

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT is made effective this 1st day of January 2021 by and between the City of Boulder, a Colorado home rule city (“City”), and Boulder County Community Services, a Colorado local government agency (“Consultants”).

RECITALS

A. City desires that Consultants provide certain consulting services, project management services and other related services for the City’s Substance Education and Awareness Fund (SEA Fund) as described in the Scope of Work (“Project”).

B. The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by the City in connection with the Project and desire to perform such consulting services on the terms and conditions set forth in this Agreement.

C. The Consultants provide professional consulting services to the public and are fully qualified to perform the consulting services needed by the City in connection with the Project and desire to perform such consulting services on the terms and conditions set forth in this Agreement.

COVENANTS AND CONDITIONS

NOW, THEREFORE, in consideration of the promises and obligations set forth below, the City and the Consultants agree as follows:

1. SCOPE OF SERVICES.

A. General. The Consultants shall serve as the City’s professional advisors and representatives in connection with the Project and shall consult with and advise the City as it reasonably requires during the term of this Agreement. As a general matter, they shall communicate with the City about the Project through the Housing and Human Services Department Human Services Investments Manager, who has been assigned by the City to the Project as Project Manager.

B. Specific Duties and Responsibilities. In connection with the Project, the Consultants shall undertake the duties and responsibilities and provide the services described in the attached **Appendix A** “Scope of Work,” which is made a part of this Agreement.

C. Extra Services. Upon the express, written request of the City, the Consultants shall perform services beyond the scope of the duties and responsibilities described in the Scope of Work. The Consultants shall charge the City for such extra services, if any, in accordance with the provisions of this Agreement.

D. Documents. All City data, which includes any data or information of the City that is provided to or obtained by Consultants in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the City, work notes, reports, documents, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other materials developed specifically for the Project are and shall remain the sole and

exclusive property of the City. The Consultants, upon request by the City, agree to provide documents or any other materials developed specifically for the Project in an electronically editable format (for example, Word or WordPerfect). The Consultants shall not provide copies of any material prepared under this Agreement to any other party without the prior written consent of the City.

2. COOPERATION BY THE CITY. The City will thoroughly and as expeditiously as reasonably possible consider all reports, sketches, drawings, specifications, proposals, and other documents prepared by the Consultants, and it shall inform the Consultants of all decisions that it has made which would affect the Consultants' work under this Agreement as soon as reasonably feasible. The City will inform the Consultants of any pending change or revision to the Project as soon as reasonably feasible. The City will provide the Consultants with current, updated plans, if any, for the Project as soon as reasonably feasible after they are produced.

3. TERM AND SCHEDULE. The term of this Agreement shall commence on the effective date, written above, and shall terminate on December 31, 2021. A detailed project schedule is presented on the attached Appendix A. However, it is understood by the parties that the actual schedule may differ from what is anticipated. The City shall advise the Consultants in writing of each change in the schedule as soon as feasible after it becomes aware thereof, and the Consultants shall adjust the timing of their services so as to comply with the revised schedule. The Consultants shall provide their services at such times as are necessary in order to promote the smooth progress of the Project.

4. AMOUNT OF PAYMENTS TO CONSULTANTS.

A. Aggregate Limits. Unless services in addition to those specified in Section 1 are subsequently agreed upon in writing, the total amount paid by the City to the Consultants pursuant to this Agreement shall not exceed the sum of \$250,000.

B. Inspection of Records. Upon reasonable, advance request, the City may inspect and copy any or all records of the Consultants which would bear on any amounts charged to the City pursuant to this Agreement.

5. TIME OF PAYMENTS TO CONSULTANTS. City shall pay Consultants in two payments as described in **Appendix B.**

6. QUALIFICATIONS ON OBLIGATIONS TO PAY. Notwithstanding any other terms of this Agreement, the City may withhold any payment (whether a progress payment or final payment) to the Consultants if any one or more of the following conditions exists:

- i. The Consultants are in default of any of their obligations under this Agreement.
- ii. Any part of such payment is attributable to services which are not performed according to this Agreement. (The City will pay for any part thereof attributable to services performed according to this Agreement).
- iii. The Consultants have failed to make payments promptly to any third parties used in the services for which the City has made payment to the Consultants.

