

AGREEMENT

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **MATRIX ENVIRONMENTAL SERVICES LLC**, a Colorado limited liability company, doing business at 1601 Blake Street, Denver, CO 80202 (“Consultant”), jointly (“the Parties”).

WHEREAS, the Mayor declared a state of local disaster emergency on March 12, 2020 pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020 on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020 due to the COVID-19 crisis;

WHEREAS, the City awarded the Agreement to the Consultant as a result of a competitive selection process conducted by the City in accordance with its rules and procedures;

WHEREAS, to respond to the COVID-19 crisis in the City and County of Denver, Colorado, and pursuant to the declarations of emergency described above, the City wishes to retain Consultant for on-call environmental consulting services; and

WHEREAS, the City wishes such work to be performed on an expedited, emergency basis.

The Parties agree as follows:

1. COORDINATION AND LIAISON: With the exception of litigation support and expert related Services directed by the assistant city attorney designated by the City Attorney (“City Attorney’s Designee”) in anticipation of or for litigation or administrative enforcement action, Consultant shall fully coordinate all Services under the Agreement with the Executive Director of the Department of Public Health and Environment (“DPHE”), (“Executive Director”) or, the Executive Director’s designee. The Executive Director hereby designates the Project Manager as his designee for day-to-day administration of the Agreement. For litigation support and expert related Services, Consultant will perform work under the direction of the City Attorney’s designee and coordinate with DPHE as requested by the City Attorney’s Office.

2. SERVICES TO BE PERFORMED:

A. General: As the Executive Director directs, Consultant shall perform the environmental site assessment, brownfields redevelopment support, storage tank removal and remediation, general remediation and oversight, and litigation support and expert technical analysis services set forth in **Exhibit A, the Scope of Work**, and other environmental services as requested (collectively the “Services” or “Work”) to the City’s satisfaction.

B. Requirements:

i. All Services.

1. Consultant shall review the City's needs and requirements to determine the specific requirements for each project based on the information the City provides.

2. Consultant shall follow all applicable standards required by the City, State, or the Federal government for investigation, construction, or design and document standards.

ii. Storage Tank Removal and Remediation Services and Remediation and Oversight Services. Services in Parts 3 and 4 of the Scope of Work must be performed and completed in accordance with the requirements set forth subsections a. and b. and c., including subparts of b. and c., below.

1. Design Services. Unless otherwise expressly stated in a particular notice to proceed, design services consist of investigation, materials testing, inspection, planning, designing, scheduling, estimating, contract administration, and clerical services as appropriate to each project and for each phase of the project. Consultant must have written authorization from the City before proceeding with each phase.

2. Investigation, Sampling, and Remediation Oversight.

a. Consultant shall attend all conferences requisite to a complete understanding of any project for which Consultant is performing Services. Consultant shall document all such conferences and distribute minutes of such conferences to the City as requested.

b. Consultant shall review all project requirements with the City to confirm its understanding of the scope of the project with the City.

c. Upon the City's approval of the costs, and subject to the surveying and testing budget for the specific project, Consultant shall obtain all samples, special studies, and engineering data necessary to properly investigate, report on, and provide design services for the project.

d. Consultant shall prepare and present a report to the City setting forth the result of its engineering investigations, sampling and management planning efforts, and describing alternate methods or approaches to the specific project and recommending those methods or approaches best suited to the needs and budget of the City with a Statement of Probable Cost.

3. Design Phase.

a. Before beginning the Design Phase of each project, Consultant shall obtain written approval of its Investigation, Sampling, and the Statement of Probable Cost.

b. Upon approval of Consultant's investigation report and in accordance with usual and customary professional standards, Consultant shall prepare

design documents for the City's approval. All design documents shall comply with the City's requirements, budget restrictions of the specific project, the City selected design and construction formats, and the approved investigation report and shall provide a competent solution for the problems a specific project may present.

c. At a minimum, design documents must include complete drawings and specifications setting forth the requirements for the completion of the project in adequate, reasonable, reliable, and final detail and all other documents necessary to provide a thorough study and competent solution for the specific project in accordance with usual and customary professional standards; include a proposed project time schedule; set forth in detail the requirements for the completion of the entire project; include complete information as necessary to bid the project; and contain complete bidding documents meeting all City requirements.

d. Consultant shall provide the City with a final statement of construction cost based upon the design documents. Consultant shall calculate such cost to a uniform and detailed level based on drawings and the specifications for the project, reflecting the probable project cost and taking into account the building trades and construction components utilized in the project design.

e. Upon the City's authorization to proceed, Consultant shall file all documents necessary and required for the approval of the project design by governmental authorities having jurisdiction over the project. The City will lend any required assistance, such as signing an application, and paying any permit-fees or other fees.

f. The City's acceptance of the design documents and final statement of construction cost does not relieve Consultant of any responsibility for design deficiencies, omissions, or errors.

g. Consultant or responsible subconsultant, if any, shall execute and seal, if necessary, all final work products. Consultant is ultimately responsible for all design provided by Consultant or its subconsultants under the Agreement.

h. Consultant shall make available all design data forming the basis for drawings and specifications for the City to review.

i. Consultant shall provide to the Project Manager a list of long lead items including but not limited to agency approvals and the issuance of permits.

3. PROJECT AWARD: The process by which the City will request Services is on a project-by-project basis:

A. The Project Manager will request Consultant to submit written statement of work. Within the time period and manner requested by the Project Manager, Consultant shall provide a proposed statement of work, including a project timeline, all costs, and if applicable, estimated quantities and costs of materials, and any other information requested, to the Project Manager. In each proposed statement of work Consultant shall represent that: i) its proposed

statement of work was arrived at independently and submitted without collusion with any other contractor performing similar work for the City; and ii) the contents of the proposed statement of work have not been communicated by Consultant, nor, to its best knowledge and belief, by any of its employees or agents, to any person not an employee or agent of Consultant or its surety on any bond furnished under the Agreement, and will not be communicated to any such person before issuance of the associated notice to proceed.

