

FUNDING AGREEMENT

AMERICAN RESCUE PLAN ACT FUNDS ALLOCATED BY US DEPARTMENT OF TREASURY TO BOULDER COUNTY

DETAILS SUMMARY	
OFS Number	303168
County Contact Information	
Boulder County Legal Entity	Boulder County
Department	Department of Housing and Human Services
Division/Program	Partnerships, Contracts and Services Division
Mailing Address	P.O. Box 471, Boulder, CO 80306
Contact – Name, email	Rory Trujillo Thomes, Community Investments and ARPA Project Manager, rthomes@bouldercounty.gov
Invoice Contact – Name, email	Joyce Westbrook, jwestbrook@bouldercounty.gov
Recipient Contact Information	
Name	The Tiny Tim Center, Inc. (dba TLC Learning Center)
Mailing Address	611 Korte Pkwy, Longmont, CO 80501
Contact 1- Name, title, email	Matt Eldred, Executive Director meldred@learningwithtlc.org
Term	
Start Date	November 22, 2022
Expiration Date	December 31, 2023
Funding Amount	
Amount (not to exceed)	\$975,000
Grant funded?	YES - ARPA
Project #	102493, Task 45, 2.11.4 Longmont Childcare Hub
Subaward #	
Brief Description of Purpose	
The purpose of this contract is to provide The Tiny Tim Center, Inc. (dba TLC Learning Center) with funding via the American Rescue Plan Act (ARPA) to purchase property for the development of a Longmont Childcare Hub to expand affordable, high-quality childcare services to Boulder County Residents.	
Agreement Documents	
Exhibit A - Use of Funds Exhibit B – Payment & Reporting Requirements Exhibit C - Federal Award Addendum Exhibit D - Form of Restrictive Covenant	
Agreement Notes	
<i>Additional information not included above</i> Project and funding source approved by Boulder County Board of Commissioners on 08/16/2022 Accounting String: 117.45058.74000.1010.102493.DR12	

THIS FUNDING AGREEMENT ("Agreement") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic ("County") and The Tiny Tim Center, Inc. dba TLC Learning Center, a Colorado nonprofit corporation, doing business as TLC Learning Center ("Recipient"). County and Recipient are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Agreement: The **Details Summary** is incorporated into this Agreement. The **Agreement Documents** are incorporated into this Agreement by reference.
2. Use of Funds: Recipient will use the funds in strict accordance with the Agreement and during the **Term**, which begins on the **Start Date** and expires on the **Expiration Date**, unless terminated sooner.
3. Payment of Funds: Subject to conditions contained in this Agreement, including a condition that Recipient record a restrictive covenant in substantially similar form as that set forth on Exhibit D with the real property records at the clerk and recorder's office in Boulder County, County will pass-through to Recipient as subrecipient an amount not to exceed the **Funding Amount** to Recipient in accordance with the Agreement Documents.
4. Indemnity: Recipient will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Recipient, its employees, agents, representatives or other persons acting under Recipient's direction or control in performing or failing to perform its obligations under this Agreement. Recipient will indemnify and hold harmless County, its elected officials and appointed department heads, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Recipient, its employees, agents or representatives, or other persons acting under Recipient's direction or control. This indemnification obligation will extend to claims based on Recipient's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Recipient under any circumstances. Recipient's obligations under this provision shall survive expiration or termination of this Agreement. Nothing contained in this Agreement or the **Agreement Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.
5. Nondiscrimination: Recipient will comply with the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Recipient must require that its subrecipients, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.
6. Information and Reports: Recipient will provide to authorized County, State, and Federal government representatives all information and reports that may be required in relation to this Agreement for any purpose authorized by law. Recipient will permit access to such representatives to Recipient's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of

a person or entity other than Recipient, Recipient must so certify to the County and explain what efforts it has made to obtain the information.

7. Independent Contractor: Recipient is an independent contractor for all purposes. Recipient is not an employee of the County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Recipient or Recipient's employees. Recipient will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

8. Termination for Non-Appropriation: The other provisions of this Agreement notwithstanding, the County is prohibited by law from making commitments beyond the current fiscal year. Payment to Recipient beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the full **Term**. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Agreement without penalty by providing seven (7) days' written notice to Recipient.