- iv. The City, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Project or any task according to this Agreement. In such case, no additional payments will be due to the Consultants until the Consultants, at their sole cost, perform a sufficient portion of the Project or task so that the City determines that the compensation then remaining unpaid is sufficient to complete the Project or task.
- v. No partial payment shall be final acceptance or approval of that part of the Project or task paid for, or shall relieve the Consultants of any of their obligations under this Agreement.

7. CONSULTANTS' DUTIES.

A. Abilities, Qualifications, Experience, and Best Efforts. Consultants shall perform the Services in a timely and professional manner consistent with the requirements set forth in the Scope of Work, and in accordance with industry best practices. Consultants agree to utilize its expertise and creative talents in completing the services.

B. No Conflicts. The Consultants represent, covenant, and agree that they have and will undertake no obligations, commitments, or impediments of any kind that will limit or prevent them from the timely completion of the Project, loyally and strictly according to the best interests of the City. In case of any conflict between interests of the City and any other entity, the Consultants shall fully and immediately disclose the issue to the City and shall take no action contrary to the City's interests.

C. Subcontractors. Consultants shall be permitted to subcontract the performance of certain services to a third party (a "subcontractor") provided, that the Consultants give prior notice to the City of the subcontractor, outlining the nature and scope of the services to be subcontracted and that the City consents to the subcontracting of such services to such subcontractor. Consultants shall remain responsible to the City in accordance with this Agreement for consulting services performed by any subcontractor. Under no circumstances (including, without limitation, Consultants' failure to make timely and full payments to a subcontractor) shall the City be liable to any subcontractor for payment of any amounts.

D. Limitation on Public Statements and Lobbying Activity. Consultants are retained to provide services and/or materials to the City or the community that may include confidential data, work product, and other privileged or confidential information. Consultants agree to not disclose any information that is identified by the City as confidential, without the prior written consent of the City. Notwithstanding, upon prior notice to the City, Consultants may disclose information as required by the Colorado Open Records Act, C.R.S. 24-72-101, et seq.

E. Duty to Warn. The Consultants agree to call to the City's attention errors in any drawings, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Consultants (by the City or any other party) that it becomes aware of and believes may be unsuitable, improper, or inaccurate in a material way. However, Consultants shall not independently verify the validity, completeness, or accuracy of such information unless otherwise expressly engaged to do so by the City. Nothing shall detract from this obligation unless the

Consultants advise the City in writing that such data may be unsuitable, improper, or inaccurate and the City nevertheless confirms in writing that it wishes the Consultants to proceed according to the data as originally given.

F. Attendance at Meetings. The Consultants shall attend such meetings on the work required by this Agreement as the City requires. The City will give reasonable notice of any such requirement, so that the Consultants may schedule and attend.

G. Efficiency. The Consultants agree to furnish efficient business administration and superintendence and perform the services required by this Agreement in the best, most expeditious and most economical manner consistent with the interests of the City.

H. Books and Records. The Consultants shall keep their books and records for the Project and reimbursable expenses according to recognized accounting principles and practices, consistently applied. The Consultants shall make them available for the City's inspection at all reasonable times. The Consultants shall retain such books and records for at least three years after completion of the Project.

I. Payment of Bills. The Consultants shall promptly pay all bills for labor and material performed and furnished by others in performance of the Project.

8. CONFIDENTIAL INFORMATION. Consultants may receive or have access to data or information from the City and information that the City may have access to from Boulder County. Such data or information, because of applicable law or other obligations with third parties, may be: (i) required to be kept confidential; (ii) not required to be disclosed; or (iii) not a public record under the Colorado Open Records Act ("Confidential Information"). Consultants agree to hold and not disclose any Confidential Information to any person not having a legitimate, need-to-know purpose authorized by the City.

Consultants agree to protect all Confidential Information with the same degree of care as it uses to avoid unauthorized use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

Consultants agree to immediately notify the City in writing of all circumstances surrounding any possession, use or knowledge of Confidential Information at any location or by any person or entity other than those authorized by this Agreement.

Notwithstanding the foregoing, nothing in this Agreement shall restrict the Consultants with respect to information or data identical or similar to that contained in the Confidential Information of the City but which: (i) that party rightfully possessed before it received such information from the City as evidenced by written documentation; (ii) subsequently becomes publicly available through no fault of the Consultants; (iii) is subsequently furnished rightfully to the Consultants by a third party without restrictions on use or disclosure; or (iv) is required to be disclosed by law, provided that the Consultants will exercise reasonable efforts to notify the City prior to disclosure.

