of Colorado. An agreement similar to this one is being executed between the COUNTY and other governmental units within the COUNTY, including the TOWN of Bennett, and the CITIES of Brighton, Commerce City, Federal Heights, and Northglenn that are participating in the Community Development Block Grant (CDBG) as part of the Urban County and Participating Jurisdiction, as further described hereunder. The COUNTY and the CITY may be referred to collectively as "PARTIES," and individually as "PARTY."

RECITALS

WHEREAS, in 1974 the U.S. Congress enacted the Housing and Community Development Act of 1974 (Act) thereby permitting and providing for the participation of the Federal government in a wide range of local housing and community development activities and programs, which activities and programs are administered by the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, the primary objective of Title I of the Act ("Act") is the development of viable urban communities by providing decent housing and a suitable living environment and the expansion of economic opportunities, mainly for persons of low and moderate-income. This objective is to be accomplished by providing financial assistance in the form of block grant funds to state and local governments for the conduct and administration of housing and community development activities and programs as contemplated under the Act via the CDBG program; and

WHEREAS, HUD rules and regulations governing the CDBG Program, as published in 24 C.F.R., Volume 3, Subtitle B, Chapter V, Part 570 ("CDBG Regulations"), provide that a county must qualify as an "Urban County," as defined therein, and submit to HUD an annual request for funding in the form of a Five-Year (05) Consolidated Plan ("Con Plan") and an Annual Action Plan ("AAP") or a five (5) year Consolidated Plan with an Annual Action Plan component ("CPAAP"). The cities and units of local government within an Urban County may be included in the Urban County by intergovernmental or cooperative agreement and may thereby be included in the Urban County's CDBG Program; and

WHEREAS, Adams County has qualified as an Urban County since 1986 for Federal fiscal years, 1986-1988, 1989-1991, 1992-1994, 1995-1997, 1998-2000, 2001-2003, 2004-2006, 2007-2009, 2010-2012, 2013-2015 and wishes to retain Urban County classification for 2016 -2018 and future years; and

WHEREAS, rules and regulation to qualify or re-qualify as an Urban County are published annually and the notice for the Federal fiscal years 2016-2018 are published in HUD Notice CPD-11-02, "Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years ("FYs") 2016-2018"; and

WHEREAS, HUD has determined that the COUNTY is authorized to undertake essential community development activities in its unincorporated areas that are necessary to qualify as an Urban County to receive funds from HUD by annual grant agreement. This determination is based on the authority granted

the COUNTY pursuant to §§ 29-3-101 to 123, §§ 30-11-101 to 107; §§ 30-20-301 to 310; and §§ 30-20-401 to 422, Colorado Revised Statutes (C.R.S.), as amended; and

WHEREAS, it is recognized that the COUNTY does not have independent legal authority to conduct some kinds of community development and housing assistance activities within the boundaries of the CITY and, therefore, its ability to conduct the CDBG Program in the CITY is limited. Accordingly, in order for the CITY to be considered a part of the Urban County and be included in the County's annual requests to HUD for CDBG Program funds, CDBG regulations require that the CITY and the COUNTY enter into a cooperation agreement wherein the CITY authorizes and agrees to cooperate with the COUNTY to undertake or to assist in the undertaking of community renewal and lower-income housing assistance activities, essential community development and housing assistance activities within the boundaries of the CITY, as may be approved and authorized in the COUNTY's annual grant agreements with HUD; and

WHEREAS, the CITY also recognizes and understands that a unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, or Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

WHEREAS, pursuant to Colo. Const. art. XIV, § 18 and § 29-1-203, C.R.S., as amended, the COUNTY and the CITY are expressly authorized to cooperate and contract with each other for any function, service, or facility lawfully authorized to each; and

WHEREAS, the COUNTY and CITY have determined that it would be mutually beneficial and in the public interest to enter into this Agreement.