B. Services will be authorized by issuance of a notice to proceed (“NTP”). Consultant shall not commence any Services until it receives the NTP authorizing the performance of any Services. The City will not encumber funds for any Services until it issues an NTP. Notwithstanding any other term or condition of the Agreement, nothing in the Agreement places any obligation on the City to proceed with any phase beyond the latest phase authorized by a written NTP (or amendment thereto) or guarantees Consultant any minimum amount of work.

4. TERM: The Agreement will commence on **January 1, 2021** and will expire on **December 31, 2023** (the “Term”). At the City’s sole option, the Term may be extended up to five (5) years from the commencement date as indicated on the City’s signature page by a written amendment to the Agreement. Subject to the Executive Director’s prior written authorization, Consultant shall complete any Services in progress as of the expiration date and the Term of the Agreement will extend until the Services are completed or earlier terminated by the Executive Director.

5. COMPENSATION AND PAYMENT:

A. Fee. As full compensation for Services and reimbursable expenses incurred, the City will pay Consultant the lesser of the maximum fee to be set forth in the corresponding NTP or an amount based on Consultant’s periodic invoices. Amounts billed for Services rendered and expenses incurred may not exceed the hourly rates and unit costs provided in **Exhibit B**.

B. Reimbursable Expenses. The reimbursable expenses identified in **Exhibit B** are the only expenses permitted for reimbursement under the Agreement and will be reimbursed at the rates set forth in **Exhibit B**. Consultant shall include the anticipated cost of reimbursable expenses in its proposed statement of services. No other reimbursable expenses are permitted under the Agreement, and Consultant is responsible for any other expense it incurs as its cost of doing business.

C. Invoicing. Consultant shall submit invoices for the preceding month’s work, specifying the work performed, time period covered thereby, and any additional information the City requires to the Project Manager, except for Services under Part 5 of **Exhibit A**, for which the invoice must be sent to the City Attorney’s Designee and a copy to the Project Manager. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under the Agreement.

D. Maximum Contract Amount:

i. Notwithstanding any other provision of the agreement, the City’s maximum payment obligation will not exceed **ONE MILLION DOLLARS AND NO CENTS**

(\$1,000,000.00) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Consultant beyond that specifically described in **Exhibit A**. Any services performed beyond those provided for under, and authorized in accordance with, the Agreement are performed at Consultant’s risk and without authorization under the Agreement.

ii. 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 the purpose of the Agreement. The City does not by the 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.

6. COVENANTS; WARRANTIES: Consultant warrants that it is ready, willing, and able to provide the Services required by the Agreement and covenants that it shall faithfully perform the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement. Consultant further covenants that upon the occurrence of any of the events listed below, it shall notify the Executive Director within seventy-two (72) hours of the occurrence.

A. Consultant (including any affiliate or its parent company) has been served with notice of a violation of any law, regulation, permit or license related to the types of services provided under the Agreement.

B. Proceedings have been commenced against Consultant (including any affiliate or its parent company) that could result in revocation of permits or licenses that are required for the types of services provided under the Agreement.

C. Consultant’s (including any affiliate or its parent company) permits, licenses, or other governmental authorizations necessary to perform the types of services provided under the Agreement have been revoked.

D. Litigation has been commenced against Consultant, including any affiliate or its parent company, involving the types of services provided under the Agreement.

E. Consultant has reason to believe or is aware that equipment or facilities used for Services under the Agreement are not in compliance with applicable laws, regulations, permits or licenses.

F. Consultant has reason to believe or is aware that it, including its officers, employees, independent contractors, subconsultants, or subcontractors, have been involved in an accident or incident involving hazardous wastes or hazardous materials that it has reason to believe or is aware were generated by the City.

G. Consultant has reason to believe or is aware that a destination facility (landfill or other Treatment, Storage, or Disposal Facility) to which hazardous wastes or hazardous

materials were sent under the Agreement has been cited by state or federal authorities for failure to comply with environmental law, permits, licenses or certificates required for operation have been suspended or revoked; has been closed for any reason, or otherwise becomes unsuitable to receive the types of wastes it formerly received.

7. **TRAINING**: At its sole expense, Consultant is responsible for all required training. Upon request, Consultant shall provide a copy of all training certificates for its employees, including those of all sub-contractors. When training of workers for a specific duty is required by law, Consultant shall ensure that only properly trained individuals are assigned to and actually perform the duty for which training is required; training for each worker is up to date and meets all refresher requirements; and a physical record of certification of training and refresher training exists for each worker.

8. **TIME IS OF THE ESSENCE**: Time is of the essence in performing Services requested under the Agreement. Consultant shall comply with all time frames.

9. **KEY PERSONNEL**:

A. Consultant shall provide experienced personnel to perform and complete Services under the Agreement utilizing the list of key personnel identified in **Exhibit C**. To the extent possible, Consultant shall provide advance written notice to the Executive Director requesting approval of any changes in key personnel. If advance notice of a change in personnel is not possible, Consultant shall inform the Executive Director within 72 hours of the change and request consent to substitution of key personnel.

B. If the Executive Director does not consent or determines that the performance of any key personnel is not acceptable, he shall notify Consultant of the determination and may give Consultant an opportunity to correct performance. If the Executive Director notifies Consultant that a substitution of key personnel or performance of Services by any key personnel is unacceptable, Consultant shall substitute such personnel within the period of time requested by the City.

10. **ACCESS TO NON-CITY OWNED REAL PROPERTY**: When access to real property owned by third parties must be gained to perform work under the Agreement, Consultant is responsible for obtaining the necessary permission and releases from the property owner to allow Consultant to gain access and work on non-City property. For access to private property temporarily under control of Denver Police or Fire departments, Consultant must obtain permission to enter from the on-site commander and comply with all requested precautions.

11. **STATUS OF CONSULTANT**: Consultant is an independent contractor retained to perform professional or technical services for limited periods of time. Neither Consultant nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

12. TERMINATION:

A. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to Consultant. However, nothing gives Consultant the right to perform Services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

B. Notwithstanding the preceding paragraph, the City may terminate the Agreement if Consultant 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, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Consultant'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, Consultant shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for Work duly requested and satisfactorily performed as described in the Agreement.

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 Consultant's possession, custody, or control by whatever method the City deems expedient. Consultant 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. Consultant shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

13. EXAMINATION OF RECORDS: 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 Consultant's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Consultant 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.