9. Termination for Breach: Either Party's failure to perform any of its material obligations under this Agreement, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Recipient, or the appointment of a receiver or similar officer for Recipient or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Agreement or at law, including immediate termination of this Agreement.

10. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

11. Conflicts of Interest: Recipient must not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Recipient's obligations.

12. Notices: All notices provided under this Agreement must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

13. Statutory Requirements: This Agreement is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for payment from a supplier or subrecipient of Recipient upon notice of final settlement (required for public works Agreements that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

14. Entire Agreement/Binding Effect/Amendments: This Agreement represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Agreement terminates any prior agreements, whether written or oral in whole

or in part, between the Parties relating to the Funds. This Agreement may be amended only by a written agreement signed by both Parties.

15. Assignment/Subcontractors: This Agreement may not be assigned or subcontracted by Recipient without the prior written consent of the County. If Recipient subcontracts any of its obligations under this Agreement, Recipient will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Agreement.

16. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement. Any claim relating to this Agreement or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

17. Nonwaiver: The failure of either Party to exercise any of its rights under this Agreement will not be deemed to be a waiver of such rights or a waiver of any breach of the Agreement. All remedies available to a Party in this Agreement are cumulative and in addition to every other remedy provided by law.

18. Severability: If any provision of this Agreement becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Agreement will continue to be operative and binding on the Parties.

19. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other person receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement.

20. Conflict of Provisions: If there is any conflict between the terms of the main body of this Agreement and the terms of any of the Agreement Documents, the terms of the main body of the Agreement will control.

21. Governmental Immunity: Nothing in this Agreement shall be construed in any way to be a waiver of County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

22. Representations and Warranties: Recipient represents and warrants the following:

- a. Execution of this Agreement and performance thereof is within Recipient's duly authorized powers;
- b. The individual executing this Agreement is authorized to do so by Recipient; and
- c. Recipient is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Recipient.

23. Legal Compliance: Recipient assumes full responsibility for obtaining and maintaining any permits and licenses required to carry out its obligations hereunder. Recipient's performance under this Agreement will comply with all Federal, State, and local laws, regulations, ordinances and codes.

24. Litigation Reporting: Recipient is not currently involved in any action before a court or other administrative decision-making body that could affect Recipient's ability to perform its obligations under this Agreement. Recipient will promptly notify the County if Recipient is served with a pleading or other document in connection with any such action.

25. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the

beneficiary **Department** and their designees to act on behalf of the County under the terms of this Agreement, including but not limited to the authority to terminate this Agreement.

26. Publicity Releases: Recipient will not refer to this Agreement or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Agreement.

27. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Agreement in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

28. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO RECIPIENT FOR ANY DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County		SIGNED for and on behalf of Recipient
Signature:		Signature:
Name:		Name:
Title:		Title:
Date:		Date:
↓↓ <i>For Board-signed documents only</i> ↓↓		
Attest Signature:	<i>Initial</i>	
Attestor Name:		
Attestor Title:		

EXHIBIT A USE OF FUNDS

Recipient must use the Funding Amount only to finance the purchase of the real property upon which The Longmont Childcare Hub (LCH) will be built (the "Property"). The Recipient will construct and operate the LCH, a local services center to be located in East Boulder County in response to the State of Colorado-identified need to increase the availability of affordable, convenient, and quality care for infants and toddlers.

EXHIBIT B PAYMENT AND REPORTING REQUIREMENTS

1. BUDGET

- A. The total dollar amount for this Funding Agreement shall not exceed \$975,000.

2. PAYMENT REQUIREMENTS

A. Invoicing

- i. BCDHHS shall provide Recipient with an invoice template.
- ii. Recipient must complete and submit an invoice for the Funding Amount and supporting documentation to reflect the property purchase.
- iii. Invoiced expenses may not be reimbursable by any other funding source.
- iv. The invoice shall contain the name and title of the person authorized, or his or her designee, to submit claims for payment.
- v. All invoices, supporting documentation, and applicable reports shall be submitted electronically to BCDHHS via email to:
hhsaccountingoffice@bouldercounty.gov and
rthomes@bouldercounty.gov

B. Payments

- i. Invoices, supporting documentation, and all required deliverables must be submitted in a timely manner and in accordance with the terms of the Contract in order to receive payment.
- ii. BCDHHS will reimburse the Recipient within 30 days of receipt and approval of a fully-supported and payable invoice. BCDHHS will follow-up with Recipient within 15 days of receipt should there be any questioned or unsupported costs.