9. TERMINATION.

A. Termination for Breach. If either Party materially defaults in the performance of any term of this Agreement (other than by nonpayment) and does not substantially cure such default

within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Agreement by providing ten (10) days prior written notice of termination to the defaulting Party.

B. Termination for Convenience. In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultants written notice at least fourteen days in advance of the termination date. In the event of such termination, the Consultants will be paid for all services rendered to the date of termination, except as set forth in Section 6, above, and upon such payment, all obligations of the City to the Consultants under this Agreement shall cease.

C. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the City may, at its pleasure, suspend the services of the Consultants. Such suspension may be accomplished by giving the Consultants written notice one day in advance of the suspension date. Upon receipt of such notice, the Consultants shall cease their work in as efficient a manner as possible so as to keep their total charges to the City for services under this Agreement to the minimum. No work shall be performed during such suspension except with specific prior authorization by the Project Manager. The City recognizes that suspension and subsequent reactivation may inconvenience the Consultants and will endeavor to provide advance notice and minimize its use. After a suspension has been in effect for thirty days, the Consultants may terminate this Agreement at will.

D. Return of Property. Upon termination of this Agreement, the Consultants shall promptly deliver to the City all City data, which includes any data or information of the City that is provided to or obtained by Consultants in the performance of its obligations under this Agreement, including data and information with respect to the businesses, customers, operations, facilities, products, consumer markets, assets, and finances of the City as well as any plans, photographic images, analyses, test, maps, surveys, and written materials of any kind generated in the performance of their services under this Agreement up to and including the date of termination.

10. LAWS TO BE OBSERVED. The Consultants shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall indemnify and hold harmless the City against any claim or liability to the extent caused by the intentional or negligent violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

11. PERMITS AND LICENSES. The Consultants shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of their services under this Agreement.

12. NO MULTIPLE FISCAL YEAR OBLIGATION. Nothing in this Agreement shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's obligations under this Agreement are subject to annual appropriation by the City Council of the City. Any failure of a City Council annually to appropriate adequate monies to finance the City's obligations under this Agreement

shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the Consultants of any failure to appropriate such adequate monies.

13. INDEPENDENT CONTRACTOR. The relationship between the Consultants and the City is that of an independent contractor. The Consultants shall supply all personnel, equipment, materials and supplies at their own expense, except as specifically set forth in this Agreement. The Consultants shall not be deemed to be, nor shall they represent themselves as, employees, partners, or joint venturers of the City. No employee or officer of the City shall supervise the Consultants. **The Consultant is not entitled to worker's compensation benefits. Consultant is exempt from payment of Federal, State, and local government taxes. Consultant shall provide its tax exemption status information to the City upon request.**

14. INDEMNIFICATION

A. Neither Party is required to indemnify the other in connection with this Agreement. However, each party assumes responsibility for its actions and omissions in the performance or failure to perform work under this Agreement, as well as the actions and omissions of its agents and employees. Neither party waives or intends to waive the limitations on liability which are provided to the parties, their officers, and employees under the Colorado Governmental Immunity Act, Section. 24-10-101 et. seq., C.R.S.

B. Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to the City, its officers, or its employees.

15. INSURANCE. The Consultants are a "public entity" within the meaning of Colorado Governmental Immunity Act, C.R.S. §§24-10-101, et seq., as amended, and shall at all times during the terms of this Agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. The Consultant is authorized under C.R.S. §24-10-115 (2)(a) to self-insure, and, pursuant to such authorization does so self-insure. The Consultant further agrees, again without waiving any governmental immunity protections to which it and its officials or employees are entitled under C.R.S. 24-10-101, et seq., as amended, to obtain adequate insurance to cover the liability and other risks to which they may be exposed as a result of the services to be provided pursuant to this Agreement, if it does not already have such insurance, to maintain such insurance throughout the term of this Agreement. The Consultant shall provide satisfactory proof of such insurance upon the City's request.

16. PROHIBITIONS ON PUBLIC CONTRACTS FOR SERVICES. In all hiring or employment made possible by or resulting from this Agreement, Consultant shall not discriminate against any employee or applicant for employment, or person seeking the Consultant's services, based upon that person's legally protected characteristics as defined by federal, state or local laws.

