

**BOULDER COUNTY WORTHY CAUSE FUNDING AGREEMENT**

**between**

**COUNTY OF BOULDER, STATE OF COLORADO**

**and**

**BOULDER COUNTY HOUSING AUTHORITY**

**AWARD AMOUNT:** \$750,000

**Worthy Cause Round:** IV

**Worthy Cause Year:** 2024

**Capital Funding Type:**

- Debt Reduction**
- Purchase**
- Construction**
- Improvements/Renovations**

**1. PARTIES**

This Boulder County Worthy Cause Funding Agreement (hereinafter called “Funding Agreement”) is entered into by and between **BOULDER COUNTY HOUSING AUTHORITY** (hereinafter called the “Agency”), and the COUNTY OF BOULDER, Colorado, a body corporate and politic (hereinafter called the “County”). The Agency and the County are each a “Party,” and collectively are “Parties” to this Funding Agreement.

**2. RECITALS**

**A. Authority, Appropriation, and Approval**

The County has authority to enter into this Funding Agreement pursuant to Board of County Commissioners’ Resolution No. 2017-89 and 2017 County Ballot Issue 1A, “Worthy Cause 0.05% Countywide Sales and Use Tax Extension,” hereinafter referred to as “Worthy Cause IV,” which was adopted by the voters of the County of Boulder in November 2017.

**B. Consideration**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient to support this Funding Agreement.

### C. Purpose

i. **Worthy Cause IV:** The purpose of Worthy Cause IV is to address the critical need for capital facilities and equipment of nonprofit human services agencies and housing authorities that provide free or low-cost health, transitional and permanently affordable housing, and other human services, including but not limited to childcare and early childhood education, basic needs such as food and clothing, and services for the elderly and people with disabilities. Worthy Cause IV funds are collected by and through a voter-approved 0.05% countywide sales and use tax. Worthy Cause IV funds are awarded to select eligible nonprofit organizations and housing authorities for use in capital projects, including but not necessarily limited to, facility construction, property or facility purchases, facility renovations, and the reduction of capital debts such as mortgages or loans incurred to fund capital purchases, construction, or renovation.

ii. **Funding Agreement:** The purpose of this Funding Agreement is described in **Exhibit B**.

### 3. DEFINITIONS

The following terms as used herein will be construed and interpreted as follows:

**Deed of Trust:** “Deed of Trust” means the Deed of Trust executed by the Agency and recorded on the title to the Property in a form substantially similar to **Exhibit D**.

**Effective Date:** The “Effective Date” of this Funding Agreement will be the date of the last Party signature, as reflected on the Signature Pages.

**Event of Default:** Each of the following events constitutes a breach of this Funding Agreement. An “Event of Default” will exist when any one or more of the following events continues to exist after the notice and cure period described in **§19(B)**.

- i. Failure of the Agency to use the Property for a period of 30 or more consecutive days as a necessary and integral part of the Program, as described in **Exhibit B**, unless such interruption is due to reasons beyond the reasonable control of the Agency, as determined by the County;
- ii. Material violation of this Funding Agreement;
- iii. Failure of the Agency to fulfill its obligations under **Exhibit B**;
- iv. All or any part of the Agency’s interest in the Property is sold, assigned, conveyed, hypothecated, alienated, or otherwise transferred without the County’s prior written consent;

v. The filing of a petition by the Agency for any proceedings under federal or state bankruptcy acts or other similar-type proceedings seeking protection from creditors not dismissed within 120 days thereafter;

vi. The giving by the Agency of an assignment of any interest in the Property for the benefit of creditors, except for mortgages or deeds of trust given as security for one or more loans obtained by the Agency to finance the Program or from time to time in the ordinary course of business;

vii. The dissolution of the Agency as an entity other than in conjunction with a merger or consolidation of said entity into, or the transfer of the Property to, another or surviving entity which will thereby become the owner of the Property and continue the Program; or

viii. Any representation of the Agency made herein or made by the Agency or any agent of the Agency in any submission or document delivered by or on behalf of the Agency in connection with this Funding Agreement proves to be materially untrue.

**Funding Agreement:** "Funding Agreement" means this Funding Agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Funding Agreement, and any future modifying agreements, exhibits, attachments or references incorporated herein.

**Funding Documents:** "Funding Documents" means the Promissory Note, Deed of Trust, and Restrictive Covenant (if required), and all such other documents, instruments and agreements and all amendments, replacements, extensions and renewals of any of the foregoing.

**Note:** "Note" means the Promissory Note to be executed by the Agency in favor of the County, which will be in a form substantially similar to **Exhibit C**.

**Party or Parties:** "Party" means the Agency or the County and "Parties" means both the County and the Agency.

**Program:** "Program" means the program administered by the Agency on the Property as fully described in **Exhibit B**.

**Project:** "Project" means the capital undertaking proposed in the Agency's Worthy Cause IV Application that forms the basis for the Worthy Cause Award as fully described in **Exhibit B**.

**Property:** "Property" means the real property for which the Worthy Cause Funds will be used for capital purposes, the legal description of which is set forth in **Exhibit A**.

**Services:** "Services" means the core services to be performed by the Agency as set forth in detail in **Exhibit B**.

**Worthy Cause Funds:** “Worthy Cause Funds” means funds payable by the County to the Agency pursuant to the Board of County Commissioners’ Worthy Cause IV award and this Funding Agreement.

**4. INCORPORATION**

All of the attachments and Exhibits to this Funding Agreement are incorporated by reference.

**5. TERM**

This Funding Agreement will commence on the Effective Date and will continue for a term of 99 years.