14. 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 Consultant. 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.

15. INSURANCE:

A. General Conditions: Consultant agrees to secure, at or before the time of execution of the Agreement, the following insurance covering all operations, goods or services provided pursuant to the Agreement. Consultant shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for **three (3)** years for consulting work or **eight (8)** years after termination of the Agreement. The required insurance must 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 must contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies is canceled or non-renewed before the expiration date thereof. This written notice shall be sent to the parties identified in the Notices section of the Agreement and must reference the City contract number listed on the signature page of the Agreement. These notices must be sent thirty (30) days prior to cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the persons 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. If any policy is in excess of a deductible or self-insured retention, Consultant shall notify the City. Consultant is for the payment of any deductible or self-insured retention. The insurance coverages specified in the Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Consultant. Consultant 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 the Agreement.

B. Proof of Insurance: Consultant shall provide a copy of the Agreement to its insurance agent or broker. Consultant may not commence any Services relating to the Agreement prior to placement of coverages required under the Agreement. Consultant certifies that the certificate of insurance attached as **Exhibit D**, preferably an ACORD certificate, complies with all insurance requirements of the Agreement. The City requests that the City’s contract number be referenced on the Certificate. 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 the Agreement shall not act as a waiver of Consultant’s breach of the Agreement or of any of the City’s rights or remedies under the 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, Auto Liability and Contractors Pollution Liability Including Errors & Omissions, Consultant, subconsultants, and subcontractors’ insurers 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 the Agreement, Consultant's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: Consultant 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 Consultant and appropriate to their respective primary business risks considering the nature and scope of services provided.

F. Workers' Compensation/Employer's Liability Insurance: Consultant 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. Consultant expressly represents to the City, as a material representation upon which the City is relying in entering into the Agreement, that none of Consultant's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of the Agreement, and that any such rejections previously effected, have been revoked as of the date Consultant executes the Agreement.

G. Commercial General Liability: Consultant shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: Consultant shall maintain Business Automobile Liability, or its equivalent, 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. If transporting wastes, hazardous material, or regulated substances, Consultant shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.

I. Contractors Pollution Liability Including Errors and Omissions: Consultant shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include coverage for errors and omissions, bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and clean up costs. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

J. Professional Liability (Errors & Omissions): Consultant shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

K. Additional Provisions:

i. For Commercial General Liability, the policy must provide the following:

- a.** That the Agreement is an Insured Contract under the policy
- b.** Defense costs are outside the limits of liability;
- c.** A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and
- d.** A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

ii. For claims-made coverage:

- a.** The retroactive date must be on or before the contract date or the first date when any goods or Services were provided to the City, whichever is earlier.
- b.** Consultant shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits.

iii. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Consultant will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

16. DEFENSE AND INDEMNIFICATION:

A. Consultant 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 the Agreement (“Claims”), unless the 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 Consultant or its subconsultants or 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. Consultant’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. Consultant’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. Consultant shall defend any and all Claims that may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of 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 will be in addition to any other legal remedies available to City and will not be the City's exclusive remedy.

D. Insurance coverage requirements specified in the Agreement in no way lessen or limit the liability of Consultant under the terms of this indemnification obligation. Consultant is responsible to 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 the Agreement.

17. 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. Consultant shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

18. ASSIGNMENT; SUBCONTRACTING: Consultant shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under the Agreement without obtaining the Executive Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of the Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) Consultant shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subconsultant, subcontractor or assign.

19. 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.

20. NO THIRD PARTY BENEFICIARY: Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the 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 Consultant receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

21. NO AUTHORITY TO BIND CITY TO CONTRACTS: Consultant 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.

22. 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.

23. 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. Consultant 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. Consultant shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. Consultant 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 Consultant by placing Consultant's own interests, or the interests of any party with whom Consultant 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 Consultant written notice describing the conflict.

24. NOTICES: All notices required by the terms of the 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 Consultant at the address first above written, and if to the City at the addresses below. 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.

Executive Director, Department of Public Health & Environment or Designee
101 West Colfax Ave., Ste. 800
Denver, Colorado 80202

With a copy of any such notice to:

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

25. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

A. The Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

B. Consultant certifies that:

i. At the time of its execution of the Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement.

ii. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

C. Consultant also agrees and represents that:

i. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

ii. It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to Consultant that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

iii. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement, through participation in either the E-Verify Program.

iv. It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. Consultant shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

vi. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. Consultant is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, Consultant shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Consultant from submitting bids or proposals for future contracts with the City.

26. **DISPUTES**: All disputes between the City and Consultant 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 the Agreement.

27. **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).

28. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under the Agreement, Consultant agrees not to refuse to hire, nor to discharge, promote or demote, nor to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

29. **PREVAILING WAGE**:

A. Consultant's employees and those of its subconsultants and subcontractors are subject to the payment of prevailing wages pursuant to § 20-76 et seq., D.R.M.C. By executing the Agreement, Consultant covenants and affirms that it is familiar with the prevailing wages provisions and is prepared to pay or cause to be paid prevailing wages for the affected services to be provided under the Agreement by Consultant or its subconsultants or subcontractors. The prevailing wages provisions are applicable to all contracts in excess of two thousand dollars (\$2,000.00).

B. Consultant shall pay every covered worker, as defined in § 20-76(a) D.R.M.C., a living wage as provided in § 20-76, D.R.M.C. A copy of the applicable prevailing wage rate schedule is attached as **Exhibit E**.