17. INTEGRATION. This document constitutes the entire agreement between the City and the Consultants and incorporates all prior verbal and written communications between the parties concerning the subject matter of this Agreement.

18. NO ASSIGNMENT. This Agreement may not be assigned by Consultants without the prior written consent of the City. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

19. AMENDMENT IN WRITING. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both parties.

20. GOVERNING LAW AND VENUE. This Agreement is governed by the laws of the State of Colorado. Any suit between the parties arising under this Agreement shall be brought only in a court of competent jurisdiction for the Twentieth Judicial District of the State of Colorado.

21. FORCE MAJEURE. A party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

22. NO THIRD-PARTY BENEFICIARIES. The parties intend no third-party beneficiaries under this Agreement. Any person other than the City or the Consultants receiving services or benefits under this Agreement is an incidental beneficiary only.

23. NO WAIVER. No waiver of any breach or default under this Agreement shall be a waiver of any other or later breach of default.

24. AUTHORITY. Consultants warrant that the individual executing this Agreement is properly authorized to bind the Consultants to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

The parties to this Agreement have caused it to be executed by their authorized officers. This Agreement may be executed in counterparts, each of which shall be original, but all of which together shall constitute a fully binding and executed Agreement.

CONSULTANTS
BOULDER COUNTY COMMUNITY SERVICES

Name: _____

Title: _____

CITY OF BOULDER

Kristin Hyser
Deputy Director of Housing and Human Services

APPENDIX A SCOPE OF WORK

I. PROJECT OVERVIEW. Through this Agreement, the Consultants shall provide coordination services to assist in implementation of the City’s Substance Education and Awareness (SEA) Fund.

The intent of the SEA Fund is to implement a community-wide substance abuse prevention education program for children, youth and families. SEA funding will be allocated to non-profit agencies, determined collaboratively by the City and the Consultant, to develop a consistent message for children, youth, families and the community related to the impacts of drug/alcohol use on children and youth. Long-term outcomes resulting from the SEA Fund may include decreased use and abuse of addictive substances, and increased mental and behavioral health resilience among youth and other community members.

II. TASKS AND DELIVERABLES. The Consultant shall complete the following activities between January 1 – December 31, 2021:

a. Facilitate SEA Fund administrative coordination, including:

1. creating and maintaining a SEA Fund 2021 timeline with clear milestones, deliverables and grantee payment information, in collaboration with City Department of Housing and Human Services staff (“City staff”);
2. creating and updating SEA Fund budget and reporting documents;
3. coordinating program check-in meetings and additional communication as necessary between City staff and the Consultant;
4. coordinating quarterly program meetings and additional communication among SEA Fund grantees and other Project partners as necessary; and
5. reviewing and providing feedback on SEA Fund updates and reports from City staff.

b. Provide contracting and general grants management services with SEA Fund grantees, to be determined collaboratively with City staff, for substance education activities, outputs and outcomes in alignment with the SEA purpose and logic model. 2021 grantees shall include the following non-profit agencies:

1. Boulder Community Health for the Prevention & Intervention for Life Long Alternatives and Recovery (PILLAR) Program;
2. Boulder County Public Health for the Healthy Futures Coalition and the Reducing Vaping Use Program;
3. Boulder Valley School District for the EFFEKT and Sources of Strength programs;
4. Partners Mentoring Youth for the Responsible Association of Retailers program;
5. YMCA of Boulder Valley for adult influencer and pro-social programs;
6. Additional potential media communications programs to be determined, following the transition from the Forward Together campaign;

c. Conduct SEA Fund Grantee program orientation, oversight, evaluation and reporting activities, in collaboration with City staff, to ensure completion of anticipated outputs and progress toward SEA short-, intermediate- and long-term outcomes. Evaluation activities shall include collaborating with City staff to develop and integrate health- and racial equity indicators and measurement tools into the SEA evaluation framework.

- d. Assist in collecting SEA Fund grantee program success-stories and challenges for City staff reporting and other SEA communications uses.
- e. Provide SEA Fund grantee training and technical assistance, with collaboration with City staff as necessary to advance and achieve SEA Fund outputs and outcomes.
- f. Enable and encourage Substance Abuse Prevention Skills Training (SAPST) for SEA grantees.