**6. AGENCY OBLIGATIONS**

The Agency will perform all of its obligations as described herein and in **Exhibit B**.

**7. PAYMENTS TO AGENCY**

The County will pay the Agency in the following amounts using the methods set forth below:

**A. Maximum Amount:** The maximum amount payable under this Funding Agreement to the Agency by the County is the Award Amount.

**B. Conditions on County’s Obligation to Fund:** The County will pay to the Agency the Worthy Cause Funds upon satisfaction of all of the following conditions, as determined by the County in its sole and absolute discretion:

- i. Receipt of an executed copy of this Funding Agreement;
- ii. Receipt of an executed Promissory Note;
- iii. Receipt of an executed Deed of Trust;
- iv. Receipt of an executed Restrictive Covenant (if required by the County);
- v. Receipt of a copy of the Agency’s W-9 Form;
- vi. Receipt of a copy of Title Report pursuant to **§8**;
- vii. Receipt of a copy of Property Valuation pursuant to **§8**; and

- viii. Any other requirements as communicated in writing by the County to the Agency prior to the execution of this Funding Agreement.

**C. Interest:** In no event will the County pay any interest to the Agency.

**D. Use of Funds and Property:** The Agency must use the Worthy Cause Funds solely for the purpose of the Project. The Agency's use of the Worthy Cause Funds will strictly comply with the terms of this Funding Agreement and the Funding Documents. The Agency will be the sole occupant of the Property and will use the Property solely in furtherance of the Program. Except that the County permits the Agency to allow occupancy of the Property by another entity if such entity (1) is a § 501(c)(3) nonprofit organization and (2) provides human services consistent with the Agency's mission, as defined in **Exhibit B**. All other occupancy of the Property inconsistent with this paragraph, including for-profit leases, will be a material violation of this Funding Agreement.

**E. Disbursement of Funds:** The County will provide to the Agency instructions as to the disbursement of the Worthy Cause Funds. Upon confirmation that the Conditions on County's Obligation to Fund are satisfied, the County will remit, in accordance with the County's instructions, the Worthy Cause Funds to the Agency pursuant to the information on the Agency's W-9 Form.

**F. No Guaranty of Future Awards:** The disbursement of Worthy Cause Funds to the Agency will in no way guarantee that the Agency will receive additional Worthy Cause funds or other County funds in future years.

## **8. TITLE REPORT AND PROPERTY VALUATION**

The Agency must provide to the County documentation issued within the past 12 months by an independent third-party professional entity evidencing (1) a legally reliable recitation of the Property's title history, such as a Title Report, Title Commitment, or Title Work, and (2) the valuation of the Property, such as an appraisal, broker's opinion, or Boulder County Assessor valuation.

## **9. ACKNOWLEDGEMENT OF RECEIPT**

Upon receipt of the Worthy Cause Funds, the Agency will provide to the County an Acknowledgement of Receipt that includes the following information:

- a. Name and address of the Agency;
- b. Amount of funds received; and
- c. A description of how the funds were used.

## **10. PROMISSORY NOTE AND DEED OF TRUST**

The Agency will execute (1) a Promissory Note in favor of the County to evidence the Agency's obligations hereunder and (2) a Deed of Trust, which the County will record against the Property. The Promissory Note and Deed of Trust will be executed by the Agency as soon after the execution of this Funding Agreement as practicable and promptly submitted to the County. The County will file the Deed of Trust in the Boulder County Clerk and Recorder's Office.

## **11. RESTRICTIVE COVENANT**

If required by the County, the Agency will execute a Restrictive Covenant in favor of the County, the form of which will be substantially similar to **Exhibit E** (human services delivery) or **Exhibit F** (permanently affordable housing). The County will file the Restrictive Covenant in the Boulder County Clerk and Recorder's Office.

## **12. REPORTING, NOTIFICATION**

### **A. Performance**

The County may request that the Agency provide a report containing a summary of the services provided by the Agency through the Program for the then-preceding 12 month period. The County may also request that the Agency provide financial statements to the County showing the Agency's financial condition and use of the Worthy Cause Funds. The Agency will provide the requested documents within 60 days of the County's request.

### **B. Reporting**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Funding Agreement or which may affect the Agency's ability to perform its obligations hereunder, the Agency will notify the County of such action and deliver copies of such pleadings to the County's representative as identified herein.

If the Agency becomes aware of any situation, event, or condition which, to the best of its knowledge, would result in noncompliance of the Program, the Project, or the Agency with Colorado law, the Agency will promptly give written notice thereof to the County.

### **C. Annual Certification**

On an annual basis, the Agency will submit to the County a written certification affirming the Agency's compliance with this Funding Agreement and any other Worthy Cause agreements currently in effect between the Agency and the County. Each written certification is due to the County by January 31 for the preceding calendar year. For example, the written certification for the current calendar year will be due on January 31<sup>st</sup> of the following calendar year.

### **13. COMPLIANCE AUDITING**

#### **A. Records Maintenance**

The Agency will make, keep, maintain, and allow inspection and monitoring by the County of a complete file of all records, documents, communications, financial statements, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Property, the Program, the Project, or the delivery of Services hereunder. Agency will retain all such records for a five-year period.

#### **B. Inspection and Monitoring**

The Agency will permit the County to audit, inspect, examine, excerpt, copy and transcribe the Agency's records related to this Funding Agreement to confirm compliance with the terms hereof. The Agency will allow the County access to its records at any time during normal business hours upon 48 hours advance notice.

The Agency will permit County access to the Property at all reasonable times and places during the term of this Funding Agreement. The County will provide the Agency with ten days' advance notice of its intention to enter the Property, except if the County reasonably determines there is an immediate need to take emergency action to prevent a material violation of this Funding Agreement.