**EXHIBIT C:
ARPA COVER PAGE FOR FEDERAL AWARD ADDENDA**

ARPA-funded contract?

 X Yes (if "Yes," complete the below table)

 No

If this Contract is ARPA-funded, as identified above, this Cover Page is incorporated into the Contract.

The ADDENDUM following this Cover Page is incorporated into the Contract by reference whether or not the Contract is ARPA-funded.

Name/Type of Federal Award	On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program.
Recipient name	Boulder County, Colorado
Boulder County DUNS number	075755199
Federal Award Identification Number (FAIN)	20-1982-0-1-806
Federal Award Date (Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency)	March 11, 2021
Federal Award Identification Number (FAIN)	20-1982-0-1-806
Federal Award Date (Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency)	March 11, 2021
Subrecipient/Contractor name	The Tiny Tim Center, Inc.(dba TLC Learning Center)
Subrecipient/Contractor DUNS number	
Subrecipient/Contractor sam.gov number	FNB1KJYDACT4.
Contract Period of Performance Start Date	July 1, 2023
Contract Period of Performance End Date	December 31, 2026
Amount of Federal Funds Obligated by this action	\$975,000
Total Amount of Federal Funds Obligated to the subrecipient	\$975,000
Total Amount of SLFRF funds awarded to Boulder County	\$63,359,749.00
Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	Sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "Act"), Pub. L. No. 117-2 (Mar. 11, 2021) authorizes the Coronavirus State Fiscal Recovery Fund (CSFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF) respectively (referred to as the "Coronavirus State and Local Fiscal

	<p>Recovery Funds” or “SLFRF”), which provides \$350 billion in total funding to Treasury to make payments generally to States (defined to include the District of Columbia), U.S. Territories (defined to include, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Tribes, Metropolitan cities, Counties, and Non entitlement units of local government to respond to the COVID-19 public health emergency or its negative economic impacts, including to provide assistance to households, small business, nonprofits, and impacted industries, such as tourism, travel, and hospitality; respond to workers performing essential work during the COVID-19 pandemic by providing premium pay to eligible workers of the State, territory, tribal government, metropolitan city, county, or non entitlement units of local government performing essential work or by providing grants to eligible employers that have eligible workers; provide government services, to the extent of the reduction of revenue due to COVID-19 relative to revenue collected in the most recent full fiscal year of the State, territory, tribal government, metropolitan city, county, or non entitlement units of local government; or make necessary investments in water, sewer, or broadband infrastructure. Section 602(b) of the Act prescribes that \$219.8 billion must be allocated as follows: (1) \$4.5 billion reserved for making payments to the U.S. Territories; (2) \$20 billion reserved for making payments to Tribal governments; and (3) \$195.3 billion reserved for making payments to the 50 States and the District of Columbia. Section 603(b) of the Act prescribes that \$130.2 billion must be allocated as follows: (1) \$45.57 billion reserved for making payments to Metropolitan cities; (2) \$19.53 billion reserved for making payments to States for distribution to Non entitlement units of local government; and (3) \$65.1 billion reserved for making payments to Counties.</p>
Name of Federal awarding agency, pass-through entity, and contact information for awarding official	<ul style="list-style-type: none"> • Federal Awarding Agency – U.S. Department of Treasury • Pass-Through Entity – Boulder

	County <ul style="list-style-type: none"> • Contact information for Boulder County's ARPA Administrator – Leslie Irwin, lrwin@bouldercounty.org
Assistance Listing(s) (formerly known as the CFDA) number and Title	In SAM.gov under assistance listing number 21.027
No indirect cost rate has been negotiated for the Federal award, so the de minimis rate of 10% of modified total direct costs will be used	De minimus rate of 10% modified total direct costs

ADDENDUM TO CONTRACT
OFFICE OF MANAGEMENT AND BUDGET

POST FEDERAL AWARD REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the **Longmont Child Care Hub** Contract (the "Contract") by and between Tiny Tim Center, dba TLC Learning Center ("Contractor" or "Recipient"), and Boulder County, (the "County").

