

APPENDIX A

AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule and municipal corporation of the State of Colorado (the “**City**”), and **[NAME]**, a **[ENTITY FORMATION]**, whose address is **[ADDRESS]** (the “**Recipient**”) (together, the “**Parties**”).

R E C I T A L S

WHEREAS, there are public purposes for supporting the construction of all-electric and passive house (certified through PHI or Phius) buildings in Denver, including reducing greenhouse gas emissions to protect City residents and visitors from the adverse public health impacts associated with climate change and climate pollution, increasing safety for building occupants, and improving indoor air quality.

WHEREAS, the use of all-electric and passive house design and construction in affordable housing developments ensures that the public health and safety benefits reach Denver’s more vulnerable populations;

WHEREAS, the public purposes above will be furthered to a greater extent through the study and construction of all-electric, passive house projects than alternative energy system and construction options;

WHEREAS, incentives are needed to encourage building owners and developers to study and construct all-electric, passive house projects to further the public purposes above;

WHEREAS, providing incentives during the design and construction of new affordable housing developments will allow the City and its residents to benefit from the use of all-electric and passive house designs and construction immediately and avoid the need for more costly retrofits after construction;

WHEREAS, the Recipient is willing to study and construct an all-electric, passive house property, which is located within the City and County of Denver, partly due to the availability of certain incentives provided by the City, as further described in this Agreement;

WHEREAS, this Agreement, and the study and construction at Recipient’s all-electric, passive house property within the City will advance the valid and valuable public purposes set forth above by reducing greenhouse gas emissions, increasing safety for building occupants, and improving indoor air quality as a result of the incentives described herein; and

WHEREAS, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECIPIENT OBLIGATIONS.

- a.** This Agreement and the City’s obligations hereunder are conditioned upon the following Recipient’s study and construction at its property located at _____ (the “**Property**”) of an affordable housing development that is an all-electric, passive house building as set forth in **Exhibit A, Scope of Work**.
- b.** The Recipient agrees that the City’s payment of incentive payments under this Agreement is conditioned

upon Recipient's compliance with the following terms:

- (1) The Property will be completed within 36 months of the execution of this Agreement.
 - (2) The Recipient has executed and will remain in full compliance with a funding or loan agreement with the City coordinated by the City's Department of Housing Stability, City contract number [City Contract No.], including any amendments subsequently executed by Recipient and the City ("Funding Agreement"). Recipient shall inform the Office of Climate Action, Sustainability, and Resiliency within thirty (30) days of executing an amendment to or assignment of the Funding Agreement.
 - (3) The Property will include [number] "80% Units" as defined in the Funding Agreement, which comprise at least two-thirds of the total number of units at the Property [or other description of affordability limitations and requirements at the Property as reflected in the Funding Agreement].
 - (4) The Property will be an all-electric property as defined by the 2022 Denver Energy Code when completed [if applicable]
 - (5) The Property will be certified through Phius CORE, Phius ZERO, Phius CORE REVIVE, Phius ZERO REVIVE, Phius CORE COMM, Phius ZERO COMM, PHI Classic, PHI Plus, PHI Premium, or EnerPHit when completed. [if applicable]
2. **TERM.** The term of this Agreement shall commence upon the date of execution set forth on the City's signature page and shall expire on _____ (the "Term"); provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the Maximum Contract Amount. Subject to the Executive Director's prior written authorization, the Recipient may complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director. The Term of this Agreement may be extended by written amendment executed by the Parties in the same manner as the original Agreement.
3. **INCENTIVE PAYMENTS.** Subject to the terms hereof, the City agrees to make incentive payments to the Recipient payable as follows:
- a. **Budget.** The City shall reimburse Recipient for documented costs directly incurred by Recipient and allocable to the all-electric and passive house design and construction at the Property as further detailed in **Exhibit B, Budget and Invoicing.** Recipients' costs shall not exceed the line item amounts set forth in **Exhibit B.**
 - b. **Maximum Contract Amount.**
 - (1) Notwithstanding any other provision of the Agreement, the City's maximum incentive payment

obligation shall not exceed _____ (\$_____) (the “**Maximum Contract Amount**”).

- (2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for purposes of the Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple fiscal year direct or indirect debt or financial obligation of the City.

c. **Petitions for Payment.** To receive an incentive payment hereunder, the Recipient shall petition the Executive Director of Climate Action, Sustainability, and Resiliency or her designee (the “Executive Director”).