If the Agency's use of the property fails to comply with this Funding Agreement, or the County otherwise determines that the Agency is noncompliant with its obligations under this Funding Agreement, the County may require the Agency to promptly take action to comply with the Funding Agreement and may exercise the remedies available under this Funding Agreement, at law or inequity in lieu of or in conjunction with such corrective measures.

### **14. SUBSTITUTE COLLATERAL**

With the passage of time, the Property may no longer be suitable for the Program, and it might be necessary for the Agency to secure an alternate property for the Program. Consequently, if the Agency notifies the County that it wishes to purchase another property in Boulder County to replace the Property, and the County determines in its sole discretion that the new Property is sufficient to protect the County's interests, the County will release the Deed of Trust recorded against the Property and the Parties will replace such instrument with a new deed of trust or other security instrument acceptable to the County in its sole discretion, to be recorded against the substitute property to secure the Agency's obligations through the remainder of the Funding Agreement Term. Notwithstanding anything to the contrary herein, the Agency may assign its rights and obligations under this Funding Agreement pursuant to **§25(A)**.

### **15. MODIFICATIONS TO THE PROGRAM AND THE SCOPE OF SERVICES**

With the passage of time the needs of the community and other circumstances may require modifications to the Agency's obligations to administer the Program and provide the Services. Consequently, the Parties may agree to amend this Funding Agreement, along with the Promissory Note and Deed of Trust, if necessary required, to more closely align the Agency's obligations with then-current circumstances and needs of the community. A change in circumstances does not relieve the Agency of its obligations under this Funding Agreement until the County has agreed to amend this Funding Agreement. The County may decline to modify any terms of this Funding Agreement if the Agency fails to show a reasonable need therefor.

## **16. CONFLICTS OF INTEREST**

The Agency will not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Agency's obligations hereunder. The Agency acknowledges that with respect to this Funding Agreement, even the appearance of a conflict of interest is harmful to the County's interests. Absent the County's prior written approval, the Agency will refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Agency's obligations to the County hereunder. If a conflict or appearance exists, or if the Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Agency will submit to the County a disclosure statement setting forth the relevant details for the County's consideration. Failure to promptly submit a disclosure statement or to follow the County's direction in regard to the apparent conflict constitutes a breach of this Funding Agreement.

## **17. REPRESENTATIONS AND WARRANTIES**

The makes the following specific representations and warranties, each of which was relied on by the County in entering into this Funding Agreement.

### **A. Standard and Manner of Performance**

The Agency will perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Funding Agreement.

### **B. Legal Authority – Agency and Agency's Signatory**

The Agency warrants that it possesses the legal authority to enter into this Funding Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Funding Agreement, or any part thereof, and to bind the Agency to its terms.

### **C. Licenses, Permits, Etc.**

The Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it will have, at its sole expense, all licenses, certifications,



approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder.

**D. Compliance with Laws**

The Agency will strictly comply with all applicable federal, state, and local laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**18. DELEGATION OF COUNTY SIGNATURE AUTHORITY**

**A. Authorized Officers:** The Board of County Commissioners of Boulder County hereby delegates to the Chair, any commissioner, Program Administrator Meca Delgado, and any attorney in the County Attorney's Office (the "Authorized Officers") authority to sign all documents related to the Worthy Cause Funds, and to enter into and perform all of its obligations under and take all actions and enter into all contracts and agreements necessary to carry out of the intent of this Funding Agreement in the judgment of the Authorized Officers. All documents and agreements to be entered into by the County will be in form and substance acceptable to the Authorized Officers in the sole discretion of the Authorized Officers, such acceptance to be evidenced by any such person's execution of any such documents.

**B. Execution and Delivery:** The Authorized Officers are hereby authorized to execute and deliver, and hereby are authorized to affix the County seal and acknowledge, if required, on behalf of the County, any and all agreements, instruments and certificates as such persons in their sole and absolute discretion may deem appropriate or helpful in connection with this Funding Agreement, whether in connection with the closing of the transactions described above or thereafter, and agreements containing such terms and provisions as the Authorized Officer executing the same considers appropriate in his or her sole and absolute discretion, and to do such other acts and things as may be appropriate or helpful and consistent with carrying out the intent and purposes of this Funding Agreement, with the execution and delivery of any of the foregoing documents or the doing of any act or thing being conclusive evidence as to the appropriateness thereof as determined by the Authorized Officer executing or doing the same.

**19. BREACH**

**A. Defined**

In addition to any of the Events of Default, and any breach of this Funding Agreement or the Funding Documents, the failure of either Party to perform any of its obligations hereunder, in whole or in part, or in a timely or satisfactory manner, constitutes a breach.

**The Agency has an affirmative duty to notify the County of the occurrence of any of the Events of Default or any other breach of this Funding Agreement within 10 business days of said occurrence.**

## **B. Notice and Cure Period**

In the event that the County determines that the Agency has breached this Funding Agreement, the County will provide written notice to the Agency in the manner provided in §22 and to the person and address listed in **Exhibit B**. If the Agency fails to cure the breach within 90 days of the delivery of the written notice, such uncured breach will constitute an Event of Default, entitling the County to exercise any of its remedies set forth in §21.

The County may determine that a breach is not reasonably capable of being cured within 90 days. In such cases, the Agency will have such additional time as is reasonably necessary to cure the breach, as determined by the County, prior to the County exercising any of its remedies, so long as the Agency takes the following action within the 90-day notice period:

- i. Initiates corrective action; and
- ii. Continues to diligently, continually, and in good faith work to effect a cure as soon as possible.

