

**STATE OF COLORADO**  
**Colorado Department of Education**  
**Grant Agreement with**  
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**I. PARTIES**

This Grant Agreement (hereinafter called “Grant”), is entered into by and between the State of Colorado, for the use and benefit of the Colorado Department of Education, Division of Public School Capital Construction Assistance (CCA), 1580 Logan Street, Suite 310, Denver, Colorado 80203, hereinafter referred to as the State or CDE, and **GRANTEE NAME AND ADDRESS** hereinafter referred to as the Grantee.

**II. EFFECTIVE DATE AND NOTICE OF NON-LIABILITY**

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the Effective Date). The State shall not be liable

to pay or reimburse Grantee for any performance hereunder including, but not limited to, costs or expenses incurred, unless included in the Grantee's Application and approved by the Public School Capital Construction Assistance Board as described in paragraph VI.A. below, or be bound by any provision hereof prior to the Effective Date.

### **III. RECITALS**

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

Authority to enter into this Grant exists in Section 22-43.7-101, *et seq.*, C.R.S. and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

#### **B. Consideration**

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

#### **C. Purpose**

The purpose of the Grant is to provide financial assistance to school districts, charter schools and Boards of Cooperative Educational Services (BOCES) throughout the state that have difficulty financing new capital construction projects and renovating and maintaining existing facilities.

#### **D. References**

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### **IV. DEFINITIONS**

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

“Application” means the application for financial assistance submitted by the Grantee and approved by the BEST Board to implement the Grantee's Project.

“BEST Board” means the nine-member Public School Capital Construction Assistance Board created pursuant to Section 22-43.7-104, C.R.S.

“Budget” means the budget for the Work described in Section VI below.

“District Adjusted Match %” means the percentage of matching funds the grantee is to provide for the total Project cost.

“Division” means the Division of Public School Capital Construction Assistance at the Colorado Department of Education.

“Eligible Expenses” means those expenses directly necessary to complete the Work, subject to Division approval.

“Evaluation” means the process of examining Grantee’s Work and rating it based on criteria established in Section VI below.

“Exhibit” means Exhibit A, Statement of Work Exhibit B, Application Documents, and Exhibit C, Deliverables and Submittals, which are attached hereto and incorporated herein by reference.

“Goods” means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

“Grant Amount” means funds available for payment by the State to Grantee pursuant to this Grant, excluding any Grant Reserve Amounts.

“Grant Reserve Amount” or “Reserve Amount” means funds designated by the BEST Board outside the Grant Amount to cover unforeseen events not known at the time of the Application, which upon approval of the BEST Board, may be expended on the Project.

“Grantee” means a school district, Board of Cooperative Educational Services (BOCES), or the Colorado School for the Deaf and Blind that receives financial assistance from a BEST Cash Grant from the Building Excellent Schools Today Program pursuant to 22-43.7-101, *et seq.* C.R.S. Pursuant to 22-43.7-109(3) C.R.S., if financial assistance is awarded for a charter school, the charter school’s authorizer is the Grantee.

“Party” or “Parties” means the State or Grantee and “Parties” means both the State and Grantee.

“Program” means the Building Excellent Schools Today (BEST) grant program established pursuant to Section 22-43.7-101, *et seq.*, C.R.S. that provides the funding for this Grant.

“Project” means the capital construction project submitted by the Grantee in its Application to the BEST Board and approved for Financial Assistance.

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in Section VI below.

“Services” means the required services to be performed by Grantee pursuant to this Grant.

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant, including the performance of the Services and delivery of the Goods in order to complete the Project.

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

## **V. TERM**

### **A. Initial Term-Work Commencement**

The Parties’ respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on June 30, 2018, unless sooner terminated as specified elsewhere herein.