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AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein set forth, the sufficiency of which is hereby acknowledged, the COUNTY and the CITY agree as follows:

I. TERM OF THE AGREEMENT

This Agreement covers the CDBG Entitlement program. The three Federal fiscal years covered by the urban county qualification period is FY 2016 to FY 2018. The initial term of this Agreement shall be for three (3) program years, beginning **March 1, 2016**, ending **February 28, 2019**. Funding for this Agreement is based on Federal fiscal years, which begin October 1st and end September 30th of the following year.

This Agreement shall automatically be renewed for an additional three (3) year term unless either party provides written notice that it elects not to participate in a new qualification period. The automatic renewal provision also requires that entities will adopt all amendments and failure to comply will void the automatic renewal for such qualification period. By the date specified in HUD's Urban County qualification notice for the next qualification period, the COUNTY shall provide notice to the CITY of its right not to participate in the additional term, pursuant to applicable HUD regulations. Any changes to this Agreement required pursuant to HUD's Urban County Qualification Notice shall be made by written amendment to this Agreement, which shall be mutually agreed upon and executed by both Parties hereto and submitted to HUD.

This Agreement shall remain in effect until the CDBG funds and Program Income ("PI") received with respect to activities carried out during the three-year qualification period and any applicable successive qualification periods pursuant to renewals of the Agreement are expended and the funded activities completed, and the COUNTY and the CITY cannot terminate or withdraw from the Agreement while it remains in effect.

II. RESPONSIBILITIES OF THE CITY

- A. **City and County Cooperation.** The CITY will cooperate and work with the COUNTY in the preparation of detailed projects and other activities to be conducted or performed within the CITY during the Federal fiscal years during which this Agreement is in effect. The CITY will also cooperate with the COUNTY, and the COUNTY will cooperate with the CITY, to undertake or assist in undertaking community renewal and lower income housing assistance activities, specifically urban renewal and publicly-assisted housing. The finalized projects and activities will be included in the COUNTY's AAP when required, annually. The CITY understands and agrees, however, that the COUNTY shall have final responsibility for the selection of all projects and activities to be included in the grant requests and the submission of requests. The CITY shall cooperate fully with the COUNTY in all CDBG Program efforts planned and performed hereunder and does hereby allow and permit the COUNTY to undertake or assist in undertaking essential community development and housing assistance activities within the CITY as may be approved and authorized in the COUNTY's CDBG Plans, Agreements and/or Contracts, including the AAP, when required.
- B. **Delegation of Administrative and Supervisory Control.** The CITY acknowledges that the COUNTY is ultimately responsible to HUD for the supervision and administration of any funds received by the Urban County or Participating Jurisdiction under the CDBG Program. However,

to the extent authorized by law, the COUNTY hereby delegates to the CITY responsibility for the supervision, administration, and expenditure of any funds it is allocated pursuant to this Agreement. The CITY hereby expressly agrees to independently supervise, administer, and spend such funds in compliance with this Agreement, CDBG Regulations, and the AAP.