- (1) The petition for incentive payment shall contain the Recipient’s supporting documentation evidencing eligible expenses as set forth in **Exhibit B**, and the Recipient’s satisfaction of the requirements contained in Section 1 above and in **Exhibit A**. To receive an incentive payment, the Recipient must petition the Executive Director at least forty-five (45) days before the expiration of the Term.
- (2) The Recipient shall supply whatever additional information the City requests in order to substantiate the Recipient’s petition for incentive payments. The City may withhold incentive payments for which it has been petitioned by the Recipient if it reasonably determines that the petition is not substantiated by the supporting documentation submitted by the Recipient. Such determination shall be provided to the Recipient in writing and shall be appealable to the Executive Director. The City shall withhold a five percent (5%) retainage as set forth in **Exhibit B**.
- (3) Upon receipt of documentation satisfying the requirements of this Section 2.c., the City shall verify the Recipient’s petition and issue proper incentive payment consistent with the City’s Prompt Payment Ordinance, D.R.M.C. §§ 20-107–118.

4. **EXAMINATION OF RECORDS AND AUDITS.** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Recipient’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Recipient shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States,

including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276.

5. **ACCESS AND INSPECTIONS.** For the purposes of assuring compliance with the Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of the expected average service life of the equipment or the passive house certification (through PHI or Phius) achievement, whichever is longer. During the period of expected average service life of the equipment or passive house certification, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Agreement.
6. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Recipient. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.
7. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than the Recipient. The Recipient shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City.
8. **INSURANCE.**
 - a. **General Conditions:** The Recipient agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Recipient shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Recipient shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of

such notice by its insurer(s) and referencing the City’s contract number. The Recipient shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Recipient. The Recipient shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- b. Proof of Insurance:** The Recipient may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. The Recipient certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the certificate of insurance. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Recipient’s breach of this Agreement or of any of the City’s rights or remedies under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- c. Additional Insureds:** For Commercial General Liability, Business Auto Liability and Excess Liability/Umbrella (if required), the Recipient and subcontractor’s insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- d. Waiver of Subrogation:** For all coverages required under this Agreement, the Recipient’s insurer shall waive subrogation rights against the City.
- e. Subcontractors and Subconsultants:** The Recipient shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Recipient and appropriate to their respective primary business risks considering the nature and scope of services provided.
- f. Workers’ Compensation and Employer’s Liability Insurance:** The Recipient shall maintain the coverage as required by statute for each work location and shall maintain Employer’s Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.
- g. Commercial General Liability:** The Recipient shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.
- h. Automobile Liability:** The Recipient shall maintain Business Automobile Liability with minimum limits

of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

9. DEFENSE AND INDEMNIFICATION.

- a. The Recipient hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Recipient or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- b. The Recipient’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Recipient’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- c. The Recipient will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.
- d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Recipient under the terms of this indemnification obligation. The Recipient shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.
- e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

10. NONCOMPLIANCE. If the Property is not completed and used and operated in accordance with this Agreement, the Funding Agreement, or the Covenant required by the Funding Agreement throughout the term of the Covenant, Recipient shall repay to the City the full amount of incentive payments received under this Agreement within sixty (60) days of the City’s request.

11. LIMITED LICENSE FOR REGISTERED TRADEMARK USE.

- a. City uses and has rights in the trademark of the “Denver Logo”.
- b. City hereby grants to Recipient, for the term of the Agreement and subject to the terms and conditions set forth herein, a non-exclusive, nontransferable, personal license during the term of the Agreement to use the

Denver Logo, and the goodwill appurtenant thereto, in the United States of America and the world (“Territory”) only in printed and digital materials acknowledging the City’s funding for this project as set forth in the Agreement and in Exhibit A in preliminary or final forms (“Materials.”). The Materials shall only be distributed or used to carry out the services described in the Scope of Work, subject to the terms of the Agreement (“Use”).