## **VI. STATEMENT OF WORK**

### **A. Completion**

Grantee shall complete the Work and its other obligations as described herein and in Exhibit A on or before the Project Completion date in Exhibit A. The State may reimburse certain Project Expenses incurred prior to the Effective Date if included in the Grantee’s Application and approved by the BEST Board, but shall otherwise not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

### **B. Goods and Services**

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

### **C. Employees**

All persons employed by Grantee or Subgrantees shall be considered Grantee’s or Subgrantees’ employee(s) for all purposes hereunder and shall not be employees of the

State for any purpose as a result of this Grant.

## VII. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this section, pay Grantee in the following amounts and using the methods set forth below

### A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is                      Grant Amount as determined by the State from available funds. If the Project cannot be completed for the Grant Amount, Grantee agrees to provide any additional funds required for the successful completion of the Project. Payments to Grantee are limited to the unpaid obligated balance of the Grant Amount as set forth in Exhibit A, Statement of Work.

### B. Payment

1. To access the Grant, the Grantee shall submit Form CC-06 Division Funding Request, proof of expenditures and any other requested documentation in accordance with Exhibit A. The Grantee acknowledges that payment will be made only upon Division approval of this submission.
2. The Grantee acknowledges that:
  - a. If the Grant is a BEST Emergency Grant or a BEST Cash Grant, it will be paid on a draw basis as needed to pay current Project invoices no more frequently than once a month.
  - b. Any and all Project costs in excess of the Grant Amount are the responsibility of the Grantee.
3. In the event unforeseen or unanticipated events occur on the Project, the Grantee may request additional funds for the Project in the form of a Grant Reserve. The Grantee must complete a Grant Reserve application for submittal to the BEST Board to request Grant Reserve funding, and support any such request for access with written documentation. The Grantee acknowledges that the BEST Board may approve or deny additional funding for the Grant Reserve to fund issue that arose during the Project. If Grant Reserve access is not approved by the BEST Board, the Grantee shall be responsible for the additional costs to complete the Project. In no case will Grant Reserve funding be awarded in an amount greater than 5% of the State Grant Amount.
4. Grantee shall submit invoices/payment requests as incurred, on a monthly basis.
5. In conjunction with the final Division Funding Request, the Grantee shall submit

to the Division a form CC-05, Capital Construction Project Final Report, to finalize the status of the Project. The Grantee acknowledges that the Division will withhold Grant funds pending receipt and approval of the Request.

6. Advance, Interim and Final Payments

Any advance payment allowed under this Grant as set forth in the Application and approved by the BEST Board shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

7. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 45 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

8. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate this Grant in whole or in part without further liability in accordance with the provisions herein.

9. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or

entity other than the State.

C. Use of Funds

Grant Funds shall be used only for Eligible Expenses identified herein and/or in the Project costs set forth in the Application. The State's total consideration shall not exceed the maximum amount shown herein.

D. Matching Funds

Grantee shall provide matching funds in accordance with the Application. Grantee shall have the full amount of matching funds on deposit, budgeted and appropriated prior to the Effective Date and shall report to the State regarding the status of such funds upon request.

**VIII. REPORTING – NOTIFICATION**

Reports, Evaluations, and Reviews required under this Section VIII. shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with Section XIX., if applicable.

A. Performance, Progress, Personnel, and Funds

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements set forth in Section VII. B.4. above and Exhibit A: II.C.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Deputy Commissioner of CDE.

C. Performance Outside the State of Colorado and/or the United States

*[Not applicable if Grant Funds include any federal funds]* Following the Effective Date, Grantee shall provide written notice to the State, in accordance with Section XVI (Notices and Representatives), within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at

such location or locations. All notices received by the State pursuant to this Section VIII.C shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this Section VIII.C shall constitute a material breach of this Grant.

D. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this Section may result in the delay of payment of funds and/or termination as provided under this Grant.

E. Contracts and Subgrants

Copies of any and all contracts and subgrants entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all contracts and subgrants entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such contracts and subgrants be governed by the laws of the State of Colorado.

**IX. GRANTEE RECORDS**

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such period as may be necessary to resolve any pending Grant matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the Record Retention Period).