In no event will the County be precluded from exercising remedies if security or safety becomes or is about to become materially jeopardized by the Agency's breach or failure to cure, or if the breach is not cured within 180 days after first notice of breach is given.

## **20. RIGHT TO ACCESS**

The County will be permitted access to, and entrance upon, the Property at all reasonable times upon reasonable advance notice, where 48 hours advance notice will be presumed reasonable. The Agency will allow the County access to its records, which will include, but are not limited to, the Agency's financial statements. The Agency grants the County authority to make copies of any Agency records related to the Agency's performance under this Funding Agreement.

## **21. REMEDIES**

### **A. Authority to Pursue Available Remedies**

In the event that the County declares an Event of Default, the County will have the remedies listed in this Section in addition to all other remedies set forth in other sections of this Funding Agreement or the Funding Documents. Upon an Event of Default, the County, at its option, may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

### **B. Remedies upon Uncured Default**

i. **Declare Due and Payable:** Upon the occurrence of an Event of Default, the County will have the right to declare the amount of Worthy Cause Funds plus 5% interest due and payable (or so much thereof as the County has advanced hereunder), and to enforce its rights under this Funding Agreement and/or any of the Funding Documents, with any amount owing to the County to include the amount of Worthy Cause Funds plus 5% interest.

ii. **Enforcement Generally:** Except as otherwise provided in this Funding Agreement, upon an Event of Default the County will have the right (but not the obligation) to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants and charges now or hereafter imposed by the provisions of this Funding Agreement. Failure by the County to enforce any covenant or restriction contained in this Funding Agreement will not be deemed a waiver of the right to do so thereafter. The prevailing party in any judicial proceeding will be entitled to reimbursement from the non-prevailing party or parties for all reasonable costs and expenses, including attorneys' fees in connection with such judicial proceeding.

iii. **Specific Enforcement:** This Funding Agreement may be specifically enforced against the Agency or any successor in interest, with the Agency specifically acknowledging that the beneficiaries of the Agency's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. Venue for such action will be proper in Boulder County.

## 22. NOTICES

All written notices required to be provided by the Parties under the terms of this Funding Agreement will be in writing, signed by a person duly authorized to provide such notice, and will be deemed given when sent by (i) first class registered or certified mail, return receipt requested, (ii) facsimile transmission, or (iii) electronic mail, read receipt requested, to the parties hereto at the addresses set forth in **Exhibit B**, or to such other place as a party may from time to time designate in writing. All notices will be deemed sufficient (a) upon receipt after dispatch by registered or certified mail, (b) upon confirmation of receipt when transmitted by facsimile transmission, or (c) upon confirmation of receipt when transmitted by electronic mail. Any notice party will provide current facsimile numbers and email addresses upon request.

## 23. RIGHT OF FIRST REFUSAL

During the term of this Funding Agreement, before the Agency may sell the Property to a third party, the Agency will first offer the Property to the County following the procedures set forth in this paragraph. The County will have thirty (30) days following the date the Agency first presents the County such offer to decide whether to try to negotiate an agreement for the purchase of the Property from the Agency. If the County desires to try to negotiate such an agreement, the County will, within said thirty (30) day period, deliver to the Agency written notice thereof. Promptly thereafter, the Parties will commence good faith negotiations

exclusively with each other for a period not to exceed 120 days after the date the County gives the requisite notice to the Agency. If the Agency does not receive said notice within said thirty (30) day period, or if the Agency receives said notice within said period but the Parties do not enter into a legally binding, written agreement for the purchase and sale of the Property within said 120 day period, the Agency will be free to enter into an agreement with a third party on terms (considered as a whole) no more favorable to the third party than the Agency offered to the County.

## **24. GOVERNMENTAL IMMUNITY**

Nothing in this Funding Agreement will be construed in any way to be a waiver by the County of its immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

## **25. GENERAL PROVISIONS**

**A. Assignment:** Neither Party will assign, sublet, or transfer its interest in this Funding Agreement without the written consent of the other. Upon receipt of a written request from the Agency, the Board of Boulder County Commissioners' Deputy (or his or her designee) will have the authority to approve an absolute assignment of all of the Agency's rights and obligations under this Funding Agreement to another agency eligible for Worthy Cause, such as a nonprofit organization, so long as the assignee provides the County adequate written assurance that it accepts the assignment and can and will satisfy all obligations of the Agency regarding the Program. The County's consent to the aforementioned assignment will not be unreasonably withheld or delayed.

**B. Complete Agreement, Binding Effect:** This Funding Agreement represents the complete agreement between the Parties hereto and will be fully binding upon the successors, heirs, and assigns of the Parties, if any, during the term hereof. This Funding Agreement supersedes, as of the Effective Date, any and all prior agreements between the Parties relating to the subject matter of this Funding Agreement, whether written or oral or partly written and partly oral.

**C. Captions:** The captions and headings in this Funding Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

**D. Counterparts:** This Funding Agreement may be executed in multiple identical original counterparts, all of which will constitute one agreement.

**E. Indemnification:** The Agency will defend, indemnify, save, and hold harmless the County and its employees and agents against any and all losses, claims, suits, judgments, or liabilities incurred as a result of any act or omission by the Agency, or its employees, agents, volunteers, subcontracts, or assignees pursuant to the terms of this Funding Agreement. The Agency will pay all costs and reasonable attorney's fees, if any, incurred by the County as a result of any such claims or suits, provided that the Agency will have the right to defend the interests of the County with counsel selected by the Agency reasonably acceptable to the County.

In the alternative, if the County is obliged to defend such claims or suits, the time, if any, of the attorneys and paralegals in the Boulder County Attorney's Office spent on any such claims or suits will be paid for by the Agency in accordance with the current hourly market rates in Boulder County for legal services at the time of such legal defense for submission of litigation billing and charges in court cases.