- c. Recipient shall Use the Denver Logo in accordance with any and all logo usage guidelines in effect from time-to-time as provided by the City. All Materials using the Denver Logo are subject to prior approval by the Executive Director or the Executive Director’s designee.
- d. There is no limit on how many times the Denver Logo may be used on Materials; however, the license to distribute these Materials expires when the Agreement expires or is revoked or otherwise terminated.
- e. This license for trademark use is being granted specifically due to the nature of the work performed by the Recipient and this license is therefore non-transferable and non-assignable to anyone other than those acting under the supervision and authority of the Recipient with respect to the creation and distribution of the Materials.
- f. The Recipient shall state in a prominent place on all Materials as follows: The use of the City and County of the Denver Logo is by permission granted from the City and County of Denver, all rights reserved.
- g. The Recipient shall be solely responsible for the entire cost and expense of the Recipient’s Use of the Denver Logo.
- h. The Recipient shall ensure that only accurate reproductions of the Denver Logo are utilized and that the size, proportions, colors, elements, and other distinctive characteristics of the Logos are not altered in any manner except as may be permitted herein or as permitted in writing by the City. The Denver Logo may not be used as a feature or design element of any other logo or graphic. Recipient may only use the colors set forth as outlined in the Denver Brand Guidelines at www.denvergov.org/marketing under Brand Guidelines.
- i. The Recipient shall deliver to the City from time to time upon request, orally or in writing, samples of the Materials within seven (7) days of the City’s request in order to confirm that the use of the Denver Logo is consistent with the terms of this Agreement. The City shall approve or disapprove of said Materials within fourteen (14) days of the date of receipt thereof. All Materials shall be of the same quality as the approved samples.

12. TERMINATION.

- a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Recipient. However, nothing gives the

Recipient the right to perform services or incur expenses under the Agreement beyond the time when its performance becomes unsatisfactory to the Executive Director.

- b. Notwithstanding the preceding paragraph, the City may terminate the Agreement if the Recipient or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Recipient’s business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.
- c. Upon termination of the Agreement, with or without cause, the Recipient shall have no claim against the City by reason of, or arising out of, incidental or relating to termination.
- d. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Recipient’s possession, custody, or control by whatever method the City deems expedient, and to recover any advanced funds that the Recipient has not expended in accordance with the terms of this Agreement. The Recipient shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Recipient shall mark all copies of work product that are incomplete at the time of termination “DRAFT-INCOMPLETE”.

13. COLORADO GOVERNMENTAL IMMUNITY ACT. In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, et seq.

14. TAXES, CHARGES AND PENALTIES. The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City’s prompt payment ordinance D.R.M.C. § 20-107, et seq. The Recipient shall promptly pay when due, all taxes, bills, debts and obligations it incurs from studying and constructing an all-electric and passive house building at the Property and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

15. INUREMENT. The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

16. NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Agreement, the Recipient may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status,

source of income, military status, protective hairstyle, or disability. The Recipient shall insert the foregoing provision in all subcontracts.

17. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS. This Agreement is intended as the complete integration of all understandings between the Parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

18. GOVERNING LAW; VENUE. The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

19. LEGAL AUTHORITY.

- a. The Recipient lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.
- b. The Recipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- c. The person or persons signing and executing this Agreement on behalf of the Recipient do hereby represent and warrant that he/she or they have been fully authorized by the Recipient to execute this Agreement on behalf of the Recipient and to validly and legally bind the Recipient to all the terms, performances and provisions of this Agreement.
- d. The City shall have the right, in its sole discretion, to temporarily suspend or permanently terminate this Agreement, if there is a dispute that the legal authority of either the Recipient or the person signing this Agreement on the Recipient's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to the Recipient for any performance of the provisions of this Agreement in the event that the City has suspended or terminated this Agreement as provided in this Section.

20. NO THIRD PARTY BENEFICIARY. Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Recipient receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

21. **SEVERABILITY**. Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.
22. **CONFLICT OF INTEREST**.
- a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Recipient shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City’s Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.
 - b. The Recipient shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Recipient represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Recipient by placing the Recipient’s own interests, or the interests of any party with whom the Recipient has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Recipient written notice describing the conflict.
23. **COMPLIANCE WITH ALL LAWS**. The Recipient shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
24. **COMPLIANCE WITH DENVER WAGE LAWS**. To the extent applicable to the Recipient’s provision of Services hereunder, the Recipient shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Recipient expressly acknowledges that the Recipient is aware of the requirements of the City’s Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Recipient, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.
25. **NOTICES**. All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Recipient at the address first above written, and if to the City at:

Executive Director of the Office of Climate Action, Sustainability & Resiliency or Designee
201 West Colfax Avenue, Dept. 704
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

- 26. DISPUTES.** All disputes between the City and the Recipient arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.
- 27. NO CONSTRUCTION AGAINST DRAFTING PARTY.** The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- 28. ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
- 29. SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Recipient's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- 30. ADVERTISING AND PUBLIC DISCLOSURE.** The Recipient shall not include any reference to the Agreement or to incentives paid pursuant to the Agreement in any of the Recipient's advertising or public relations materials except as set forth in the Exhibit A without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Recipient shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
- 31. CITY EXECUTION OF AGREEMENT.** The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter,

approved by the City Council.

32. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
33. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** The Recipient consents to the use of electronic signatures by the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to 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 formation. The Parties agree not to object to the admissibility of this 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.

List of Exhibits

Exhibit A – Scope of Work.

Exhibit B – Budget and Invoicing.

Exhibit C – Certificate of Insurance.

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EXHIBIT A – SCOPE OF WORK

1. Summary

The City has identified a public purpose to improve the study and construction of all-electric, passive house properties in Denver. For the purpose of this agreement, an all-electric property is defined by the 2022 Denver Energy Code. This program offers a financial incentive for installation of all-electric equipment, achieving passive house certifications (through PHI or Phius programs), or a combination of these options.

The City has selected _____[organization name]_____ (“Recipient”), a [entity formation], as a recipient of a financial incentive for an All-Electric Affordable Housing Rebate project study and construction at _____[address]_____.

2. PROJECT DESCRIPTION

2.1. Project. Recipient will complete the project objectives, workplan, milestones, and schedule based on the Recipient’s Program Application to City, as approved by the City Program Manager.

2.1.1. Recipient’s project includes the following:

____[description of selected rebates and activities]_____

2.1.2. The City may consider and approve changes to the project that meet or advance the intent of the project and broader Pilot Rebate Program for All-Electric Affordable Housing objectives, subject to the terms of the Agreement and the Maximum Contract Amount.

2.2. Responsibilities. Recipient shall be responsible for the completion of the work and to provide required documentation to the City as specified herein.

2.2.1. Recipient agrees to cooperate with the City to submit applications for supportive funding and/or resources from relevant sources including but not limited to utility and federal programs.

2.2.2. Recipient agrees to cooperate with the City to submit an application pursuant to the Pilot Rebate Program for All-Electric Affordable Housing adhering to all rules and eligibility requirements imposed by the program.

2.2.2.1. Eligibility Requirements. Recipient confirms that its project meets the following eligibility requirements:

- Property is located in the City & County of Denver.
- Property is not owned by the City & County of Denver.

Pilot Rebate Program for All-Electric Affordable Housing

- Property is a new construction, affordable housing development that will comply with the requirements set forth in its Funding Agreement with the City, as set forth in the Agreement.
- Property will be an all-electric property as defined by the 2022 Denver Energy Code.
- Recipient is pursuing certification for the Property through Phius CORE, Phius ZERO, Phius CORE REVIVE, Phius ZERO REVIVE, Phius CORE COMM, Phius ZERO COMM, PHI Classic, PHI Plus, PHI Premium, or EnerPHit.
- Property and equipment meet all applicable code requirements. Recipient is solely responsible for the costs of permits, inspections, licenses, and similar costs.

2.2.2.2. Program Rules:

- Rebates must be applied for prior to the start of construction.
- Rebates can be stacked with other rebates within the Pilot Rebate Program for All-Electric Affordable Housing, Xcel Energy rebates, federal and state funding and Denver's Climate Action Rebate Program or Healthy Homes Program, provided that the combined amount of rebates, payments, and incentives cannot exceed the actual cost of the service or equipment to the Recipient. If the project plans to receive the all-electric equipment rebate, the same piece of equipment cannot receive any other rebates from Denver's Climate Action Rebate Program or Healthy Homes Program. Applicants shall inform the program administrator of any other rebate or tax credits to be received for the project from the state, federal government, Xcel, or any other utility company or Denver agency.
- Incentive offers are based on building information (e.g., square footage, number of units, number of stories, common spaces) submitted at the time of application. Actual incentives paid will be based on the building as built, and any differences will result in adjustments in the incentive award. The program reserves the right to request As Built documentation or to conduct on-site verification to confirm final incentive payments. The Property as built must comply with the terms of the Agreement and the Funding Agreement.
- Recipient must inform the program administrator if you are receiving another rebate or tax credit from the state, federal government, Xcel Energy, or any other utility company or Denver agency.
- Recipient shall allow City representatives, including Michaels Energy, or contractors to visit the building as needed to verify project completion, collect

Pilot Rebate Program for All-Electric Affordable Housing

pre- and post- project data, and provide facilitation services. Recipient shall designate a point of contact for the project to keep City representatives updated and to coordinate access to the site, in a timely fashion, on dates mutually agreed upon between City representatives and the Recipient point of contact. Recipient shall promptly update the City if the point of contact changes.