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extensions or renewals. If the Work fails to conform to the requirements of this Grant, the State may require Grantee



promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government, and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

**X. CONFIDENTIAL INFORMATION-STATE RECORDS**

Grantee shall comply with the provisions of this Section if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this Section.

**XI. CONFLICTS OF INTEREST**

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

B. Grantee shall avoid conflicts of interest as follows:

1. No employee of the Grantee will perform or provide services for compensation, monetary or otherwise, to a consultant, consultant firm, business entity, contractor or other vendor that has been retained by the Grantee to perform work on the Project.
2. Grantee acknowledges that no person at any time exercising any function or responsibility in connection with the Project on behalf of the Grantee shall have or acquire any personal financial or economic interest, direct or indirect investment interest in the Project or any vendor performing work under the Project:
  - a. A personal financial or economic interest includes, but is not limited to:

- 1) Any business entity in which the person has a direct or indirect ownership or monetary interest.
  - 2) Any real property in which the person has a direct or indirect ownership interest.
  - 3) Any source of income, loans, or gifts received by or promised to the person within 12 months prior to the execution date of this Contract or any contract for work on the Project.
  - 4) Any business entity in which the person is a director, officer, general or limited partner, trustee, employee or holds any position of management.
- b. An indirect investment or interest includes:
- 1) Any investment or ownership interest held by a person's spouse, parent, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law, agent, a general, limited, or silent partner, by any business entity controlled by said person, or by a trust in which he or she has substantial interest. A business entity is controlled by a person if that person, his or her agent, or a relative as defined above possesses more than 50% of the ownership interest.
- C. If a conflict or potential conflict exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

## **XII. REPRESENTATIONS AND WARRANTIES**

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

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

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trade, or profession and in the sequence and manner set forth in this Grant.

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

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this

Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees, agents, and Subgrantees of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant is a material breach by Grantee and constitutes grounds for termination of this Grant.

### XIII. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

1. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as amended (the GIA), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with a Subgrantee that is a public entity providing Goods or Services hereunder, to include the insurance requirements necessary to meet such Subgrantee's liabilities under the GIA.

2. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall

obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in Section XIII.B with respect to Subgrantees that are not "public entities".

B. Grantee and Subgrantees

Grantee shall require each grant with Subgrantees other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

1. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee or Subgrantee employees acting within the course and scope of their employment.

2. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, Subgrantee shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

3. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

4. Additional Insured

Grantee shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Grantee and any Subgrantees hereunder.

5. Primacy of Coverage

Coverage required of Grantee and Subgrantee shall be primary over any insurance or self-insurance program carried by Grantee.

6. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Grantee and Grantee shall forward such notice to the State in accordance with Section XVI (Notices and Representatives) within seven days of Grantee's receipt of such notice.

7. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

8. Certificates

Upon request by the State at any time during the term of this Grant or any subgrant, Grantee and each contractor, or Subgrantees shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this Section.

9. Contractor Performance and Payment Bonds

Pursuant to the requirements of C.R.S. Sections 38-26-105 and 106, for any Grant exceeding \$50,000, the Grantee shall require each contractor performing work on the Project to provide a performance bond and separate labor and material payment bond which shall be executed by a corporate surety licensed to do business in the State, be in an amount which is at least one-half of the amount payable to the contractor for work under the Project and be payable to the Grantee. Contractors and suppliers shall file notice of final settlement in accordance with C.R.S. Section 38-26-107.

#### **XIV. BREACH**

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the

other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in Section XV. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

## **XV. REMEDIES**

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this Section in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in Section XIV. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **A. Termination for Cause and/or Breach**

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or any part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

#### **1. Obligations and Rights**

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Grantee to the State and shall become the State's property.

#### **2. Payments**

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was

not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

3. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss, including loss as a result of outstanding liens, claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by Section XV.A or as otherwise specifically provided for herein.