Funding shall support the following staff positions:

- 1) SEA Fund Program Coordinator at .60 FTE

III. PROJECT OUTCOMES. From the activities identified in Section II (Tasks and Deliverables), the Consultant anticipates the following outcomes:

- a. SEA Fund program will successfully integrate increased youth leadership and engagement, and holistically integrate equity and inclusion outcomes and metrics into the Fund evaluation framework.
- b. SEA Fund Grantees will increase capacity to implement quality substance use and abuse prevention programs, and to advance and achieve SEA outcomes.
- c. SEA Fund Grantees will increasingly and consistently utilize effective substance use and abuse prevention messaging and education tactics.
- d. SEA Fund Grantees will increasingly utilize SEA dashboard data and SEA program reports to communicate positive results from their SEA-funded programs.
- e. SEA Fund Grantees will increase the number and diversity (by race/ethnicity, age, gender orientation) of their program participants.
- f. SEA Fund Grantees will increase shared understanding and implementation of institutional and program equity and inclusion policies and practices.
- g. At least two SEA Fund Grantee staff and/or volunteers will begin or complete SAPST.
- h. SEA Fund Grantees will increase collaborative relationships, leveraging partnerships to collectively improve substance use prevention programming.

IV. REPORTING OBLIGATIONS. The Consultant shall provide two progress reports during the term of this Agreement, in the template provided by City staff prior to each reporting deadline. Each report shall include:

- a. The actual outputs associated with each activity identified in Section II (Tasks and Deliverables), including:
 - 1. Actual funding allocation amounts to actual SEA Fund grantees;
 - 2. Actual number of SEA Fund grantee meetings, meeting participants and brief summary of topics addressed at SEA Fund quarterly grantee meetings;
 - 3. Actual number and nature of trainings and summary of technical assistance services provided;
 - 4. Actual number of SEA Fund grantee staff and/or volunteers who began or completed SAPST;
 - 5. Actual summary of activities, outputs and outcomes advanced or achieved by SEA Fund grantees per Consultant contracts with grantees;
 - 6. Actual summary of SEA Fund dashboard data submitted by grantees; and
 - 7. Actual summary of responses from SEA Fund grantee evaluation surveys about the SEA Fund program process, training and technical assistance services.

- b. Narrative about achievement of, or progress toward the outcomes detailed in Section III (Project Outcomes).
- c. Description of the specific tools used to measure outputs and outcomes. Actual measurement tool and related data shall be available to the City upon request.
- d. Financial reporting about program expenditures, in the form of a program budget narrative for the mid-year report, and an agency and program budget-to-actual income and expense statement for the final report.

The City will review each report and request revisions, as needed, within four weeks of receipt. As noted in the Agreement COVENANTS, failure to meet reporting requirements may result in delayed or diminished payment. Report deadlines are below and may be revised upon the written agreement of both parties.

- a. Report 1 is due no later than July 31, 2021.
- b. Report 2 is due no later than January 31, 2022.

V. SCHEDULE.

Task	Deadline
Process funding allocations to SEA Fund Grantees	February 29 for the first grant payments and August 31 for the second payments
Participate in scoping and planning meeting with the City regarding Youth Opportunities Advisory Board engagement	January 31
Co-facilitate dialogue and planning with SEA Fund Grantees about health equity and racial equity integration into SEA Fund evaluation framework	February 28 (second or third week in Feb for mtg on equity outcomes, indicators; quarterly meeting in March) for first meeting; then ongoing TBD
Conduct SEA Fund orientation, oversight, evaluation and reporting activities, and host SEA Fund Grantee meetings	During the last month of each quarter TBD
Collaboratively create and publish SEA Fund 2020 annual report	March 31
Provide input to City staff about modifications to SEA Fund program data collection and dashboards	April 30
Collaboratively design recommendations for SEA Fund process and structure modifications, for presentation to SEA Fund Grantees and partners	May 31 (for discussion at June quarterly meeting)
Provide additional contracting and general grants management services with SEA Fund Grantees	Ongoing
Finalize modifications to SEA Fund process and structure for 2022-2026	June 30
Assist in collecting SEA Fund Grantee materials for program reporting	Ongoing
Provide SEA Fund Grantee training and technical assistance	Ongoing
Enable and encourage SAPST for SEA Fund Grantees	Ongoing

APPENDIX B
SCHEDULE OF PAYMENT

Payment	Timeline
First payment of \$125,000	Upon Agreement execution
Second payment of \$125,000	Following acceptance of Report 1