- Recipient shall participate in interviews, surveys, focus groups and other engagements to provide feedback to the City and its representatives on the rebate program design, challenges faced, and suggestions for improvement.
- Recipient shall provide City staff with utility and cost data and building construction information to create case studies based on the building project. Information to be provided includes but is not limited to architectural and MEP plans, equipment specifications, narrative documentation explaining design and equipment choices, trade-offs, lessons learned, and costs associated to the project. The Recipient will be given the opportunity to review the case study and ask for information to be removed but the City & County of Denver retains the final decision as to what is included in the case studies and all documentation is subject to CORA. Documentation will be made publicly available on the City's website and/or shared on the City's social media channels.
- Applicant is responsible for ensuring that the contractors they hire are licensed with the City & County of Denver and properly pull a permit for the work. Anything installed without a permit or by a contractor not licensed with the City & County of Denver is not eligible for funding.

2.2.3. A contract for the purchase or acquisition of professional services, materials, and/or equipment shall be awarded by Recipient to a qualified vendor or firm if applicable. The Recipient shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate. The Recipient will maintain records sufficient to detail the significant history of procurement, including but not limited to the rationale for the method of procurement, selection of contract type, Recipient selection or rejection, and the basis for the contract price.

3. DELIVERABLES

- 3.1. **Outcome.** The final outcome of this Agreement is completed when the following deliverables are provided for each task in accordance with §3.3 of this Exhibit.
- 3.2. **Performance Measures.** Recipient shall comply with the following performance measures:

Pilot Rebate Program for All-Electric Affordable Housing

Performance Measure/Recipient will:	By:
Award and finalize subcontract(s).	Within ____ days after the Effective Date of this Agreement.
Submit Reimbursement Requests and Project Status Reports at each milestone	See §3.3 below
Submit Project Final Report	At least 2 months prior to the Expiration Date of this Agreement

3.3. Progress Payments and Project Status Reports. The Recipient shall submit reimbursement requests and project status reports on a quarterly submission schedule. Each request shall provide a description of work completed, documentation of the amounts and types of reimbursable expenses, records of supplier invoices, and proof of Recipient payment of the requested reimbursable expenses. Upon agreement execution, Recipient shall submit IRS W9 and Xcel Energy (or other utility) Data Release form. Specific task deliverables to be included in Project Status Reports are as follows:

3.3.1. Task #1 Passive House Design Certification Rebate

- Invoices for passive house pre-construction design work from passive house consultant.
- Invoice for registration application with PHI or Phius.
- Approved permit drawings indicating final unit count.
- A passive house design assurance letter or design certification letter from PHI or Phius.
- Cost analysis of upfront expenses for all-electric, passive house compared to typical mixed-fuel building.

3.3.2. Task #2 All-Electric Equipment Rebate

- Invoices of materials showing delivery schedule, payment terms, and compliant specifications that align with design drawings.
- As-built drawings and documentation indicating final equipment count.
- Approved equipment submittals and specifications.
- Copies of permits (building, mechanical, electrical, plumbing, etc)
- Photos of construction/equipment installation at milestone stages. Milestones include, but are not limited to, groundbreaking, framing, HVAC and water heating equipment installation, solar panel or other electrification-related

Pilot Rebate Program for All-Electric Affordable Housing

system installation, and other photos from construction/equipment installation applicable to the scope in this Exhibit.

3.3.3. Task #3 Passive House Certification Rebate

- All deliverables listed under 3.3.1
- As-built drawings and documentation indicating final unit count.
- A passive house final certificate, from PHI or Phius, stating that the project has achieved passive house certification.
- Finalized cost analysis of all-electric, passive house compared to typical mixed-fuel building.

3.4. City Acknowledgement. The Recipient agrees to acknowledge the City and more specifically the Office of Climate Action, Sustainability, and Resiliency (“CASR”) and the Climate Protection Fund in any and all materials or events designed to promote or educate the public about the work and the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

3.4.1. The Recipient must get approval from the Executive Director prior to publicizing activities or projects funded by the Agreement or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by CASR. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Climate Action, Sustainability and Resiliency.” The Recipient shall acknowledge CASR in any events regarding the project being funded, including groundbreakings and openings.

4. ADMINISTRATIVE REQUIREMENTS

4.1. Reporting. Recipient shall submit the following reports to the City. The City may withhold payment(s) if such reports are not submitted timely.