1. Method and Content

The State shall notify Grantee of such termination in accordance with Section XVI. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

2. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in Section XV.A.1.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:



1. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

2. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

3. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

4. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Grantee's employees, agents, contractors or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

5. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

## **XVI. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-

mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

State:

Director, Division of Capital  
Construction  
Department of Education  
1580 Logan, Suite 310  
Denver, Colorado 80203  
[newell\\_s@cde.state.co.us](mailto:newell_s@cde.state.co.us)

Grantee:



## **XVII. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

## **XVIII. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act. C.R.S. Section 24-10-101 *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act Section 24-10-101, *et seq.* and the risk management statutes, C.R.S. Section 24-30-1501, *et seq.*, as amended.

## **XIX. COMPLIANCE**

- A. Grantee shall comply with all applicable laws and regulations, including but not limited to:
1. Section 22-43.7-109(4)(d)(I), C.R.S., 1 C.C.R. 303-3, 5.2.4 and the representations in Grantee's Application (regarding maintenance of the Project).
  2. Sections 25-7-504 and 25-7-507, C.R.S. (regarding asbestos abatement and related certifications).
  3. Section 22-32-124, C.R.S. (regarding building codes, zoning, and planning).
  4. Section 22-43.7-106(2)(i)(I)(c), C.R.S. and 1 C.C.R. 303-3, 8.2.6 (regarding the permanent sign to be affixed to the Project facility that says: "Funding for this school was provided through the Building Excellent Schools Today Program from School Trust Lands").
  5. Sections 8-17-101, *et seq.*, C.R.S., the Keep Jobs in Colorado Act of 2013.
  6. Sections 8-19-104 and 8-19-105, C.R.S. (regarding bidding preferences on public works contracts).
  7. Sections 24-92-103.5 and 24-92-103.7, C.R.S. (regarding competitive sealed best value bidding).
  8. Sections 24-102-206 and 24-102-206.5, C.R.S. (regarding contract performance outside the United States or Colorado).
  9. Section 24-103-210, C.R.S. (regarding use of foreign-produced goods - iron, steel, and related manufactured products).
  10. 1 C.C.R. 303(1) and 1 C.C.R. 303-3 (regarding the Building Excellent Schools Today program and the construction guidelines).
  11. The Occupational Safety and Health Act of 1970 (P.L. 91-576), or state and local codes to the extent they are more stringent.
  12. 40 C.F.R. Part 763 (regarding plans, inspections, and trainings under the Asbestos Hazard Emergency Response Act of 1986).
  13. The State Historical Register Act, sections 24-80.1-101 *et seq.*, C.R.S. (regarding registered historical buildings and buildings 50 years or older).
  14. The State Architect's High Performance Certification Program pursuant to C.R.S. 24-30-1305(9)(b).

15. All applicable accessibility requirements (including ANSI 1998 A 117.1 with the 2006 International Building Code or 2003 A 117.1 with the 2006 International Code when adopted by the State of Colorado, Department of Public Safety, Division of Fire Safety, Public School and Junior College Construction and Inspection, Public Schools, and including any updates to these codes, acts, or standards).
16. All other applicable state and local construction codes (including building, fire, electrical, mechanical, plumbing, and any other applicable type).
17. All other applicable state and local operation and maintenance requirements.

## **XX. GENERAL PROVISIONS**

### **A. Assignment and Subcontracts**

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. Binding Effect**

Except as otherwise provided in Section XX.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. Captions**

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

### **D. Counterparts**

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

### **E. Entire Understanding**

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification

To the extent permitted by law, Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

1. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTORS – TOOLS AND FORMS.

2. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments, including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions.
2. The provisions of the main body of this Grant.

3. Exhibit A, Statement of Work.
4. Exhibit B, Application Documents.
5. Exhibit C, Deliverables and Submittals

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof..

K. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under C.R.S. Sections 39-26-101 and 201, *et seq.* Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Grantee for such taxes.