- C. Subrecipient Agreements.** Pursuant to CDBG Regulations, as published in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.501(b), the CITY is subject to the same requirements applicable to “subrecipients,” including the requirement of a written agreement as set forth in 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.503. This Agreement shall be used as the subrecipient agreement for each of the individual projects approved during the time this Agreement is in effect. Additionally, the COUNTY shall use Sub-recipient Agreements for all projects administered on behalf of the CITY and shall notify the CITY of individual project and/or Activity COUNTY approvals. The Agreements may contain the Project Name, Project Purpose, Scope of Service, Project Description, Performance Measures, Staffing and Description of System Delivery, Project Budget, Time of Performance, Reporting Requirements, Labor Standards requirements (if any), Environmental Review Requirements and other Financial Information. This Agreement shall govern such elements as PI, Reversion of Assets, Records, Reports and Asset Management.
- D. Project Timelines.** The CITY shall submit to the COUNTY, no less frequent than annually, formal CITY proposals, including a timeline and budget for each project or activity. The timeline shall specify the length of time needed for each phase through the completion of the project or activity. The CITY shall comply and/or require its contractors and/or sub-contractors to comply with the timelines submitted and the CITY shall allocate the funds received hereunder accordingly. The CITY understands that failure to comply with the timelines may result in cancellation of a project or activity and/or the loss of CDBG funding, unless the COUNTY determines that extenuating circumstances beyond the CITY's control exist, permitting the project to proceed and be completed in a reasonable time. The timeline for a project or activity shall commence when the COUNTY provides written notification to the CITY of proposal/project/activity approval and authorization by the COUNTY and/or HUD and a fully executed Agreement. Unobligated or unexpended funds not used by the CITY shall be transferred to the allocation formula for redistribution. The COUNTY will review all CDBG projects and activities to determine whether they are being carried out in a timely manner as required by CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.902.
- E. Payment Process.**
- 1. Applications for Funding.** Before the COUNTY distributes any funds to the CITY under this Agreement, the CITY shall submit to the COUNTY Community Development Division an application for funding, which shall be in the form and format specified by the COUNTY and in compliance with HUD regulations.
 - 2. Contract Project Agreement Payments.**
 - a. Payment and Reimbursement Procedures.** In order to receive payments or expense reimbursements under this Agreement, the CITY shall submit to the COUNTY's Community Development Division a request for payment with appropriate documentation (invoices, billings, etc.) specifying the items or services for which payment is being requested. Payments for eligible expenses or reimbursements shall be made against the line item budgets specified in the Agreements and in accordance with

performance thereof. The COUNTY shall process requests for payments or reimbursements within thirty (30) business days and shall forward payments to the CITY, or the appropriate contractor or vendor as identified through a fully executed Agreement or Contract with the CITY, immediately upon the approval of the request. Reimbursements may be delayed for monitoring of activities and/or submission of incomplete documentation.

b. Indirect Costs. If indirect costs are charged, the CITY will develop an indirect cost allocation plan for determining the appropriate CDBG share of administrative costs and shall submit such plan to the COUNTY for approval.

F. Non-Appropriation Clauses. The CITY agrees that every contract to which it is a party involving the use of CDBG funds allocated hereunder shall include a non-appropriation clause. Such clause shall state that the funding therefore is contingent upon the continuing allocation and availability of CDBG funding and not upon the availability of COUNTY General funds.

1. Accounting Standards. The CITY's financial management system shall be in compliance with the standards specified in OMB Circular A-87. In addition, the CITY shall comply with OMB Circular A-110, Attachment F, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

H. Expenditure Restrictions. All CDBG funds approved by HUD for expenditure under the COUNTY's Grant Agreement, including those that are identified for CITY projects and activities, shall be allocated to the specific projects and activities described and listed in the CITY's proposal for funding, Agreements, and Contracts; such funds shall be used for no other purposes. No project, activity, or the amount allocated to a given project or activity may be changed without the written concurrence of the COUNTY and/or HUD, as required.

I. Additional Spending Limitations. The CITY agrees that no more than two-and-one-half percent (2.5%) of the total funds it receives hereunder shall be used for eligible planning, urban environmental design, and policy-planning-management-capacity building activities, upon formal application and , as defined in under the CDBG Regulations, 24 C.F.R. Subtitle B, Volume 3, Chapter V, Part 570.205. The CITY understands that if more than two-and-one-half percent (2.5%) of the funds are otherwise used, the COUNTY may be penalized and the CITY shall be required by HUD to reimburse any amounts wrongfully expended in excess of the two-and-one-half percent (2.5%) limit. The CITY further agrees that no more that fifteen percent (15%) of its annual allocation hereunder may be spent on community service activities, pursuant to the CDBG Regulations, 24 C.F.R. Chapter 3, Subtitle B, Chapter V, Part 570.201(e).

If the CITY wishes to conduct a project or activity that would be in excess of either the two and one-half percent (2.5%) limit or the fifteen (15%) limit, it shall first submit to the COUNTY a written request for a waiver prior to the submission of its project or activity application. The CITY understands and agrees that the COUNTY may or may not grant a waiver request regarding these activity limits and that the COUNTY shall have final responsibility for the selection of all projects and activities.