A Federal award, as defined in 2 C.F.R. § 200.1, is being used to fund the Contract. Accordingly, the parties acknowledge that the above-referenced contract is subject to applicable provisions of 2 C.F.R. § 200 et seq., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and all other federal requirements identified in the award terms, assistance listing, and any other related federal guidance as any of these requirements may be amended. To the extent federal requirements are not included below or in the event of a conflict between federal guidance and the below, the terms of the federal requirements shall control.

This Addendum is hereby expressly incorporated into the contract between Boulder County and the Contractor. Regardless of any conflict of provisions language contained in the Contract, to the extent that the terms of the Contract and this Addendum conflict, the terms of this Addendum shall control.

The applicability of the following contract provisions are described in brackets, below. As applicable, the following provisions are hereby added and incorporated into the above-referenced Contract:

2 C.F.R. § 200.113 Mandatory disclosures.

[All contracts]

Contractor must disclose, in a timely manner, in writing to the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

2 C.F.R. § 200.209 Certifications and representations.

[All contracts]

Unless prohibited by the U.S. constitution, Federal statutes or regulations, the County is authorized to require Contractor to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if Contractor fails to meet a requirement of a Federal award.

2 C.F.R. § 200.303 Internal controls.

[All contracts]

(a) Contractor agrees to utilize the funds received under the Contract in compliance with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award.

(b) Contractor shall comply with the U.S. Constitution, Federal statutes, regulations, and terms and conditions of the Federal award.

(c) Contractor shall evaluate and monitor, on an ongoing basis, its compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Contractor shall take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.

(e) Contractor shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or County designates as sensitive or the County considers sensitive consistent with applicable Federal, state, local and tribal laws regarding privacy and obligations of confidentiality.

2 C.F.R. § 200.331 Contractor determination.

This contract is for the purpose of obtaining goods and services for the County's own use, as it demonstrates that Contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

2 C.F.R. Part 200 Appendix II: Contract Provisions for non-Federal Entity Contracts Under Federal Awards

(A) *[For contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908]*

Breach. Any breach of the Contract by Contractor shall be governed by the termination and remedies provisions of the Contract. Additionally, in the event that the County incurs damages as a result of Contractor's breach, the County may pursue recovery of such damages from Contractor. The County further retains the right to seek specific performance of the Contract at any time as authorized by law. The County further retains the right to otherwise pursue any remedies available to the County as a result of the Contractor's breach, including but not limited to administrative, contractual, or legal remedies, as well as any applicable sanctions and penalties. Termination for cause and convenience are governed by the provisions of the Contract.

(B) *[All contracts in excess of \$10,000]*

Termination. Termination for cause and convenience are governed by the termination and remedies provisions of the Contract.

(C) *[Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3]*

Equal Employment Opportunity. Contractor agrees to comply with the Equal Opportunity Clause provided under 41 CFR 60-1.4(a) (Government Contracts) and 41 CFR 60-1.4(b) (Federal Assisted Construction Contracts), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Contractor further agrees to include this provision, including the Equal Opportunity Clause or a reference thereto, in any subcontracts it enters into pursuant to the Contract.

(D) *[When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities]*

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). Contractor must fully comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance therewith, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

Copeland "Anti-Kickback" Act (40 U.S.C. 3145). Contractor must fully comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Pursuant to the Act, Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The County shall report all suspected or reported violations of the Copeland "Anti-Kickback" Act to the Federal awarding agency.