**F. Jurisdiction and Venue:** All suits, actions, or proceedings related to this Funding Agreement will be held in the State of Colorado and exclusive venue will be in the County of Boulder.

**G. Governing Law:** The laws of the State of Colorado will govern the interpretation and enforcement of this Funding Agreement.

**H. Amendment:** No amendments or modifications will be made to this Funding Agreement unless it is in writing and signed by both Parties.

**I. Severability:** In the event it is determined by a final, non-appealable order of a court of competent jurisdiction that any provision of this Funding Agreement or any other Funding Document is invalid, illegal, or unenforceable, the remaining provisions will survive and their validity, legality or unenforceability will not in any way be affected or impaired thereby, and the Agency and the County agree they will take all such actions as are necessary and reasonable to achieve, to the greatest degree and for the longest possible term, the intent of the affected provisions.

**J. No Third-Party Beneficiary:** The enforcement of the terms and conditions of this Funding Agreement and all rights of action relating to such enforcement will be strictly reserved to the County and the Agency, and nothing contained in this Funding Agreement will give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this Funding Agreement that any person receiving services or benefits under this Funding Agreement will be deemed an incidental beneficiary only.

**K. No Waiver:** No failure on the part of any of the Parties to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Funding Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or remedy under this Funding Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

**L. CORA Disclosure:** To the extent not prohibited by federal law, this Funding Agreement is subject to public release through the Colorado Open Records Act (CORA), CRS §24-72-101, et seq. Any related documentation, records, and communications may also be subject to public release under CORA.

**M. Non-Discrimination:** The Agency will not discriminate on the basis of race, creed, color, gender, gender identity, age, marital status, national origin, disability or familial

status, religion, sexual orientation, genetic information, or any other status protected by applicable federal, state, or local law in the performance of its obligations hereunder.

**N. Safe Condition:** The Agency will maintain the Property in good and safe condition in all respects, and in full compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority with jurisdiction over matters concerning the Property.

**O. Controlling Authority:** The Agency will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Funding Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

**P. No Joint Venture:** Nothing in this Funding Agreement will be deemed to create an agency, partnership, joint venture or employment relationship between the Parties.

**Q. Electronic Signatures and Electronic Records:** Each of the Parties consents to the use of electronic signatures by the other Party. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by any of Parties in the manner specified by such signing Party. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

## **26. EARLY TERMINATION BY AGENCY**

The Agency may terminate this Funding Agreement at any time by giving the County written notice of its intention to do so. In the event that the Agency chooses to exercise this option, the Agency must repay to the County the full Award Amount plus an additional 5% interest. Upon repayment of the Award Amount and interest, this Funding Agreement will immediately terminate. Upon termination, the County will release any security documents that the County recorded against the Property pursuant to this Funding Agreement.

**[SIGNATURE PAGES TO FOLLOW]**

IN WITNESS WHEREOF, the Parties have caused this Funding Agreement to be duly executed as of the Effective Date.

**BOULDER COUNTY HOUSING AUTHORITY**, a  
Colorado housing authority

By:

Name: \_\_\_\_\_  
Susana Lopez-Baker

Title: \_\_\_\_\_  
Executive Director

**COUNTY OF BOULDER, COLORADO**, a public  
body, corporate and politic

By: \_\_\_\_\_

Name: Ashley Stolzmann

Title: Chair of the Board of County Commissioners

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

Matthew Ramos

\_\_\_\_\_  
Clerk to the Board



**EXHIBIT A**

**LEGAL PROPERTY DESCRIPTION**

**TRACT A, WILLOUGHBY CORNER FILING NO. 1, COUNTY OF BOULDER, STATE OF COLORADO.**

Also known by street and number as **120th Street, Lafayette, CO 80026.**

## **EXHIBIT B**

### **I. PURPOSE OF FUNDING AGREEMENT**

The County has awarded the Agency with \$750,000 in Worthy Cause 2024 funds to be used to construct or rehabilitate, or pay down debt related to construction or rehabilitation of, affordable housing in Boulder County.

### **II. DESCRIPTION OF THE PROJECT**

BOULDER COUNTY HOUSING AUTHORITY (BCHA) will use Worthy Cause 2024 funds to support the construction of the 400 permanently affordable housing units at Willoughby Corner in Lafayette. Agency will use remaining funds, if any, to construct or rehabilitate affordable housing developments in Boulder County.

### **III. DESCRIPTION OF AGENCY'S MISSION**

BOULDER COUNTY HOUSING AUTHORITY'S mission is to foster the availability of quality, affordable housing and related services for Boulder County residents using comprehensive community resources. BCHA strives to accomplish its mission through community collaboration, effective services and programs, professional organization, efficient resource management, and expansion of funding sources.

### **IV. DESCRIPTION OF THE PROGRAM**

BOULDER COUNTY HOUSING AUTHORITY provides rental assistance and homes to benefit the County's most vulnerable residents. Close to 800 housing vouchers, providing a rental subsidy, are distributed throughout the County to residents who have low income. With a portfolio of over 900 homes and serving a diverse mix of household sizes and needs, BCHA strives to ensure that its properties remain affordable, well-maintained, safe for residents, energy-efficient, aesthetically-pleasing, financially feasible, and contribute to increased neighborhood property values. BCHA's stewardship is critical as market rents continue to rise, opportunities for new development construction become less available and more costly, and federal funding programs are slated for drastic cuts.

### **V. SCOPE OF SERVICES**

As a material inducement for the County's award of the Worthy Cause Funds to the Agency, the Agency will provide the following human services to residents of Boulder County.