C. In accordance with § 20-76(b) and (d), D.R.M.C., the following mandatory provisions are included:

i. The minimum wages to be paid for every covered worker may not be less than the scale of wages from time to time determined under § 20-76(b) and (c) to be the prevailing wages.

ii. Consultant or its subconsultant and subcontractor shall pay covered workers performing Services under the Agreement the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the Auditor's specifications, and any addenda thereto, on the actual date of proposal opening, regardless of any contractual

relationship that may be alleged to exist between Consultant or subconsultant or subcontractor and the covered workers. Increases in prevailing wages subsequent to the date of the Agreement for a period not to exceed one (1) year is mandatory on either Consultant or subconsultants or subcontractors. Future increases in living wages on contracts whose period of performance exceeds one (1) year is mandatory for Consultant and subconsultants or subcontractors only on the yearly anniversary date of the Agreement. The City agrees to reimburse Consultant for mandatory increases in prevailing wages that occur on or after January 1, 2013. Decreases in prevailing wages subsequent to the date of the Agreement for a period not to exceed one (1) year are not permitted. Decreases in prevailing wages on contracts whose period of performance exceed one (1) year are not effective except on the yearly anniversary date of the Agreement.

iii. Consultant and its subconsultants and subcontractors shall pay all covered workers at least once a week the full amounts of wages accrued at the time of payment, except that Consultant and subconsultant and subcontractor shall pay non-construction workers, such as janitorial or custodial workers performing services under the Agreement, at least twice per month.

iv. Consultant shall post in a prominent and easily accessible place at the site of work the scale of wages to be paid by Consultant and all subconsultants and subcontractors working under Consultant.

v. If Consultant or any subconsultant or subcontractor fails to pay wages required by the Agreement, no warrant or demand for payment to Consultant will be honored until Consultant furnishes the Auditor evidence satisfactory to the Auditor that the required wages by the Agreement have been paid.

vi. Consultant shall furnish to the Auditor each week during which Services were performed or are in progress under the Agreement, a true and correct copy of the payroll records of all covered workers employed under the Agreement, either by Consultant or subconsultants or subcontractors. These payroll records must include, among other things, information showing the number of hours worked by each covered worker employed under the Agreement, the hourly pay of the covered workers, any deductions made from pay, and the net amount of pay received by each covered worker for the period covered by the payroll.

vii. The copy of the payroll record must be accompanied by a sworn statement of Consultant that the copy is a true and correct copy of the payroll records of all covered workers working under the Agreement either for Consultant or subconsultants or subcontractors, that payments were made to them as set forth in the payroll records, that no deductions were made other than those set forth in the payroll records, and that all covered workers performing Services under the Agreement, either by Consultant or by any subconsultant or subcontractor, have been paid the prevailing wages as set forth in the Auditor's specifications.

viii. If any covered worker employed by Consultant or any subconsultant or subcontractor under the Agreement has been or is being paid a rate of wages less than the rate of wages required by the Agreement, the City may, by written notice to Consultant, suspend or terminate Consultant's right to proceed with Services, or any part of the Services for which there

has been a failure to pay the required wages, and in the event of termination may prosecute the Services to completion by contract or otherwise, and Consultant and any sureties will be liable to the City for any excess costs occasioned the City thereby.

30. BONDS: Title 15 of the Department of Aviation Department of Public Works Standard Specifications for Construction General Contract Conditions, 2011 Edition, applies to the Agreement as supplemented by the following: Consultant shall furnish a Performance and Payment Bond, in the form attached as **Exhibit F**, covering all Services performed under the Agreement. Consultant shall provide a bond in the amount of **FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00)** at the time it executes the Agreement. If the dollar amount of Services to be performed under any NTP, including change orders thereto, exceeds this amount, Consultant shall provide a properly executed bond Change Rider, in the form attached as **Exhibit F-1**, in an amount that will increase the penal sum of the Bond to an amount at least equal to amount set forth in the applicable NTP, including any change orders thereto.

31. COMPLIANCE WITH ALL LAWS: Consultant 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.

32. FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS: Consultant is subject to all terms and conditions set forth in **Exhibit G**, The FEMA Grant and Cooperative Agreement provisions, attached and incorporated herein by reference.

33. LEGAL AUTHORITY: Consultant 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 the Agreement. Each person signing and executing the Agreement on behalf of Consultant represents and warrants that he has been fully authorized by Consultant to execute the Agreement on behalf of Consultant and to validly and legally bind Consultant to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Consultant or the person signing the Agreement to enter into the Agreement.

34. 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.

35. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

36. INTELLECTUAL PROPERTY RIGHTS: The City and Consultant intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans,

drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Consultant and paid for by the City pursuant to the Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. Upon creation of Materials, Consultant shall disclose them to the City unless the Executive Director directs otherwise in writing. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," Consultant (by the Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

37. 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, Consultant'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.

38. ADVERTISING AND PUBLIC DISCLOSURE: Consultant shall not include any reference to the Agreement or to Services performed pursuant to the Agreement in any of Consultant's advertising or public relations materials 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. Consultant 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.

39. CITY'S CONFIDENTIAL INFORMATION:

A. Consultant acknowledges and accepts that, in performance of all work under the terms of the Agreement, Consultant may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. Consultant agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to Consultant shall be held in confidence and used only in the performance of its obligations under the Agreement. Consultant shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent consultant would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any material or information that is designated or marked "Proprietary" or "Confidential" or that would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to Consultant by the City. Proprietary Data may be in hardcopy, printed, digital or electronic format.

B. Use and Protection of Proprietary Data or Confidential Information:

i. Except as expressly provided by the terms of the Agreement, Consultant agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under the Agreement. Consultant further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to Consultant any right or license to use such data except as provided in the Agreement. Consultant further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Executive Director and will immediately notify the City if any information of the City is requested from Consultant from a third party.

ii. Consultant agrees, with respect to the Proprietary Data and confidential information, that: (1) Consultant shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (2) Consultant shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) Consultant shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

iii. Consultant shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of Consultant to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

C. **Employees and Subcontractor**: Consultant will inform its employees and officers of the obligations under the Agreement, and all requirements and obligations of Consultant under the Agreement shall survive the expiration or earlier termination of the Agreement. Consultant shall not disclose Proprietary Data or confidential information to subconsultants or subcontractors unless such subconsultants and subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in the Agreement.

D. **Disclaimer**: Notwithstanding any other provision of the Agreement, the City is furnishing Proprietary Data and confidential information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. Consultant is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, Consultant agrees to contact the City immediately.

40. 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.

41. 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.

42. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: Consultant shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

43. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Consultant consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, 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 the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

List of Exhibits

Exhibit A – Scope of Work.

Exhibit B – Rates.

Exhibit C – Key Personnel.

Exhibit D – Certificate of Insurance.

Exhibit E – Prevailing Wage.

Exhibit F – Performance and Payment Bond.

