

# CDBG-CV SUBROGATION AGREEMENT

## SUBROGATION AGREEMENT

This Subrogation and Assignment Agreement (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2021, by and between \_\_\_\_\_ and \_\_\_\_\_ (the “Applicant(s)”) and the State of Nebraska Department of Economic Development (“Grantor” or “DED”).

In consideration of Applicant(s)’s receipt of funds or the commitment by Grantor to evaluate the Applicant(s)’s application for the receipt of funds (collectively, the “Grant Proceeds”) under the Community Development Block Grant coronavirus (CDBG-CV) Emergent Threat Opportunity Program (the “Program”) administered by Grantor, Applicant(s) hereby assigns to Grantor all of Applicant(s)’s future rights to reimbursement and all payments received from any grant, subsidized loan, or insurance policies of any type or coverage or under any reimbursement or relief program in connection with the novel coronavirus (“COVID-19”) related to or administered by the State of Nebraska (singularly, a “CV Program” and collectively, the “CV Programs”) that was the basis of the calculation for the Program to the extent of Grant Proceeds paid or to be paid to Applicant(s) under the Program and that are determined in the sole discretion of the Nebraska Department of Economic Development (“DED”) to be a duplication of benefits (“DOB”) as provided in this Agreement.

The proceeds or payments referred to in the preceding paragraph, whether they are from insurance, and/or CV Programs, or any other source, and whether or not such amounts are a DOB, shall be referred to herein as “Proceeds,” and any Proceeds that are a DOB shall be referred to herein as “DOB Proceeds.” Upon receiving any Proceeds not listed on the Duplication of Benefits Affidavit, Applicant(s) agree(s) to immediately notify the Grantor who will notify DED of such additional amounts, and DED will determine in its sole discretion if such additional amounts constitute a DOB. If some or all of the Proceeds are determined to be a DOB, the portion that is a DOB shall be paid to the Grantor, to be retained and/or disbursed as provided in this Agreement.

Applicant(s) agree(s) to assist and cooperate with the Grantor to pursue any of the claims Applicant(s) has against the insurers for reimbursement of DOB Proceeds under any such policies. Applicant(s) assistance and cooperation shall include but shall not be limited to allowing suit to be brought in Applicant(s)’s name and providing any additional documentation with respect to such consent, giving depositions, providing documents, producing record and other evidence, testifying at trial and any other form of assistance and cooperation reasonably requested by the Grantor. Applicant(s) further agree(s) to assist and cooperate in the attainment and collection of any DOB Proceeds that the Applicant(s) would be entitled to under any applicable CV Program(s).

If requested by the Grantor, Applicant(s) agree(s) to execute such further and additional documents and instruments as may be requested to further and better assign to the Grantor, to the extent of the Grant Proceeds paid to Applicant(s) under the Program policies, any amounts received under the CV Programs

that are DOB Proceeds and/or any rights thereunder, and to take, or cause to be taken, all actions and to do, or cause to be done, all things requested by the Grantor to consummate and make effective the purposes of this Agreement.

Applicant(s) explicitly allows the Grantor to request of any company with which Applicant(s) held insurance policies, or CV Programs or any other entity from which Applicant(s) has applied for or is receiving Proceeds, any non-public or confidential information determined to be reasonably necessary by the Grantor to monitor/enforce its interest in the rights assigned to it under this Agreement and give Applicant(s) consent to such company to release said information to the Grantor.

If Applicant(s) (or any lender to which DOB Proceeds are payable to such lender, to the extent permitted by superior loan documents) hereafter receives any DOB Proceeds, Applicant(s) agree(s) to promptly pay such amounts to the Grantor, if Applicant(s) received Grant Proceeds under the Program in an amount greater than the amount Applicant(s) would have received if such DOB Proceeds had been considered in the calculation of Applicant(s)'s award.

In the event that the Applicant(s) receive(s) or is scheduled to receive any Proceeds not listed on its Duplication of Benefits Affidavit ("Subsequent Proceeds"), Applicant(s) shall pay such Subsequent Proceeds directly to the Grantor, and DED will determine the amount, if any, of such Subsequent Proceeds that are DOB Proceeds ("Subsequent DOB Proceeds"). Subsequent Proceeds in excess of Subsequent DOB Proceeds shall be returned to the Applicant(s). Subsequent DOB Proceeds shall be disbursed as follows:

1. If Applicant(s) has received full payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be retained by the Grantor and remitted to DED.
2. If Applicant(s) has received no payment of the Grant Proceeds, any Subsequent DOB Proceeds shall be used by the Grantor to reduce payments of the Grant Proceeds to the Applicant(s), and all Subsequent DOB Proceeds shall be returned to the Applicant(s).
3. If Applicant(s) has received a portion of the Grant Proceeds, any Subsequent DOB Proceeds shall be used, retained and/or disbursed in the following order: (A) Subsequent DOB Proceeds shall first be used to reduce the remaining payments of the Grant Proceeds, and Subsequent DOB Proceeds in such amount shall be returned to Applicant(s); and (B) any remaining Subsequent DOB Proceeds shall be retained by the Grantor and remitted to DED.
4. If the Grantor makes the determination that the Applicant(s) does not qualify to participate in the Program or the Applicant(s) determine(s) not to participate in the Program, the Subsequent DOB Proceeds shall be returned to the Applicant(s), and this Agreement shall terminate.

Once the Grantor has recovered an amount equal to the Grant Proceeds paid to Applicant(s), the Grantor will reassign to Applicant(s) any rights assigned to the Grantor pursuant to this Agreement.

Applicant(s) represent(s) that all statements and representations made by Applicant(s) regarding Proceeds received by Applicant(s) shall be true and correct as of the date the DOB affidavit is signed.

**NOTICE:** The information provided on this form is subject to verification by the State of Nebraska and HUD at any time. Title 18, Section 1001 of the U.S. Code states that knowingly and willingly making a false or fraudulent statement to a department of the United States Government can result in termination of assistance and civil and criminal penalties.

The executing party(ies) of this Agreement on behalf of the Applicant(s) hereby represents that he\she\they has received, read, and understands this notice of penalties for making a materially false or misleading written statement to obtain the Grant Proceeds.

In any proceeding to enforce this Agreement, the Grantor shall be entitled to recover all costs of enforcement, including actual attorney's fees.

**AUTHORIZING OFFICIAL (local government grantee, chief elected official)**

Local government Grantee: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

**AUTHORIZING OFFICIAL (non-profit entity recipient, if applicable)**

Non-profit recipient: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

**GRANTOR:**

The Nebraska Department of Economic Development

Signature: \_\_\_\_\_

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

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

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