The CITY understands that, by executing the CDBG cooperation agreement, the included unit of general local government understands that it: (1) May not apply for grants from appropriations

under the State CDBG Program for fiscal years during the period in which it participates in the urban County's CDBG program; and (2) May receive a formula allocation under the HOME Program only through the urban county. Thus, even if the urban county does not receive a HOME formula allocation, the participating unit of local government cannot form a HOME consortium with other local governments; and (3) May receive a formula allocation under the ESG Program only through the urban county. .

- J. Cost Overruns.** The CITY shall be solely responsible for any financial liability or costs incurred as the result of cost overruns associated with projects or activities within its jurisdiction for which it receives funding under this Agreement.
- K. Requests for Additional Funding.** Pursuant to CDBG Regulations, 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570.504, the CITY shall fully expend all CDBG Program funds for the project or activities identified in the applicable Agreement prior to requesting any additional funding from the COUNTY. If the CITY terminates its participation in the Urban County, any CDBG Program funds received by the CITY thereafter shall be returned to the COUNTY, unless the CITY has become an "Entitlement Grantee" and the COUNTY agrees to permit the use of the funds by the CITY solely for the purposes permitted under the CDBG Regulations governing Entitlement Grantee Programs.
- L. Bonds.** The CITY shall be solely responsible for procuring from its contractors and/or subcontractors bid guarantees and performance and payment bonds as required by Federal and State law. Pursuant to OMB Circular A-110, Attachment B and Attachment O, Par. 4.C, bid guarantees in the amount of five percent (5%) of the contract price are required for contracts in the amount of one hundred thousand dollars (\$100,000) or more. Performance and payment bonds in the amount of one hundred percent (100%) of the contract price are also required. Such bonds must be issued by corporate sureties approved by the CITY, licensed to do business in the State of Colorado, and may only be released upon the written approval of the CITY.
- M. Insurance.** The CITY shall be solely responsible for requiring its contractors and/or subcontractors to provide adequate insurance as required by Federal or State law and as appropriate for all projects and activities for which the CITY receives funding under this Agreement. The insurance required of the CITY's contractors and/or subcontractors may include, but not be limited to, commercial general liability insurance, automobile insurance, workers' compensation insurance, professional liability insurance, and unemployment insurance. All insurance policies must list both the CITY and the COUNTY as "Additional Insureds."

In the event that the CITY fails to require its contractors and/or subcontractors to acquire and maintain adequate insurance as required herein, the CITY shall, to the extent allowed by law, indemnify the COUNTY for any liability incurred as the result of such failure. The CITY shall cure or cause to be cured such failure within ten (10) business days after having received written notice from the COUNTY of the failure. If the insurance requirement(s) are not met and/or cured within ten (10) business days, the COUNTY may immediately suspend, discontinue, or terminate this Agreement and any program or activity allocations made hereunder.

- N. City as Independent Contractor.** The CITY shall be responsible for the direct day-to-day supervision and administration of the projects and activities for which it receives funding under this Agreement. As such, the CITY shall be deemed to be acting as an independent contractor and not as an employee of the COUNTY. The CITY shall be solely and entirely responsible for its acts and omissions, and the acts and omissions of its elected officials, employees, servants,

contractors, and subcontractors during the term and performance of this Agreement. No elected official, employee, servant, contractor, or subcontractor of the CITY shall be deemed to be an employee, servant, contractor, or subcontractor of the COUNTY because of the performance of any services or work under this Agreement. The CITY, at its expense, shall procure and maintain workers' compensation insurance and unemployment compensation insurance as applicable and/or required by law. **Pursuant to the Workers' Compensation Act, § 8-40-202(2)(b)(IV), C.R.S., as amended, the CITY understands that it and its elected officials, employees, and agents are not entitled to workers' compensation benefits from the COUNTY. The CITY further understands that it is solely obligated for the payment of Federal and State income tax on any moneys earned pursuant to this Agreement,** as applicable.