- **Affordable Housing** - Provide affordable housing for the most vulnerable residents by increasing the number of units, preserving existing stock, reducing homelessness, and investing in its communities.

### **VI. PROPERTY VALUE: \$1,540,000**

### **VII. NOTICE**

Notices will be sent to the addresses below:

For the County: Boulder County Community Services  
P.O. Box 471  
Boulder, CO 80306  
Attn: Worthy Cause

with a copy to: Boulder County Attorney's Office  
P.O. Box 471  
Boulder, CO 80306  
Attn: Worthy Cause Attorney

For the Agency: Boulder County Housing Authority  
1333 Iris Avenue  
Boulder, CO 80304  
Attn: Executive Director

**EXHIBIT C**

**PROMISSORY NOTE  
BOULDER COUNTY WORTHY CAUSE DEBT**

**\$750,000**

[DATE]

FOR VALUE RECEIVED, **BOULDER COUNTY HOUSING AUTHORITY**, a Colorado housing authority (“Borrower”), promises to pay to the order of the County of Boulder, Colorado, a body corporate and politic (“Payee”), the principal sum of **\$750,000**, together with interest thereon at a rate as set forth herein. Principal and accrued interest are subject to repayment by Borrower through the date that is exactly 99 years after the date of this Note, as set forth herein.

Notwithstanding anything herein to the contrary, except upon the occurrence of an event of default, payments will be not required under this Note. Events of default are described collectively in this Note, the Boulder County Worthy Cause Funding Agreement, and the Deed of Trust.

This Note evidences a debt owed by Borrower to Payee, due and payable upon an Event of Default, pursuant to a Boulder County Worthy Cause Funding Agreement dated [DATE OF SIGNATURE] (the “Funding Agreement”) between Borrower and Payee. Borrower (i) acknowledges and agrees that the Funding Agreement requires Borrower to perform certain obligations under the Funding Agreement, and Borrower agrees to perform, and will perform its obligations under the Funding Agreement, and (ii) any default under the Funding Agreement for which Borrower is responsible, if not cured within applicable cure periods, will constitute a default under this Note.

This Note is executed in connection with and is secured by, and the holder of this Note is entitled to the benefits of a Deed of Trust to Public Trustee (“Deed of Trust”) given by Borrower for the benefit of Payee to secure this Note. Reference is made to the Deed of Trust for a description of the property covered thereby and the rights, remedies and obligations of the holder hereof in respect thereto.

Time is of the essence hereof. In the event of any default or event of default under the provisions of the Deed of Trust, that is not cured within any applicable cure periods set forth therein, then the whole outstanding principal sum of this Note plus accrued interest and all other obligations of Borrower to holder, direct or indirect, absolute or contingent, now existing or hereafter arising, will, at the option of the holder of this Note, become immediately due and payable without notice or demand, and the holder of this Note will have and may exercise any or all of the rights and remedies provided herein and in the Deed of Trust, as they may be amended, modified or supplemented from time to time, and under applicable law.

If Borrower fails to pay any amount due under this Note and Payee has to take any action to collect the amount due or to exercise its rights under the Deed of Trust, including, without limitation, retaining attorneys for collection of this Note, or if any suit or proceeding is brought for the recovery of all or any part of or for protection of the indebtedness or to foreclose the Deed of Trust, then Borrower agrees to pay on demand all reasonable costs and expenses of any

such action to collect, suit or proceeding, or any appeal of any such suit or proceeding, incurred by Payee, including, but not limited to, the reasonable fees and disbursements of Payee's attorneys and their staff.

Borrower waives presentment, notice of dishonor, notice of acceleration and protest, and assents to any extension of time with respect to any payment due under this Note, to any substitution or release of collateral and to the addition or release of any party. No waiver of any payment or other right under this Note will operate as a waiver of any other payment or right.

In the event that this Note becomes due and payable following Borrower's default under the provisions of the Deed of Trust, or Borrower otherwise terminates the Funding Agreement prior to the expiration of its 99-year term, the Borrower will pay to Payee the principal sum of **\$750,000** plus 5% interest.

If any provision in this Note will be held invalid, illegal or unenforceable in any jurisdiction, the validity, legality or enforceability of any defective provisions will not be in any way affected or impaired in any other jurisdiction, and in case of such determination of invalidity, illegality or unenforceability, all other provisions of this Note will remain fully enforceable and will be interpreted so as to give force and effect to the maximum extent possible of the intent of the parties in drafting the provisions of this Note, including any provision that has been held to be invalid, illegal or unenforceable.

No delay or failure of the holder of this Note in the exercise of any right or remedy provided for hereunder will be deemed a waiver of such right by the holder hereof, and no exercise of any right or remedy will be deemed a waiver of any other right or remedy that the holder may have.

Neither Borrower, any member, partner, officer, director, shareholder, employee, agent or affiliate of Borrower, or any third party will have any personal liability for any amounts owing under this Note, and in the event of any default under this Note Payee will look solely to the collateral securing this note, and will not be entitled to seek any deficiency from Borrower, or any member or affiliate of Borrower, or any third person.

All notices given hereunder will be in writing, will be hand delivered or sent by overnight courier or by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

For the Payee: Boulder County Community Services  
P.O. Box 471  
Boulder, CO 80306  
Attn: Worthy Cause

with a copy to: Boulder County Attorney's Office  
P.O. Box 471  
Boulder, CO 80306  
Attn: Worthy Cause Attorney

For the Borrower: Boulder County Housing Authority

1333 Iris Avenue  
Boulder, CO 80304Attn: Executive Director

Any such notice will be deemed effective when hand delivered, or one day after timely delivery to an overnight courier for next day delivery (as evidenced by a receipt from the overnight courier), or three days after notice is deposited with the U.S. Postal Service.