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. Debarred or Suspended Entities.

Grantee shall not enter into any grant or subgrant in connection with this Grant with a party that has been debarred or suspended from granting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov>.

P. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS § 24-105-101, if any, are subject to public release through the Colorado Open Records Act, CRS § 24-72-200.1 et seq.

SAMPLE

## **COLORADO SPECIAL PROVISIONS**

These Special Provisions apply to all Grants except where noted in italics.

### **1. CONTROLLER'S APPROVAL. C.R.S. Section 24-30-202 (1).**

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

### **2. FUND AVAILABILITY. C.R.S. Section 24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **3. GOVERNMENTAL IMMUNITY.**

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. Section Section 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

### **4. INDEPENDENT CONTRACTOR**

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits will be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

### **5. COMPLIANCE WITH LAW.**

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

### **6. CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.



**7. BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this grant or incorporated herein by reference shall be null and void.

**8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. C.R.S. Sections 24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

**10. VENDOR OFFSET. C.R.S. Sections 24-30-202 (1) and 24-30-202.4.**

[*Not applicable to intergovernmental agreements*] Subject to C.R.S. Section 24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. Section 39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC GRANTS FOR SERVICES. C.R.S. Section 8-17.5-101.**

[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to C.R.S. Section 8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. Section 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply

with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or C.R.S. Section 8-17.5-101 *et seq.*, the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

**12. PUBLIC GRANTS WITH NATURAL PERSONS. C.R.S. Section 24-76.5-101.**

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. Section 24-76.5-101 *et seq.*, and (c) has produced one form of identification required by C.R.S. Section 24-76.5-103 prior to the effective date of this Grant.

SPs Effective 1/1/09

SAMPLE

**THE PARTIES HERETO HAVE EXECUTED THIS GRANT**

**\* Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

**GRANTEE:**



**STATE OF COLORADO**

John W. Hickenlooper, GOVERNOR

**Department of Education**

Elliott Asp, Ph.D., Interim Commissioner of Education

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

Title: \_\_\_\_\_

\_\_\_\_\_  
Elliott Asp, Ph.D., Interim Commissioner of Education

\*Signature

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

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

**LEGAL REVIEW**

Cynthia H. Coffman, Attorney General

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

Signature – Senior Assistant Attorney General

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

**ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.**

STATE CONTROLLER

**Robert Jaros, CPA, MBA, JD**

By \_\_\_\_\_

Dave Grier, CDE Controller

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

**EXHIBIT A – STATEMENT OF WORK**

**I. PROJECT SUMMARY**

Name of Grantee/Applicant: \_\_\_\_\_

Name of Project: \_\_\_\_\_

CDE Accounting PO Number: \_\_\_\_\_

District Adjusted Match %: \_\_\_\_\_

	CDE Portion	Grantee Match Portion	Total Project Cost
Grant Amount			

Anticipated Project Completion Date: \_\_\_\_\_

**II. GRANTEE’S OBLIGATIONS**

**A. Responsibilities of the Grantee**

1. The Grantee shall use any Grant Amount and Grantee matching funds (the “Grant”) in accordance with the Integrated Program Plan Data set forth in the Application. The Grantee acknowledges that any modification of the implementation of the Project must receive prior written approval of the Division of Public School Capital Construction Assistance (the “Division”).
2. The Grantee shall follow the Project Schedule and detailed Project Management Plan attached to the Application. The Grantee acknowledges that any deviation from the detailed Project Management Plan and/or the Project Schedule may impact future funding of the Project.
3. The Grantee acknowledges that the cost of the Project (the “Project cost”) includes the cost of project management.
4. The Grantee acknowledges that the Grant Amount does not include any Grant Reserve funding and all normal cost overruns are the responsibility of the Grantee. In the event an unforeseen or unanticipated event occurs that could not have been known at the time of the Grant Application the Grantee must notify the Division immediately. If the unforeseen or unanticipated event requires additional funding the Grantee may fill out a Grant Reserve application and submit it to the BEST Board for review. Grant Reserve requests will be approved or denied at the sole discretion of the Best Board, and, if approved, will result in a modification of the Grant Amount. Grant Reserve Requests cannot exceed 5% of the State Grant Award Amount.
5. The Grantee shall budget and expend sufficient funds to satisfy any costs of repair, renovation, or construction not included within the Grant Amount but necessary to complete the Project.