Exhibit F-1 – Change Rider.

Exhibit G – FEMA Grant and Cooperative Agreement Provisions.

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Contract Control Number: ENVHL-202056516-00
Contractor Name: MATRIX ENVIRONMENTAL SERVICES LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

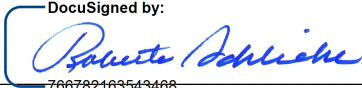
By:

By:

By:

Contract Control Number:
Contractor Name:

ENVHL-202056516-00
MATRIX ENVIRONMENTAL SERVICES LLC

By: 
706782163543468...

Name: Roberta Schlicher
(please print)

Title: Director, Executive Vice President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A Scope of Work

REQUIREMENTS SPECIFICATION:

The Consultant shall furnish environmental, engineering, scientific or other necessary services (including furnishing all labor and tools, supplies, equipment, oversight, superintendence, materials and everything necessary for and required to perform and complete the services authorized by a notice to proceed, including any changes thereto) as requested to supplement the Division of Environmental Quality's (DEQ) work efforts in:

- 1) environmental site assessment;
- 2) brownfields redevelopment;
- 3) leaking underground storage tank removal, investigation and remediation;
- 4) remediation and oversight and
- 5) environmental litigation support.

Part 1. Environmental Site Assessments (ESAs)

The Consultant shall perform Phase I Environmental Site Assessments (Phase I ESA) that comply with the EPA's *All Appropriate Inquiry Rule* and with the most current version of the ASTM E 1527, "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process". The awarded consultant(s) shall perform Phase II ESA's in conformity with the ASTM Standards related to the Phase II ESA process ASTM E 1903 "Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process". Requested attributes of the ESAs follow:

Phase I ESA. The Consultant shall detail the resources to be used to identify prior use(s). At a minimum, these efforts shall include review and evaluation of aerial photographs, Sanborn Fire Insurance Maps, topographic maps and reverse city directories. Depending on the location and size of the site, DEQ may request review of historical information at intervals more frequent than the typical 5-year interval to ensure proper coverage of important environmental events at the site. At a minimum, historical information, as available, shall identify periods with evidence of site activity, site development or a change in use. Copies of documents used to identify historical use shall be obtained and included in the final report. Additionally, the Consultant shall obtain from the provider of historical aerial photographs, a copyright release in the name of the City. Upon request, the Consultant shall provide digital images of the aerial photographs.

Categorical Exclusion (CatEx) Form 128. Colorado's Department of Transportation (CDOT) periodically requires DEQ to complete Form 128 (CatEx) for roadway projects within the City and County of Denver. DEQ may request that the Consultant prepare the associated reports for DEQ's review and submittal. The Consultant shall prepare the

required reports including recognition of biological elements (including wetlands, noxious weeds, threatened and endangered species, black-tailed prairie dogs, and migratory birds), noise, historical resources (including archaeological and paleontological), and air quality reports.

Phase II ESA Investigations. The Consultant shall provide an experienced and qualified team to perform surface and subsurface investigations to assess the environmental condition of properties. The Consultant could be required to investigate and/or remediate City-owned or managed sites contaminated by material regulated under the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or other regulations.

If requested, the Consultant shall submit a Health and Safety Plan (HASP) when required by the DEQ Program Manager. If requested by DEQ, the HASP should be reviewed and approved by a Certified Industrial Hygienist (CIH) under contract or employed by the Consultant. The HASP must cover all phases of work expected at the site. Where appropriate, the Consultant shall also submit a Sampling and Analysis Plan (SAP), including a brief description of the site, the type of sampling and media to be sampled, the laboratory analysis to be done (including methodology), the Quality Control/Quality Assurance sampling to be done, and the regulatory standards for target compounds. A Quality Assurance Project Plan (QAPP) could also be required. Prior to any work taking place, a street occupancy permit and a traffic control plan could be required for project sites within City Right-of-Ways (ROW). The Consultant is responsible for obtaining a property access agreement. Any work done on a site contaminated by an illicit drug laboratory must be conducted under the supervision of an Industrial Hygienist (IH) or a CIH.

Upon request, the Consultant shall review all relevant data for the project site. Data may include, without limitation, Phase I ESAs, Phase II ESAs, Corrective Action Plans, Corrective Measures Plans, groundwater monitoring reports and/or other data packages. Also upon request, the Consultant shall assess the feasibility of the remediation through bench-scale or pilot testing when appropriate.

Phase II ESA investigation work could include, without limitation:

- planning and performing site investigations;
- characterizing contaminated sites;
- performing asbestos containing material surveys;
- conducting complex data evaluations, analytical and numerical fate and transport modeling, hydrogeologic studies, and risk assessments;
- preparing material management and other work plans, reports, and similar documents;
- evaluating remediation options, interfacing with regulatory agencies; and

- serving as an expert witness in litigation and preparation thereof.

Phase II site investigations could include:

- surface and subsurface sampling of soil and rock by hand auguring, direct push, hollow stem auger drilling, or other drilling methods;
- installing, surveying and sampling of groundwater monitoring wells;
- sampling of surface waters;
- evaluation of vapor intrusion and indoor air quality issues consistent with ASTM, EPA, & CDPHE guidance, and sampling of vapors or explosive gases.

Reports must meet formatting and other requirements as specified by regulatory agencies and the DEQ Program Manager.

Part 2. Brownfields Redevelopment

The City has experienced significant redevelopment of brownfield properties and might request assistance under its Brownfield Program. Examples of brownfield services the City might request assistance with include:

- Environmental Site Assessments (described in Part 1 above) including, as necessary, issuing third party reliance statements.
- Technical project documents including HASPs, QAPPs and SAPs in conformance with EPA and Colorado Department of Public Health and Environment (CDPHE) guidance.
- Investigation and remediation activities associated with historical gas station sites, dry cleaners, former industrial properties, historical landfills, and other contaminated land redevelopment sites on behalf of the City and third parties.
- Subsurface geophysical surveys and underground storage tank removal at petroleum brownfield sites– consistent with the Colorado Department of Labor and Employment Division of Oil and Public Safety (CDLE OPS) requirements – to further assess environmental property conditions.
- Assessment of exposure pathways, analyze brownfield risk-based cleanup alternatives integrated with redevelopment plans and estimate of environmental costs.
- Development and implementation of Colorado Volunteer Cleanup Program (VCUP) applications and CDLE OPS work plans for brownfield sites, further described in Parts 3 and 4 below. Conduct asbestos containing material and lead-based paint surveys.
- Communication with regulatory agencies, the City and third parties with regards to environmental investigation and remediation projects.