- O. **Assurances and Certifications.** The CITY agrees to comply with the HUD Assurances and Certifications contained in the document attached hereto and incorporated herein by this reference as Exhibit 1.

- P. **Excessive Force.** The CITY has adopted and is enforcing:
 - 1. 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;
 - 2. A policy enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

- Q. **Record Retention.** The CITY shall maintain records and accounts of the funds it receives hereunder in accordance with accepted accounting procedures and any applicable Federal and State laws and regulations. The CITY will provide full access to these records to the COUNTY, the Secretary of HUD or the Secretary's designee, the Office of Inspector General, and/or the General Accounting Office, so that compliance may be confirmed regarding the expenditure of funds pursuant to this Agreement. The CITY further agrees to provide the COUNTY, upon request, a copy of any audit records pertaining to the CITY's CDBG Program operations during the term of this Agreement. The CITY shall retain all records pertaining to this Agreement for a period of ten (10) Federal fiscal years following the termination of this Agreement.

- R. **Termination Asset Management.** If the CITY terminates its participation in the Urban County CDBG Program, any assets acquired under this Agreement or from CDBG Program funding shall be managed or disposed of in accordance with 24 C.F.R. Volume 1, Subtitle A, Part 85 and any other applicable HUD and/or Federal regulations.

- S. **Compliance With Local Laws.** All responsibilities of the CITY enumerated herein shall be subject to applicable State statutes and regulations and CITY ordinances, resolutions, and rules and regulations insofar as they apply to projects or activities located within the CITY.

III. RESPONSIBILITIES OF THE COUNTY

- A. **Administrative Oversight.** The COUNTY, as a designated Urban County and Participating Jurisdiction, is ultimately responsible for the administrative oversight and supervision of all funds allocated to the CITY hereunder. As such, it is responsible for ensuring that all funds allocated to the CITY are expended in accordance with the AAP, all Agreements and/or Contracts, and all

applicable Federal, State, and local laws, ordinances, resolutions, regulations, and laws pertaining to this Agreement. It is the intent of the COUNTY to exercise only that degree of administrative and supervisory control concerning CITY projects and activities as necessary to comply with such requirements and in accordance with the provisions of this Agreement.

B. Distribution of Funds. The distribution of CDBG funds between the COUNTY and the CITY shall be determined as follows:

1. Administrative Allocation. The COUNTY shall retain seventeen-and-one-half percent (17.5%) of the total CDBG Program funds allocated to the COUNTY for the purpose of general oversight, management, coordination and related costs. The expenditure of these funds shall be within the sole discretion of the COUNTY for the aforementioned purposes.

In the event the CITY does not have appropriate planning activities for any given Federal fiscal year, the COUNTY shall retain the two-and-one-half percent (2 1/2%) Administrative funds for Program operations within the COUNTY Community Development Division.

2. Allocations to Jurisdictions. The funds remaining after the subtraction of the administrative allowance outlined above shall be made available to the respective jurisdictions based on an analysis of the percentage that each jurisdiction's population and low income population represents in comparison of the total population of the Urban County. This formula will reflect the information provided in the most recent decennial United States Census.

3. Application Compliance. All applications for funds must comply with all applicable Federal laws and regulations before any funds may be distributed.

4. Benefit to Low and Moderate Income Residents. CDBG National Objectives require that at least seventy (70%) of CDBG funds utilized must principally benefit low-to-moderate-income residents. The COUNTY and the CITY agree to utilize their CDBG Program allocations each year in accordance with CDBG Program National Objective requirements by allocating at least seventy (70%) percent of their funds toward projects or activities that principally benefit low-to-moderate income residents. In preparing applications for funding, the CITY shall also take into consideration provisions for the elimination of slums or blight and provisions to meet urgent community development needs that are a threat to public health and safety and have become known or serious within the last eighteen (18) months, which are also part of the CDBG Program National Objectives.