(E) *[Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers]*

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Contractor must fully comply with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708), including 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contract is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) *[If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a)]*

Rights to Inventions Made Under a Contract or Contract. For contracts entered into by the Contractor or the County with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the parties must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

(G) *[Contracts and subgrants of amounts in excess of \$150,000]*

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. All parties agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). All parties shall report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) *[For contract awards (see 2 CFR 180.220)]*

Debarment and Suspension (Executive Orders 12549 and 12689). Contractor attests that it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) *[For contracts exceeding \$100,000]*

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractor attests that it has filed the required certification under the Byrd Anti-Lobbying Amendment. Contractor attests that it has certified that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor further attests that it has disclosed, and will continue to disclose, any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(J) *[All contracts]*

Procurement of recovered materials (2 CFR §200.322). All parties agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(K) *[All contracts]*

Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR §200.216). Contractor is prohibited from using equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(L) *[All contracts]*

2 C.F.R. Part 25 Universal Identifier and System for Award Management.

Subrecipient must obtain and provide to County a unique entity identifier pursuant to 2 CFR Part 25.

(M) *[All contracts]*

2 C.F.R. § 200.322 Domestic preferences for procurements. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, prefer the purchase, acquisition,

or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(N) *[All contracts]*

Civil Rights Requirements

Subrecipient shall comply with all statutes and regulations prohibiting discrimination applicable to this award, which include, without limitation, the following:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
- iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
- iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
- v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Assurances of Compliance with Civil Rights Requirements

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.

3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.

5. Subrecipient shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

(O) *[All contracts]*

Requirements for Drug-Free Workplace, 31 C.F.R. Part 20

As a Subrecipient, you agree to comply with the requirements of the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as amended) that applies to grants. Specifically, Subrecipient agrees to:

(a) First, make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part. The specific measures that you must take in this regard are described in more detail in subsequent sections of this subpart. Briefly, those measures are to -

(1) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see §§ 20.205 through 20.220); and

(2) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see § 20.225).

(b) Second, identify all known workplaces under your Federal awards (see § 20.230).

(P) *[All contracts]*

New Restrictions on Lobbying, 31 C.F.R. Part 21

Subrecipient certifies, to the best of its knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Q) [All contracts]

Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR

19217 (Apr. 18, 1997), the County encourages its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

(R) [All contracts]

Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225

(Oct. 6, 2009), the County encourages its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving.

(S) [All contracts]

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321).

If subcontracts are to be let, Contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. As set forth in 2 C.F.R. § 200.321(b)(1)-(5), such affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

(T) [Construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold as defined in 2 C.F.R. § 200.88]

Bonding requirements (2 C.F.R. § 200.326).

Except where the Federal awarding agency or pass-through entity has made a determination that alternative bonding policy and requirements adequately protect the Federal interest, Contractor agrees to comply with the following minimum bonding requirements:

- (a) Contractor must provide a bid guarantee equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Contractor will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) Contractor must provide a performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- (c) Contractor must provide a payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

EXHIBIT D
FORM OF RESTRICTIVE COVENANT

When Recorded Return to:
Boulder County Attorney's Office
P.O. Box 471
Boulder, Colorado 80306
Attention: ARPA Attorney

RESTRICTIVE COVENANT
(RUNNING WITH THE LAND)

This Restrictive Covenant ("Covenant") runs with the land and is made by The Tiny Tim Center, Inc. (dba TLC Learning Center), a Colorado non-profit corporation ("Grantor"), fee simple owner of the Property (defined below), in favor of COUNTY OF BOULDER, COLORADO, a body corporate and politic ("County"), effective as of July 1, 2023 (the "Effective Date").

On March 11, 2021, the American Rescue Plan Act ("ARPA") was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, which together make up the Coronavirus State and Local Fiscal Recovery ("SLFRF") program. The County received an allocation of SLFRF funding for use in responding to, and recovering from, the COVID-19 public health emergency.

The County awarded SLFRF funds in the amount of \$975,000 (the "Funds") to Grantor pursuant to a Funding Agreement executed simultaneously herewith ("Funding Agreement"), which requires Grantor to use the Funds to finance the initial purchase of real property upon which to construct and operate a childcare education and services center (the "Project").

Grantor has purchased the property located at 0 East Third Avenue, Longmont CO 80504 and legally described on Exhibit A of this Covenant ("Property"). As a condition precedent to the receipt of Funds, Grantor must record this Covenant with the real property records at the clerk and recorder's office in the county in which the Property is located to ensure that certain use and financial limitations associated with the SLFRF program are met regardless of ownership.