- Preparation of grant applications and fund procurement assistance including EPA brownfields grants, Colorado brownfield tax credits, and OPS's Petroleum Cleanup and Redevelopment Fund and the Petroleum Storage Tank Fund.
- Environmental data validation and data evaluation services consistent with QAPP and site-specific SAP requirements.

The Consultant shall provide the City with advice regarding the possibility of implementation of redevelopment plans considering site conditions, available infrastructure, and environmental regulatory issues.

Part 3. Leaking Underground Storage Tank Removal and Remediation

The Consultant must be a CDLE OPS-listed consultant (<https://www.colorado.gov/pacific/ops/ListedConsultants>), have the technical capability and experience to respond to leaking underground storage tank episodes, and perform requisite CDLE OPS activities. The Consultant shall respond in a timely manner to suspected releases, prepare the CDLE OPS-required reports within the CDLE OPS time frames, prepare Economic Feasibility Summary (EFS) documentation, and prepare reimbursement applications. If needed, the Consultant shall arrange for tank removal.

The Consultant shall identify the source(s) of the release, determining the distribution of contamination in the subsurface, documenting geology and hydrogeology, conducting risk assessments, and identifying whether active remediation is required, and if so, the most appropriate remediation for the site.

Subsequent remediation work could include, without limitation:

- excavating and hauling contaminated material;
- designing and installing remediation systems for groundwater, soil, indoor air;
- treating contaminated soil;
- pumping and/or treating contaminated water;
- disposing contaminated water and soil;
- operating and maintaining remedial systems;
- applying for re-imbursement of costs from the Petroleum Storage Tanks Fund, decommissioning remedial systems; and
- restoring sites.

If asbestos is encountered during site remediation work, the Consultant shall also manage the regulated asbestos containing material in soil.

Part 4. Remediation and Oversight

As part of remedial actions, the Consultant will be expected to prepare, as requested, material management plans, storm water management plans, storm drainage plans, soil characterization management plans and sampling plans. Additionally, the Consultant may be requested to apply for construction storm water discharge permits and monitor contractors for compliance with regulations pertaining to idling vehicles, fugitive dust, refrigerants and noise.

Installation of remediation systems must be performed in accordance with approved plans and under the supervision of a professional engineer, licensed in the State of Colorado. If a remediation process (such as a dig and haul) is appropriate instead of an engineered system, the work must be done under the supervision of an appropriate environmental professional. Each remediation project will require confirmatory air, surface water, soil, and/or groundwater sampling to establish correctness of the remediation design or process as well as performance of the design or process. The Consultant shall ensure that all waste material generated during remediation and monitoring is properly stored, characterized, transported, and either or both disposed or treated.

The Consultant must demonstrate experience overseeing all aspects of projects involving regulated asbestos contaminated soil (RACS) disturbance conducted under Colorado Department of Public Health and Environment (CDPHE) Section 5.5 (Management of Regulated Asbestos Contaminated Soil (RACS)).

Part 5. Litigation Support/Expert Technical Analysis

Upon request by the City Attorney's designee or the Department of Environmental Health Executive Director's designee in accordance with Section 1 of the Agreement (see sample agreement on page 19), the Consultant shall provide environmental litigation support and technical assistance as indicated below:

- Testifying and non-testifying experts – provide testifying experts and non-testifying experts.
- Training - provide training on topics, such as the Clean Water Act, control technologies, groundwater and associated fate and transport.
- From Expert evaluation of existing information, such as the review and interpretation of chemical, hydrogeological, and risk data.

Rates

On-call Environmental Consulting Rates

Category / Item	Unit	Rate ^a
Labor*		
Managing Engineer/Scientist	Hour	\$178.63
Principal Engineer/Scientist (* Proposed Project Manager)	Hour	\$173.31
Senior Engineer/Scientist	Hour	\$143.88
Project Engineer/Scientist	Hour	\$118.53
Staff II Engineer/Scientist	Hour	\$100.62
Staff I Engineer/Scientist	Hour	\$90.96
Field Technician	Hour	\$72.48
Clerical	Hour	\$60.28
CADD/Accounting/Administrative	Hour	\$71.70
Reimbursables**		
Dual Interface Probe	Day	\$50.00
Groundwater Level Indicator	Day	\$25.00
Photoionization Detector / FID or Similar	Day	\$78.00
Automated Samplers, Monitors, and Data Loggers	Day	\$135.00
PID / FID / Multi Gas Meter (or Similar)	Day	\$60.00
Groundwater Sampling Kit	Day	\$9.00
Soil Sampling Kit	Day	\$9.00
Rental Vehicle	Day	\$75.00
Mileage	Day	\$0.50
Bladder pump ** added item	Day	\$115.00
1-liter Tedlar bags ** added item	Day	\$25.00
Electric submersible pump ** added item	Day	\$160.00
Pass Through Rate – Subcontractor Costs and Management***		
All Subcontracted Services	% Markup Per Job	5%
Field Sampling and Investigation Supplies and Materials as Preapproved by City and County of Denver Project Manager	% Markup Per Job	0%
Remediation Supplies and Materials as Preapproved by City and County of Denver Project Manager	% Markup Per Job	0%

^a Rates shown are for the base year of the contract. Annual escalation may be applied at a rate of 3% per follow-on year, or as negotiated based on Bureau of Labor Statistics current annual trends.

[^] Work conducted for the City and County of Denver's underground and above ground storage tank projects shall charge rates as in accordance with the most-current Colorado Division of Oil and Public Safety's Invoicing / Reasonable Costs Guidelines.

* Add categories as necessary to match your firm's labor categories; identify proposed project manager.

** Add items as necessary to complete proposed scope of work. Items not identified during the proposal process may not be considered as "reimbursable" by the City.

*** City and County of Denver may request its consultants to provide competitive bids for subcontracted services, supplies, materials.