5. Community Service Activities Spending Cap. The CITY agrees that no more than fifteen percent (15%) of its annual allocation hereunder may be spent on community service activities, pursuant to CDBG Regulations, 24 C.F.R. Chapter 3, Subtitle B, Chapter V, Part 570.201(e). No carry-over of community service activities will be allowed. Community service activities funds not fully expended within the specified timeframe must be recaptured and reprogrammed as part of the next annual funding cycle.

6. Reallocation of Funds. Should any one participating CITY be unable for any reason to spend its allocated funds within the timeframes needed for reporting and timeliness, Urban County participants will be notified of the unspent allocation and allowed to propose a project or program that could use those funds quickly and efficiently. Proposals must demonstrate the ability of that project or program to use the funds in a timely manner, as deemed by the

COUNTY. Such proposals would be considered and voted upon by the County and all participating jurisdictions. A majority vote would decide distribution of these unspent funds.

A record of these distributions will be kept by the County for the County and all participating jurisdictions to review when deciding future allocations to ensure that no single member is receiving the greatest benefit of CDBG funding.

If, for any reason, the Participating CITY cannot comply with any applicable Federal laws and regulations, the funds for which the Participating CITY was eligible under this Agreement shall not be paid to that CITY and shall be reallocated as described above.

7. **Non-Use of Funds.** Parties agree the CITY may elect not to apply for the funds for which it is eligible, in which case such funds shall be reallocated as described under the reallocation section above.

IV. MUTUAL RESPONSIBILITIES

- A. **Compliance With Federal Laws and Regulations.** The PARTIES shall take all actions to do all things that are appropriate and required to comply with the applicable provisions of the grant agreements received from HUD by the COUNTY in which the CITY is included. These include but are not limited to: the Act, as most recently amended, including all associated regulations, rules, guidelines, and circulars promulgated by the Federal departments, agencies, and commissions relating to the CDBG Program; the Davis-Bacon Act, as applicable; Section 3, as applicable; Minority-Owned Businesses/Women-Owned Businesses, as applicable; the Contract Work Hours and Safety Standards Act; Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; the Housing and Community Development Act of 1974; The Fair Housing Act; the Uniform Federal Accessibility Standards (UFAS); the Americans With Disabilities Act (ADA); and the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended, and any associated regulations and rules. Additionally, in accordance with 24 C.F.R. Volume 3, Subtitle B, Chapter V, Part 570, no employee, official, agent or consultant of the CITY shall exercise any function or responsibility in which a conflict of interest, real or apparent, would arise. The PARTIES shall take all actions necessary to assure compliance with the COUNTY's Urban County certification required by section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.
- B. **Governmental Immunity.** The COUNTY and the CITY are "Public Entities" as defined under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as amended. Nothing in this Agreement shall be construed to waive or in any manner limit any of the protections or immunities afforded thereunder.
- C. **Fair Housing.** The COUNTY is prohibited from funding activities that do not comply with HUD's policies and regulations concerning fair housing. The CITY agrees not to take any actions pursuant to funding it receives under this Agreement that would result in the COUNTY being in noncompliance with its Fair Housing Certification. The CITY acknowledges that noncompliance by the CITY may constitute noncompliance by the COUNTY, which may provide cause for funding sanctions or other remedial actions by HUD. Urban County funding shall not be used for activities in, or in support of, any locality that does not affirmatively further fair housing

within its own jurisdiction or that impedes the COUNTY's actions to comply with the County's Fair Housing Certification.

D. Reporting. The CITY will file all reports and other information necessary to comply with applicable Federal laws and regulations as required by the COUNTY and HUD. This includes providing to the COUNTY information necessary to complete the Consolidated Annual Performance and Evaluation Report (CAPER) in a timely fashion. Requirements will be specified in individual Agreements and/or Contracts. The COUNTY shall be responsible for confirming the compliance of CITY projects with applicable Federal laws and regulations. The COUNTY shall further be responsible for maintaining proper documentation of the COUNTY's administrative expenses and for determining that all necessary reports and information are filed with HUD and other applicable Federal agencies in a timely fashion.