- 4.1.1. Project Status Reports shall be submitted to the City in accordance with §3.3 of this Exhibit.
- 4.1.2. Within 30 days before Project completion, Recipient shall notify the City of Denver to schedule a site visit and interview for case study development and documentation of installed equipment.
- 4.1.3. Within 90 days after the completion of the Project, Recipient shall submit the final Pay Request and Status Report to the City. The final Project Status Report should include a summary of the project, lessons learned, and any remaining deliverables from those identified within §3.3 of this Exhibit.

4.2. Monitoring. City shall monitor this work on an as-needed basis. The City may choose to audit the records for activities performed under this Agreement. Recipient shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to an executed Agreement. Such books and records shall contain documentation of the Recipient's pertinent activity under this Agreement in accordance with generally accepted accounting principles.

4.2.1. Recipient shall monitor its subcontractors, if any, during the term of this Agreement. Results of such monitoring shall be documented by Recipient and maintained on file.

4.2.2. Copies of any and all contracts entered into by the Recipient in order to accomplish this Project shall be submitted to the City upon request, and any and all contracts entered into by the Recipient or any of its subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

4.3. System Performance and Building Energy Data.

4.3.1. Recipient is required to complete an "Xcel Energy: Consent to Disclose Utility Customer Data" form for the timeframe associated with the 5 years after equipment installation.

4.3.2. Recipient is required to provide data and information upon request to demonstrate the efficacy of the System and/or to inform an assessment of greenhouse gas reduction at the property.

EXHIBIT B – BUDGET & INVOICING

- 1. Budget.** The City will award up to \$_____ (“Maximum Contract Amount”) to the Recipient for documented costs of the Recipient’s project as further detailed in this Exhibit.
 - 1.1. Activities for the Award are set forth in Exhibit A, Scope of Work (“SOW”)
 - 1.2. Recipient may increase the total project cost or contribute to the project “Other Funds” (e.g., non-City award) secured and provided by the Recipient and such change does not require an amendment. City will verify the Recipient’s contribution of Other Funds and compliance with this section at Project Closeout.

- 2. Disbursement Request Procedures and Project Status Reports.** Disbursements shall be processed through the Department of Climate Action, Sustainability & Resiliency (“CASR”) and the Department of Finance (“DOF”). CASR will disburse funds to the Recipient for approved incentive payment amounts covered by this agreement upon the Recipient’s written request delivered to CASR (the “Disbursement Request”). The Disbursement Request shall be in the form approved or required by CASR and DOF and may be submitted no more frequently than four times per year. Disbursement Requests must be submitted by Recipient electronically to the assigned CASR staff member who will review the submission for completeness and accuracy.
 - 2.1. All Disbursements will be via check sent by regular mail unless ACH or other method of disbursement is requested.
 - 2.2. Recipient may request advanced payment if deemed necessary (as determined by City in its sole discretion), for successful completion of the project. Advance payments are limited to ten percent (10%) of a specific task or deliverable item in the budget. The Recipient may not make an advanced payment request until such funds are needed to pay costs of the Project. Recipient shall account for the expenditure of all advance funds on expenses authorized under this Agreement.
 - 2.3. The City will disburse 95% of the approved Disbursement Request for each task or deliverable and shall retain 5% of the approved amount as retainage. The Recipient may not make a Disbursement Request until such funds are needed to pay costs of the Project. The amount of each Disbursement Request must be limited to the amount needed to pay costs actually incurred by the Recipient at the time of the Disbursement Request. The Disbursement Request may not include items previously submitted to and reimbursed by other lenders or funds to be placed into escrow accounts. Disbursement Requests containing amounts for prospective or future needs or advances in lump sums will be limited to the terms outlined in section 2.2 of this Exhibit. The Retainage will be released with or as the final incentive payment.
 - 2.4. Each Disbursement Request must be accompanied by documentation acceptable to CASR and DOF that evidences payments for which a disbursement request has been made. CASR and DOF will review documentation for incurred costs that match the

Pilot Rebate Program for All-Electric Affordable Housing

Disbursement Request. Disbursement Request shall include, as applicable, but not limited to:

- 2.4.1. A description of the work completed and what approved incentives the Recipient is seeking reimbursement for.
- 2.4.2. Documentation of the amounts and types of reimbursable expenses.
- 2.4.3. Invoices and records of supplier invoices, and proof of Recipient payment of the requested reimbursable expenses. All invoices must have the Property address.
- 2.4.4. Documentation required under section 3.3 of Exhibit A for Tasks included in the Disbursement Request.
- 2.5. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information, as applicable:
 - 2.5.1. All documents, reports, or other information required to be submitted to the City not previously provided;
 - 2.5.2. Documentation that all equipment for which a rebate was received has been installed at the Property;
 - 2.5.3. Documentation that the Project and all installed equipment has passed inspection;
 - 2.5.4. Final unconditional lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
 - 2.5.5. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective, as applicable.
 - 2.5.6. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled, as applicable.
 - 2.5.7. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received, as applicable.
 - 2.5.8. A certificate of occupancy.
 - 2.5.9. Current certificates of insurance.
 - 2.5.10. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.
 - 2.5.11. The Project must also pass a HUD standard inspection performed by the City.

Pilot Rebate Program for All-Electric Affordable Housing

2.5.12. Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”) Determination, as applicable.

2.5.13. Environmental mitigation memorandum of understanding.

2.5.14. Any other information required by the City.

3. Contingency. The Recipient may request and the City may approve use of the contingency funds to cover unexpected increases in the costs of approved tasks as set forth in the budget. These may include costs attributable to code changes or upgrades, changes in design or equipment approved by the City, increases in equipment cost, or other unexpected increases in costs associated with Tasks.

4. Recapture of Advanced Funds. To maximize the use of City funds, the City shall evaluate Recipient’s expenditure of the incentive funds for timeliness and compliance with the terms of this Agreement. The City reserves the right to recapture advanced incentive funds when Recipient has not or is not complying with the terms of this Agreement. When the City elects to recapture advance funds, the Recipient shall return the funds to City within sixty (60) days of receiving written notice from the City.

4.1.1. If upon completion the project cost is less than the Award Value, City shall reduce the subsequent payment accordingly. Recipient shall refund to the City any awarded amount in excess of the completed project cost within sixty (60) days of notification of the reduction.

4.1.2. Erroneous Payments. City may recover, at the discretion, payments made to Recipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Recipient. The City may recover such payments by deduction from subsequent payments under this Award Letter, deduction from any payment due under any other contracts, grants or agreements between the City and Recipient, or by any other appropriate method for collecting debts owed to the City.

5. Project Quote

Projected Project Quote	
Task	Amount
Task #1 Passive House Design Certification Rebate \$600 per dwelling unit, up to \$150,000 for receiving a passive house design certification letter from PHI or Phius. Refer to 3.3.2 of Exhibit A for required deliverables.	\$

Pilot Rebate Program for All-Electric Affordable Housing

Task #2 All-Electric Equipment Rebate Fixed rebate amount per unit of equipment as indicated in Section 5.2 of this Exhibit, up to \$600,000. Refer to 3.3.3 of Exhibit A for required deliverables.	\$
Task #3 Passive House Certification Rebate \$3,000 per dwelling unit, up to \$500,000 for receiving a passive house design certification letter from PHI or Phius. Refer to 3.3.4 of Exhibit A for required deliverables.	\$
Contingency (cannot exceed 10% of Maximum Contract value)	\$
Total Awarded Value	\$

- 5.1. Awarded amounts for each task listed below are based on a dwelling unit count of ____ and an equipment unit count of _____. The Awarded Value is subject to change and is determined by final dwelling unit count and equipment count.
- 5.2. All-Electric Equipment Rebates will be awarded based on the equipment requirements and funding amount specified in the table below:

All-Electric Equipment Rebates		
Equipment Type	Equipment Requirements	Funding Amount
Electric Heat Pump Rooftop Unit <5.4 tons (<65,000 Btu/h)	Energy Star Compliant	\$1,000 per cooling tonnage
Electric Heat Pump Rooftop Unit ≥5.4 tons - <11.25 tons (≥65,000 - <135,000 Btu/h)	Energy Star Compliant	\$950 per cooling tonnage
Electric Heat Pump Rooftop Unit ≥11.25 – <20 tons (≥135,000 – <240,000 Btu/h)	Energy Star Compliant	\$900 per cooling tonnage
Electric Heat Pump Rooftop Unit ≥ 20 tons (≥240,000 Btu/h)	Energy Star Compliant	\$850 per cooling tonnage
Ducted Cold Climate Split Air Source Heat Pump <5.4 tons (<65,000 Btu/h)	15.2+ SEER2 & 10+ EER2 & 8.1+ HSPF2 & the heating capacity at 5°F must be at least 70% of the 47°F rated heating capacity & COP@5°F ≥1.75	\$1,800 per condensing unit
Non-Ducted Cold Climate Mini-Split/Multi-Split Heat Pump <5.4 tons (<65,000 Btu/h)	16+ SEER2 & 9+ EER2 & 9.5+ HSPF2 & the heating capacity at 5°F must be at least 70% of the 47°F rated heating capacity & COP@5°F ≥1.75	\$1,800 per condensing unit
Light Commercial Heat Pump Water Heater Tier 1	≥2.8 – <3.5 UEF	\$1,300 per water heater
Light Commercial Heat Pump Water Heater Tier 2	≥3.5 UEF	\$1,800 per water heater
Variable Refrigerant Flow Heat Pump <5.4 tons	15+ SEER & 11.5+ EER & 9+ HSPF	\$1,000 per cooling tonnage
Variable Refrigerant Flow Heat Pump ≥5.4 – <11.25 tons	11.0+ EER & 14.6+ IEER & 3.3+ COP@47°F & 2.25+ COP@17°F	\$1,000 per cooling tonnage
Variable Refrigerant Flow Heat Pump ≥11.25 tons	10.6+ EER & 13.9+ IEER & 3.2+ COP@47°F & 2.05+ COP@17°F	\$1,000 per cooling tonnage
Cold Climate Packaged Terminal Heat Pumps (standard size) (≤15,000 Btu/h)	11.9+ EER & 3.3+ COP@47°F & 1.5+ COP@5°F	\$250 per packaged unit

Pilot Rebate Program for All-Electric Affordable Housing

Cold Climate Packaged Terminal Heat Pumps (standard size) (>15,000 Btu/h)	9.5+ EER & 2.9+ COP@47°F & 1.5+ COP@5°F	\$250 per packaged unit
Cold Climate Packaged Terminal Heat Pumps (nonstandard size***) (≤15,000 Btu/h)	9.3+ EER & 2.7+ COP@47°F & 1.5+ COP@5°F	\$250 per packaged unit
Cold Climate Packaged Terminal Heat Pumps (nonstandard size***) (>15,000 Btu/h)	7.6+ EER & 2.5+ COP@47°F & 1.5+ COP@5°F	\$250 per packaged unit
Cold Climate Single Package Vertical Heat Pumps (<65,000 Btu/h)	11+ EER and 3.3+COP@47°F and 1.5+COP@5°F	\$500 per packaged unit
Cold Climate Single Package Vertical Heat Pumps (≥65,000 -<135,000 Btu/h)	10+ EER and 3.0+ COP@47°F and 1.5+COP@5°F	\$500 per packaged unit
Cold Climate Single Package Vertical Heat Pumps (≥135,000 -≤240,000 Btu/h)	10.1+EER and 3.0+ COP@47°F and 1.5+COP@5°F	\$500 per packaged unit
Water Source Heat Pumps <1.4 tons (Water-to-air, water loop <17,000 Btu/h)	12.2+ EER and 4.3+ COP@47°F	\$700 per cooling tonnage
Water Source Heat Pumps ≥1.4 tons - <11.25 tons (Water-to-air, water loop ≥17,000 - <135,000 Btu/h)	13.0+ EER and 4.3+ COP@47°F	\$700 per cooling tonnage
Water Source Heat Pump <11.25 tons (Water-to-water, water loop <135,000 Btu/h)	10.6+ EER and 3.7+ COP@47°F	\$700 per cooling tonnage
Ground Source Heat Pumps <11.25 tons (Water-to-air, groundwater <135,000 Btu/h)	18+ EER and 3.7+ COP@47°F	\$1,000 per cooling tonnage
Ground Source Heat Pumps <11.25 tons (Water-to-water, groundwater <135,000 Btu/h)	16.3+ EER and 3.1 COP@47°F	\$1,000 per cooling tonnage
Ground Source Heat Pumps <11.25 tons (Brine-to-air, ground loop <135,000 Btu/h)	14.1+ EER and 3.2 COP@47°F	\$1,000 per cooling tonnage
Ground Source Heat Pumps <11.25 tons (Brine-to-water, ground loop <135,000 Btu/h)	12.1+ EER and 2.5 COP@47°F	\$1,000 per cooling tonnage

- 5.3. Applicant shall notify the City immediately if changes are made to the project impacting the requirements for funding and measures will be taken to rectify the Project funding as outlined in §3 of this Exhibit.