At the option of the holder hereof, an action may be brought to enforce this Note in the District Court in the County of Boulder, Colorado or in any other court in which venue and jurisdiction are proper. Borrower and all signers or endorsers hereof consent to venue and jurisdiction in the District Court in the County of Boulder, Colorado, and to service of process as permitted under Colorado law, in any action commenced to enforce this Note.

This Note is to be governed by and construed according to the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in the State of Colorado for performance in the State of Colorado, without regard to principles of conflicts of laws. Time is of the essence in all provisions of this Note.

**BORROWER:**

**BOULDER COUNTY HOUSING AUTHORITY**, a  
Colorado housing authority

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Executive Director  
\_\_\_\_\_

**EXHIBIT D**

**DEED OF TRUST TO PUBLIC TRUSTEE  
BOULDER COUNTY WORTHY CAUSE DEBT**

Grantor: **BOULDER COUNTY HOUSING AUTHORITY**, a Colorado housing authority, whose address is 1333 Iris Avenue, Boulder, CO 80304.

Beneficiary: County of Boulder, Colorado, a body corporate and politic, whose address is 1325 Pearl Street, Boulder, CO 80302.

Trustee: The Public Trustee of the County of Boulder, Colorado.

Property: Grantor, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the following legally described property located in the County of Boulder, State of Colorado:

**TRACT A, WILLOUGHBY CORNER FILING NO. 1, COUNTY OF BOULDER, STATE OF COLORADO.**

Also known by street and number as **120th Street, Lafayette, CO 80026.**

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions will also be covered by this Deed of Trust to Public Trustee ("Deed of Trust"). All of the foregoing is referred to in this Deed of Trust as the "Property."

Obligations Secured:

All indebtedness evidenced and created by a Promissory Note of even date herewith from Grantor in the principal amount of \$750,000 (the "Note"), payable to Beneficiary, which Note evidences a debt payable in accordance with the terms and provisions of the Note, and all renewals, extensions, modifications, amendments and restatements thereof and substitutions therefor; and

All other indebtedness due under the Note, this Deed of Trust, the Boulder County Worthy Cause Funding Agreement ("Funding Agreement"), and/or any other document, instrument or agreement evidencing, securing or governing the debt evidenced by the Note (the Note, this Deed of Trust, the Funding Agreement and all such other documents, instruments and agreements and all amendments, replacements, extensions and renewals of any of the foregoing are hereinafter collectively referred to as the "Debt Documents").

The obligations described in this Section 5 are referred to as the "Obligations."

Grant. As security for the Obligations, Grantor hereby grants, bargains, sells, mortgages and conveys the Property to Trustee in trust with the power of sale for the use and benefit of Beneficiary.

Representations. Grantor covenants that Grantor owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date. Grantor warrants that the person signing this Deed of Trust on behalf of Grantor has been fully and properly authorized to do so and that this Deed of Trust constitutes the valid, binding and enforceable obligation of Grantor.

Covenants of Grantor. Grantor covenants and agrees to:

(a) satisfy all the Obligations on or before the date the Obligations are due and to comply with and perform according to their terms all of the covenants and agreements contained in this Deed of Trust, the Note, the Funding Agreement, and any other Debt Documents;

(b) perform all of Grantor's obligations under any prior deed of trust and any other prior liens ("Permitted Encumbrances"). Grantor will pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust. Despite the foregoing, Grantor will not be required to make payments otherwise required by this section if Grantor, after notice to Beneficiary, will in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Grantor making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed;

(c) obtain and maintain at all times policies of insurance in an amount equal to the full replacement cost of all improvements on the Property, insuring against all risk of loss, damage, destruction, theft or any other casualty, and such other hazard or similar insurance as Beneficiary may reasonably require, and to obtain and maintain comprehensive general liability insurance covering the Property and Grantor in an amount reasonably satisfactory to Beneficiary, all of the foregoing with such policy provisions and with such companies as may be reasonably approved by Beneficiary, with Beneficiary named as a loss payee (with respect to property insurance) and as an additional insured (with respect to liability insurance) and providing that any such policy will not be canceled without 30 days' prior written notice from the insurer to Beneficiary, and to assign and deliver original or certified copies of all policies of insurance to Beneficiary;

(d) keep the Property and any improvements which may at any time be on the Property in good condition and repair and not to commit or suffer any material waste;

(e) not commit or suffer destruction or removal of all or any material part of the Property without the prior written consent of Beneficiary;

(f) comply with applicable insurance policy provisions and all laws, ordinances, rules and regulations of governmental authorities governing or applicable to the Property or its use;

(g) keep the Property and any improvements thereon free and clear of all material liens, judgments or other encumbrances other than the Permitted Encumbrances; and

(h) appear in and defend any action or proceeding purporting to affect the Property and any improvements thereon. Grantor acknowledges that the amounts advanced by



Beneficiary under the Note represent funds received by Beneficiary pursuant to the Funding Agreement, **Boulder County Worthy Cause Funding Agreement** dated [DATE OF SIGNATURE], between Grantor and Beneficiary, and that the Funding Agreement requires Beneficiary to secure Grantor's agreement to perform certain obligations under the Funding Agreement. Grantor further covenants and agrees that it agrees to perform, and will perform, its obligations under the Funding Agreement, and will indemnify, defend and hold harmless Beneficiary from any loss, claims or damages arising from Grantor's failure to perform such obligations.