1. Support of Nonprofit Organizations. The COUNTY recognizes nonprofit organizations as being valuable partners in addressing the needs of low and moderate-income citizens. The CITY is encouraged to provide financial support utilizing its General funds, CDBG funds, and other available funds to support nonprofit organizations that serve low-income residents within the Urban County and/or the CITY. CDBG funds are limited to fifteen percent (15%) annually for community service activities. CDBG funds should supplement activities above and beyond what local CITY funds normally support; they are not meant to displace use of local support.

2. Termination. This Agreement may only be terminated as provided herein or as otherwise provided by Federal, State, or local law, ordinance, resolution, regulation, or rule.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the COUNTY and the CITY have duly executed this Agreement, which shall become effective as of the latest date written below.

**BOARD OF COUNTY COMMISSIONERS
ADAMS COUNTY, COLORADO**

Charles Tedesco, Chairman

Date

ATTEST:
Stan Martin
CLERK AND RECORDER

APPROVED AS TO FORM:

Deputy Clerk

Adams County Attorney's Office

**NORTHGLENN
ADAMS COUNTY, COLORADO**

Joyce Downing, Mayor

Date

ATTEST:
NORTHGLENN

APPROVED AS TO FORM:

Johanna Small, CMC City Clerk

Corey Hoffmann, City Attorney

EXHIBIT 1

CERTIFICATIONS

The CITY certifies that:

- a. It possesses legal authority to make a grant request, and to execute a community development and housing program, and to contract with Adams County for such assistance.
- b. The CITY governing body will duly adopt or pass as an official act, a resolution, motion or similar action authorizing the person identified as the Official Representative of the CITY to submit CITY funding proposals and all understandings and assurances contained therein, and directing and authorizing the person identified as the Official Representative of the CITY to act in connection with the submission of proposals and to provide such additional information as may be required.
- c. As part of the COUNTY's Citizen Participation Plan, the CITY will hold a public hearing at least ten (10) days prior to submitting funding proposals to the COUNTY and will:
 1. Provide citizens with estimated amounts of CDBG funds proposed to be used for activities that will benefit persons of low and moderate-income; and
 2. The CITY will prepare proposals of community development on the projected use of funds in accordance with Section 570.301(a) (3).
- d. CDBG funds/projects/programs will be conducted and administered in compliance with:
 1. Title VI of the Civil Rights Act of 1964 (Pub.L. 88-352; 2 U.S.C. § 2000d *et seq.*);
 2. Title VIII of the Civil Rights Act of 1968 (Pub.L. 90-284; 42 U.S.C. § 3601 *et seq.*); and
 3. Federal Fair Housing Requirements.
- e. The CITY will develop proposals of projected use of funds in which at least seventy percent (70%) of the funds are utilized on activities or projects that principally benefit low and moderate-income families. Remaining funds may be used on activities or projects that address other National Objectives, in compliance with HUD requirements, including activities or projects that eliminate slum or blight, as identified in a HUD-approved Slum/Blight Plan, or projects that meet an urgent need, as defined by HUD;
- f. The CITY will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under Section 206 of the Act or with amounts resulting from guarantee under Section 108 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:
 1. Funds received under Section 108 of the Act are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act; or
 2. For purposes of assessing any amount against properties owned and occupied by persons of moderate-income, the CITY certifies to the Secretary that it lacks sufficient funds received under Section 108 of the Act to comply with the requirements of subparagraph (1) above.
- g. When appropriate for CITY projects, notifications, inspections, testing, and abatement procedures concerning lead-based paint will comply with Section 570.608.
- h. The CITY will comply with the other provisions of the Act and with other applicable laws.
- i. The CITY agrees to administer, in good faith, a policy designed to ensure that the activities and facilities are free from illegal use, possession, or distribution of drugs and alcohol by its beneficiaries and is in compliance with drug-free work place policies.