6. The Grantee shall complete, or have made substantial progress towards completion of, the Project by the Project Completion Date set forth in the Application. The Grantee acknowledges that the Grant may be withdrawn and closed out after one year unless the Grantee provides adequate justification for an extension.
7. The Grantee acknowledges that the Grant does not obligate the Division, Colorado Department of Education or the State of Colorado to any future grant awards. If the Grantee contemplates grant funding of any future phases related to the Project, the Grantee acknowledges that any such future grant funding would be contingent upon approval of an additional application, appropriation of additional funds, and award of an additional grant by the BEST Board.
8. The Grantee acknowledges that if the Grant Amount is not fully expended upon completion of the Project, the Grantee will forfeit any remaining BEST Grant funds.
9. The Grantee shall ensure that the condition of the structures adjacent to the Project will not have adverse impacts upon the Project.
10. The Grantee acknowledges that it has reviewed its Asbestos Hazard Emergency Response Act (AHERA) plan to determine the presence of asbestos containing material on the site of the Project and that any asbestos issues were disclosed in the Application and will be remediated in the Project, or are above and beyond costs included in the Project Costs.
11. The Grantee acknowledges that it will obtain all necessary and proper permits and approvals to complete the Project.

B. Oversight

1. The Grantee acknowledges that the Division may, but is not obligated to, provide assistance by:
  - a. Reviewing any Project planning documents and methods for conformity with applicable standards, manuals and guidelines.
  - b. Making site visits as determined necessary by the Division before, during, and/or after the conclusion of the Project to provide on-site technical advice, to monitor progress and to confirm conformance with the Application.
2. The Grantee acknowledges that the Division encourages open and competitive bidding in vendor selection for work on the Project. Unless specifically stated in the application, or approved in advance by the Division, the Grantee agrees to comply with the Division's competitive selection process for vendors as outlined in the grant application.

3. The Grantee acknowledges that:
  - a. If the Grant is a BEST Emergency Grant or a BEST Cash Grant and the property impacted by the Grant is sold, abandoned, demolished, or extensively renovated in a manner that makes the Project work obsolete within a five-year period after completion of the Project, the Grant will be recaptured as follows: if the property is sold, abandoned, demolished or extensively renovated in a manner that makes the Project work obsolete within the first year after completion, 100% of the Grant shall be returned to the State of Colorado, with a 20% reduction per year thereafter.

C. Reporting

1. Final Report: CC-05 – Due upon completion and prior to final payment of CDE’s portion of the Grant.
2. Additional Reporting: The Grantee shall provide the Division the following, with additions or adjustments as indicated in Exhibit C: Deliverables and Submittals
  - a. Written progress reports detailing project progress, evidence of site visits, and areas of concern and proposed solutions.
  - b. Documentation demonstrating that key quality processes such as design review, inspections, permitting, and quality testing have been completed.
  - c. Line Item Budgets with the following parameters.
    - 1) A column displaying the final Grant Application project budget with line items matching those submitted in Exhibit B.
    - 2) A column displaying the budget as revised during the design stage.
    - 3) A column displaying the final approved budget at the time of Guaranteed Maximum Price or Bid, following review with Division Staff.
    - 4) An adjustment column displaying any changes from the final approved budget
    - 5) All contingencies, allowances, and grant reserve line items, identified separately, with all changes approved by Division staff in advance of cost commitment.
  - d. All furniture, fixture and equipment (FF&E) budgets, technology budgets, and add alternatives lists need to be approved by the Division prior the Grantee incurring expenses. All expenses in these categories must be pre-approved by the Division.