NOW, THEREFORE, the following is established as a covenant running with the land:

1. **Use Restriction.** Grantor agrees to use the Property only for developing and operating the Project as more specifically detailed below ("Use Restriction").
2. **Change in Use.** No change in use is permitted without the express written consent of the County.
3. **Restriction Period.** This Covenant will encumber the Property, without regard to the term of any mortgage or any Transfer of ownership, for a period of twenty (20) years following the Effective Date (the "Restriction Period"); provided, however if Grantor wishes to Transfer the Property during the Restriction Period, Grantor must notify the County at least thirty (30) days in advance of such Transfer, and may either (a) repay the Funds to the County upon or before such Transfer, or (b) use the proceeds of sale to purchase a similar

property in Boulder County to operate the Project and burden such property with a restrictive covenant substantially similar to this Covenant for a period of time equal to the Restriction Period less the period of time lapsed prior to Transfer.

4. **Repayment.** Grantor must repay the Funds to County if the Property becomes materially non-compliant with the Use Restriction, and Grantor fails to cure such non-compliance within thirty (30) days after receipt of notice. The following will not constitute a violation of the Use Restriction: (a) seasonal and other temporary closures, or (b) closures or non-operation due to forces beyond Grantor's reasonable control, such as acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemics, or supply chain interruptions; it being understood that Grantor must use reasonable efforts to resume operation of the Project as soon as practicable under the circumstances.
5. **Recordkeeping.** Grantor must maintain records documenting compliance with this Covenant for the most recent six-year period, until six years after the expiration of the Restriction Period.
6. **Monitoring.** Grantor must timely respond to and cooperate with all requests from the County, or its designee, for any information or reports reasonably requested by the County, or to conduct on-site inspections, for the purposes of determining Grantor's compliance with this Covenant and the Funding Agreement.
7. **Enforcement.** The County, or its designee, may take legal action to enforce the terms of this Covenant and will be entitled to all available remedies in law or in equity including, without limitation, specific performance, and injunctive relief.
8. **Transfers.** This Covenant is a covenant running with the land and will be binding on Grantor's successors, assigns, heirs, grantees and lessees. Grantor will take all steps reasonable and necessary to ensure that the requirements and restrictions of this Covenant are binding on any successor to Grantor who acquires an interest in the Property. Grantor hereby covenants to include the requirements and restrictions of this Covenant in any document to be executed in connection with the Transfer of any interest in the Property to another person or entity to ensure that such transferee has notice of, is bound by, and agrees to abide by the terms of this Covenant. Grantor will not, without the prior written consent of the County, Transfer the Property or any interest in the Property. For purposes of this Covenant, "Transfer" means (i) the sale, assignment, transfer, conveyance, disposition, or alienation of an interest in the Property; (ii) the dissolution of Grantor; or (iii) the sale, transfer, conveyance or other disposition of all of Grantor, a sufficient amount of interest such that another entity gains a controlling interest in Grantor, or the general partner of Grantor.
9. **Release.** This Covenant will expire and be automatically released upon the satisfaction of its terms.
10. **Termination.** This Covenant will terminate if the Property is acquired by foreclosure or transfer in lieu of foreclosure, unless such acquisition is part of an arrangement with the Grantor a purpose of which is the termination of this Covenant or the entity or entities acquiring the Property through foreclosure have business ties to the Grantor or family ties

to a principal of Grantor. “Business ties” do not include entities having a debtor-creditor relationship with Grantor.

11. **Changes in Law.** Grantor will comply with all laws, regulations, and ordinances applicable to Grantor under this Covenant, as such laws, regulations, and ordinances may change from time to time.

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Grantor has signed this Covenant on the date written above.

Grantor

The Tiny Tim Center, Inc.

Matt Eldred
Executive Director

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me this ____ day of _____, 2023, by Matt Eldred as Executive Director of The Tiny Tim Center, Inc., a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires _____

Notary Public

EXHIBIT A
(to Form of Restrictive Covenant)
Legal Description of Property

LOT 1, MS STRONG SUBDIVISION, FILING NO. 2, REPLAT A, COUNTY OF BOULDER,
STATE OF COLORADO