Events of Default. The occurrence of any of the following will constitute an "event of default" hereunder:

- (a) Grantor's failure to perform or observe any other covenant, agreement, duty or obligation contained in this Deed of Trust, which failure is not cured within 90 days after notice thereof from Beneficiary to Grantor or such longer period as may reasonably be necessary so long as Grantor is diligently working in good faith to cure;
- (b) Any warranty, representation or statement of Grantor in this Deed of Trust, or otherwise made or furnished to Beneficiary by or on behalf of Grantor, proves to have been false in any material respect when made or furnished; or
- (c) The occurrence of any default or event of default (however defined) under the Note or any of the other Debt Documents, which include but are not limited to:
  - i. Failure of Grantor to use the Property for a period of thirty (30) or more consecutive days as a necessary and integral part of the Program, as defined in the Funding Agreement;
  - ii. Failure of the Grantor to fulfill its obligations under the Funding Agreement or otherwise materially violate any covenant therein;
  - iii. All or any part of the Grantor's interest in the Property is sold, assigned, conveyed, hypothecated, alienated, or otherwise transferred without the Beneficiary's prior written consent;
  - iv. The filing of a petition by the Grantor for any proceedings under federal or state bankruptcy acts or other similar-type proceedings seeking protection from creditors not dismissed within 120 days thereafter;
  - v. The giving by the Grantor of an assignment of any interest in the Property for the benefit of creditors; or
  - vi. The dissolution of the Grantor as an entity other than in conjunction with a merger or consolidation of said entity into, or the transfer of the Property to, another or surviving entity which will thereby become the owner of the Property and continue the Program, as defined in the Funding Agreement.

Remedies Upon Default. Upon the occurrence of any event of default, Beneficiary will have the following rights and remedies which will be cumulative and which may be exercised with or without notice, and which may be exercised separately, independently or concurrently and more than once and in any order, and without any election of remedies to be deemed made, and without affecting the right of Beneficiary to exercise any other remedy hereunder or which Beneficiary may have in law, and without regard to other remedies then, theretofore or thereafter pursued or being pursued: (a) to declare any or all of the Obligations immediately due and payable; (b) to take immediate possession, management and control of the Property and to lease, operate, repair and maintain the same at the expense of Grantor and to perform such acts thereon or in connection therewith as Beneficiary may deem necessary or desirable; (c) to collect and receive any and all rents, issues and profits from the Property and to apply the same to the Obligations or to the repair or maintenance of the Property, or both; (d) to apply for and obtain, ex parte and without notice, the appointment of a receiver for the Property or of the rents, issues and profits thereof, or both, and to have such receivers appointed as a matter of right without regard to the solvency of any person or the adequacy of any security or the existence of waste with Grantor hereby specifically waiving any right to any hearing or notice of hearing prior to the appointment of a receiver, and to have sums received by such receivers, after deducting and paying costs and expenses of such receiverships, including attorneys' fees of Beneficiary, applied to the Obligations in such manner and order as Beneficiary may request; and (e) to foreclose this Deed of Trust through the Trustee or through the courts as the Beneficiary may desire and to become the purchaser of the Property at any foreclosure sale. If foreclosure is made through the Trustee, such foreclosure will be conducted in the manner provided by the laws of the State of Colorado.

The proceeds of any foreclosure sale will first be applied to (a) reimburse Beneficiary for reasonable costs and expenses of foreclosure and attorneys' fees, (b) to retire obligations secured by liens having priority over this Deed of Trust, and (c) the balance of the proceeds will be paid first to Beneficiary to pay the Obligations, with the surplus, if any, to be paid to the owner of the Property on the date of the foreclosure sale.

No member, partner, officer, director, shareholder, employee, or agent of Grantor, or any other third party, will have any personal liability for any amounts due under this Deed of Trust, and in the event of a default, Beneficiary will look solely to the collateral for payment of the Obligations, and will not be entitled to seek any deficiency from any third party.

Miscellaneous. (a) This Deed of Trust and each of its provisions will be binding upon the heirs, personal representatives, successors and assigns of Grantor and will inure to the benefit of the Trustee, the Beneficiary and her and its successors and assigns. (b) This Deed of Trust may be amended or modified only by an instrument in writing signed by the party charged with such amendment or waiver. (c) The Trustee may, upon production of the Note duly canceled, or a properly executed Request for Release of Deed of Trust without evidence of debt, and payment of all fees and costs by Grantor, release this Deed of Trust without further showing as to payment of the Obligations. (d) If there is more than one Grantor, all the terms and conditions of this Deed of Trust will apply to each of them. (e) The Trustee may release parts of the Property from the lien of this Deed of Trust upon the request of Beneficiary without impairing any rights or priority Beneficiary may have in the remainder of the Property or against Grantor. (f) Failure on the Beneficiary's part to exercise its rights in the event of any one default will not constitute a waiver of such rights in the event of any subsequent default. (g) Any notice and other

communications required or contemplated by this Deed of Trust will be in writing and will be delivered (and deemed given) as set forth in the Note, addressed to the parties at the respective addresses set forth in the Note or at such other address as may be designated in writing from time to time by the Grantor or the Beneficiary. (h) Grantor and any other party liable for the Obligations hereby consent to venue and jurisdiction in the District Court in and for the County of Boulder, State of Colorado, and in the United States District Court for the District of Colorado, and to service of process under Section 13-1-124(1)(A) and 13-1-125 Colorado Revised Statutes, as amended, in any action commenced in connection with this Deed of Trust or enforcement of the Obligations. (l) Time is of the essence of this Deed of Trust in all duties and Obligations to be performed by Grantor under this Deed of Trust.

**[SIGNATURE PAGE TO FOLLOW]**