D. Administrative Requirements

1. Accounting

- a. At all times from the Effective Date of this Grant until completion of the Project, Grantee shall maintain properly segregated books of State Grant Funds, matching funds, and other funds associated with the Project.
- b. All receipts and expenditures associated with said Project shall be documented in a detailed and specific manner, and shall accord with the Project Budget set forth in Exhibit B and the line item budget maintained per II.C.2.c .Monitoring
- c. The State shall monitor this Project on an as-needed basis. The State may choose to audit the business activities performed under this Grant. Grantee 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 Grant. Such books and records shall contain documentation of the participant's pertinent activity under this Grant in a form consistent with good accounting practice.

SAMPLE

**EXHIBIT B - APPLICATION DOCUMENTS**

Name of Grantee/Applicant: \_\_\_\_\_

Name of Project: \_\_\_\_\_

**YES NO**

Capital Construction Assistance Grant Application (Form CC-03)

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

Signed by: \_\_\_\_\_

Person who prepared the grant: *Name & Title*

School District Superintendent: *Name & Title*

Designated Board Officer: *Name & Title*

Charter School Director (if applicable): *Name & Title*

Revisions – If any, please list below:

1) *Revision description*

2) *Revision description*

3) *Revision description*

4) *Revision description*

Detailed Project Budget

Electronic Photos – *List#*

Supporting Letters  
*The date, who it is from, and a brief description*

Facility Master Plan – *Date of Master Plan & Name of preparer*

Supporting Documentation Based on Project Type (i.e Plans, Reports, etc):

1) *Type of documentation and date*

2) *Type of documentation and date*

Waiver Request

Other revisions or supplemental information:

1) *Date, document revised and revision description*

2) *Date, document revised and revision description*

3) *Date, document revised and revision description*

4) *Date, document revised and revision description*



5) *Date, document revised and revision description*



Other information:

1)

2)

3)

4)

5)

SAMPLE

**EXHIBIT C – DELIVERABLES AND SUBMITTALS**

Name of Grantee/Applicant:

Name of Project:

<b><u>Deliverable or Submittal</u></b>	<b><u>Frequency</u></b>
Signed Sublease or Contract	Prior to first invoice
Finalized Line Item Budget	Initial at design phase, Final at GMP or bid, updates with each Fund Request
Project Directory	Initial at design phase, updated as needed
Building Program Comparisons	SD, DD, and final
Fund Requests (CC-06) - monthly	Monthly
Procurement documents and decision memoranda	Within 1 week of each procurement
Soils reports	Upon receipt
Field Observation Reports including progress, testing and inspection results, photos, and corrective actions - A/E	Monthly minimum
Progress reports - OR	Monthly minimum
Design phase meeting minutes	as produced
Project Schedule	Initial and as revised
Vendor Contracts	Prior to Execution
Electronic copies of contract documents	100% SD, 100% DD, 100% CD, and as-built following completion
Permanent sign per BEST rules	at completion
OAC Meeting Minutes	as produced
Change Order Requests and Logs, with detailed backup	Prior to signing Change Order
Vendor Certificates of Insurance required by Sublease or Contract	Prior to start of construction, and annual until occupied
FFE plans and schedules	Prior to order of FF&E
Technology plans and schedules	Prior to order of Technology
Sublease Renewal (COP Projects)	Annual in June
Post-Issuance Compliance Letter (COP Projects)	Annual in June until completion
Post-Occupancy Compliance Letter (COP Projects)	Annual in June after completion
HPCP Documentation and copy of certificates	SD, DD, CD, and upon certification
Project Completion Certificate (COP Projects)	within 6 months of occupancy
Final Report (CC-05)	At closeout of grant
Certificate of Occupancy	prior to occupancy
Certificate of Substantial Completion	upon substantial completion
Notice of Final Completion	upon final completion
Release of Liens	upon final completion