EXHIBIT C

Key Personnel

Team Key Personnel	Functional Title	Labor Category
David Huntsinger, PE	Contract Management	Managing Engineer/Scientist
Steve Young, PG	Program/Project Management	Principal Engineer/Scientist
Holli Merchant, CIH (EHS)	Program Health & Safety	Senior Engr/Scientist
Roberta Schlicher, PE	QA/QC Manager	Managing Engineer/Scientist
Chad Coker, CABI, REP	Environmental Scientist	Senior Engr/Scientist
Mike Gronseth, PE, PG, PMP	Task Manager	Managing Engineer/Scientist
Mike Pompliano, PE, CABI	Project Engineer	Project Engineer
Kent Boler, PG	Geophysicist	Senior Engr/Scientist
Tierney Walsh, CABI	Environmental Scientist	Project Scientist
Betty Van Pelt	Program Chemist	Senior Engr/Scientist
Andy Davis	Field Technician	Field Technician
Matt Zoss (SWCA)	NEPA SME	Senior Engr/Scientist
Cindy Cason, PG (ET)	Leaking UST SME	Senior Engr/Scientist
Tom Berger	Construction Manager	Managing Engineer/Scientist
Drew Beck, PE	Water Resources SME	Senior Engr/Scientist
Bob Meadows PLS	Land Surveyor	Senior Engr/Scientist
Austen Cutrell	GIS Technician	CADD
Richard Satkin, PG	Ordnance SME	Managing Engineer/Scientist
Jason Rutt, PE	Civil Engineer	Managing Engineer/Scientist
Felipe Zubia, AICP	Planner	Managing Engineer/Scientist
Bob Eck, PLA	Landscape Architect	Managing Engineer/Scientist
Matt Scwalb	Economist	Senior Engr/Scientist
Kevin Lardner, PE	Structural Engineer	Senior Engr/Scientist
Angie Whitehead	Accounting/Admin	Accounting/Admin
Valerie Muro	Clerical	Clerical



EXHIBIT E PREVAILING WAGE

TO: All Users of the City and County of Denver Prevailing Wage Schedules
FROM: Ryland Feno, Classification & Compensation Technician II
DATE: February 03, 2020
SUBJECT: Latest Change to Prevailing Wage Schedules

The effective date for this publication will be **Friday, January 31, 2020** and applies to the City and County of Denver for **HEAVY CONSTRUCTION PROJECTS** in accordance with the Denver Revised Municipal Code, Section 20-76(c).

General Wage Decision No. CO20200002
Superseded General Decision No. CO20190002
Modification No. 1
Publication Date: 01/31/2020
(6 pages)

Unless otherwise specified in this document, apprentices shall be permitted only if they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor (DOL). The employer and the individual apprentice must be registered in a program which has received prior approval by the DOL. Any employer who employs an apprentice and is found to be in violation of this provision shall be required to pay said apprentice the full journeyman scale.

Attachments as listed above.

***Career Service Board approved to adjust all Davis Bacon classifications under \$13.00 to comply with the city's minimum wage. The effective date is August 15, 2019. See page 7 for reference.**

Office of Human Resources
201 W. Colfax Ave. Dept. 412 | Denver, CO 80202
p: 720.913.5751 | f: 720.913.5720
www.denvergov.org/humanresources

"General Decision Number: CO20200002 01/31/2020

Superseded General Decision Number: CO20190002

State: Colorado

Construction Type: Heavy

Counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties in Colorado.

HEAVY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020
1	01/31/2020

ASBE0028-001 07/01/2019

Rates Fringes

Asbestos Workers/Insulator
(Includes application of
all insulating materials,

protective coverings,
 coatings and finishings to
 all types of mechanical
 systems).....\$ 32.98 14.73

BRCO0007-004 01/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON AND WELD COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 29.52	10.48

BRCO0007-006 05/01/2018

EL PASO AND PUEBLO COUNTIES

	Rates	Fringes
BRICKLAYER.....	\$ 25.88	10.34

ELEC0012-004 06/01/2019

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN		
Electrical contract over \$1,000,000.....	\$ 27.50	12.50+3%
Electrical contract under \$1,000,000.....	\$ 24.85	12.50+3%

ELEC0068-001 06/01/2019

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON, LARIMER, AND WELD COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 36.50	16.18

ELEC0111-001 03/01/2019

	Rates	Fringes
Line Construction:		
Groundman.....	\$ 20.41	13.75%+\$6.20
Line Equipment Operator.....	\$ 28.98	13.75%+\$6.20

Lineman and Welder.....\$ 44.92 25.25%+\$5.75

 ELEC0113-002 06/01/2019

EL PASO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 32.60	16.23

 ELEC0969-002 06/01/2019

MESA COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 25.20	10.06

 ENGI0009-001 05/01/2018

	Rates	Fringes
Power equipment operators:		
Blade: Finish.....	\$ 28.57	10.70
Blade: Rough.....	\$ 28.25	10.70
Bulldozer.....	\$ 28.25	10.70
Cranes: 50 tons and under..	\$ 28.40	10.70
Cranes: 51 to 90 tons.....	\$ 28.57	10.70
Cranes: 91 to 140 tons.....	\$ 29.55	10.70
Cranes: 141 tons and over...	\$ 31.07	10.70
Forklift.....	\$ 27.87	10.70
Mechanic.....	\$ 28.73	10.70
Oiler.....	\$ 27.49	10.70
Scraper: Single bowl under 40 cubic yards.....	\$ 28.40	10.70
Scraper: Single bowl, including pups 40 cubic yards and over and tandem bowls.....	\$ 28.57	10.70
Trackhoe.....	\$ 28.40	10.70

 * IRON0024-003 11/01/2019

	Rates	Fringes
Ironworkers:.....	\$ 30.85	22.26
Structural		

 LABO0086-001 05/01/2009

	Rates	Fringes
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Laborers:

Pipelayer.....\$ 18.68 6.78

 PLUM0003-005 06/01/2017

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PLUMBER.....	\$ 39.08	16.44

 PLUM0058-002 07/01/2018

EL PASO COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 32.75	14.85

 PLUM0058-008 07/01/2018

PUEBLO COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 32.75	14.85

 PLUM0145-002 07/01/2016

MESA COUNTY

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 35.17	11.70

 PLUM0208-004 06/01/2016

ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS,
 JEFFERSON, LARIMER AND WELD COUNTIES

	Rates	Fringes
PIPEFITTER.....	\$ 37.10	16.62

 * SHEE0009-002 07/01/2019

	Rates	Fringes
Sheet metal worker.....	\$ 34.62	17.95

 * TEAM0455-002 07/01/2019

	Rates	Fringes
Truck drivers:		
Pickup.....	\$ 21.91	4.42
Tandem/Semi and Water.....	\$ 22.54	4.42

 SUCO2001-006 12/20/2001

	Rates	Fringes
BOILERMAKER.....	\$ 17.60	
Carpenters:		
Form Building and Setting...	\$ 16.97	2.74
All Other Work.....	\$ 15.14	3.37
Cement Mason/Concrete Finisher...	\$ 17.31	2.85
IRONWORKER, REINFORCING.....	\$ 18.83	3.90
Laborers:		
Common.....	\$ 11.22	2.92
Flagger.....	\$ 8.91	3.80
Landscape.....	\$ 12.56	3.21
Painters:		
Brush, Roller & Spray.....	\$ 15.81	3.26
Power equipment operators:		
Backhoe.....	\$ 16.36	2.48
Front End Loader.....	\$ 17.24	3.23
Skid Loader.....	\$ 15.37	4.41

 WELDERS - Receive rate prescribed for craft performing
 operation to which welding is incidental.

**Office of Human Resources
Supplemental Rates
(Specific to the Denver Projects)
(Supp #74, Revised: 08-21-2019)**

Classification		Base	Fringe
Ironworker	Ornamental	\$24.80	\$10.03
Laborer	Group 1	\$18.18	\$8.27
	Group 2	\$21.59	\$8.61
Laborer (Common)		\$13.00	\$2.92
Laborer (Flagger)		\$13.00	\$3.80
Laborer (Landscape)		\$13.00	\$3.21
Laborer (Janitor)	Janitor/Yardmen	\$17.68	\$8.22
Laborer (Asbestos)	Removal of Asbestos	\$21.03	\$8.55
Laborer (Tunnel)	Group 1	\$18.53	\$8.30
	Group 2	\$18.63	\$8.31
	Group 3	\$19.73	\$8.42
	Group 4	\$21.59	\$8.61
	Group 5	\$19.68	\$8.42
Line Construction	Lineman, Gas Fitter/Welder	\$36.88	\$9.55
	Line Eq Operator/Line Truck Crew	\$25.74	\$8.09
Millwright		\$28.00	\$10.00
Power Equipment Operator	Group 1	\$22.97	\$10.60
	Group 2	\$23.32	\$10.63
	Group 3	\$23.67	\$10.67
	Group 4	\$23.82	\$10.68
	Group 5	\$23.97	\$10.70
	Group 6	\$24.12	\$10.71
	Group 7	\$24.88	\$10.79
Power Equipment Operator (Tunnels above and below ground, shafts and raises):	Group 1	\$25.12	\$10.81
	Group 2	\$25.47	\$10.85
	Group 3	\$25.57	\$10.86
	Group 4	\$25.82	\$10.88
	Group 5	\$25.97	\$10.90
	Group 6	\$26.12	\$10.91
	Group 7	\$26.37	\$10.94
Truck Driver	Group 1	\$18.42	\$10.00
	Group 2	\$19.14	\$10.07
	Group 3	\$19.48	\$10.11
	Group 4	\$20.01	\$10.16
	Group 5	\$20.66	\$10.23
	Group 6	\$21.46	\$10.31

Go to <http://www.denvergov.org/Auditor> to view the Prevailing Wage Clarification Document for a list of complete classifications used.

Exhibit F

**CITY AND COUNTY OF DENVER
DEPARTMENT OF ENVIRONMENTAL HEALTH
Environmental Quality Division**

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Matrix Design Group, Inc.
1601 Blake Street Suite 200 Denver, CO 80202, a corporation organized and existing under and by virtue of the laws of the State of CO, hereafter referred to as the "Contractor", and Laxon Insurance Company
10002 Shelbyville Rd, Suite 100, Louisville, KY 40223, a corporation organized and existing under and by virtue of the laws of the State of Texas, and authorized to transact business in the State of Colorado, as Surety, are held and firmly bound unto the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", in the penal sum of **Fifty Thousand Dollars and No Cents (\$50,000.00)**, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents;

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden Contractor has entered into a written agreement with the City for providing services set forth in the agreement having **Contract ID No. ENVHL-202056516**, which includes furnishing all labor and tools, supplies, equipment, superintendence, materials and everything necessary for and required to do, perform and complete the services authorized by each notice to proceed issued pursuant to that Agreement (including changes to any notice to proceed – collectively notice to proceed and changes thereto are referred to as "NTP"), and has bound itself to complete the services within the time or times specified as designated, defined and described in the Agreement, or NTP, and in accordance with the terms of the Agreement, a copy of the Agreement being made a part hereof;

NOW, THEREFORE, if the Contractor shall and will, in all particulars well and truly and faithfully observe, perform and abide by the Agreement, including each NTP, according to the true intent and meaning in such case, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect;

PROVIDED FURTHER, that if the Contractor shall satisfy all claims and demands incurred by the Contractor in the performance of the Agreement, and shall fully indemnify and save harmless the City from all damages, claims, demands, expense and charge of every kind (including claims of patent infringement) arising from any act, omission, or neglect of the Agreement, its agents, or employees with relation to the services; and shall fully reimburse and repay to the City all costs, damages, and expenses that it may incur in making good any default based upon the failure of the Contractor to fulfill its obligation to furnish maintenance, repairs or replacements for the full guarantee period provided in the Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if Contractor at all times promptly makes payments of all amounts lawfully due to all persons supplying or furnishing it or its subcontractors with labor and materials, rental machinery, tools or equipment used or performed in the prosecution of services provided for in the Agreement and that if the Contractor indemnifies and saves harmless the City for the extent of any and all payments in connection with the carrying out of the Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, that if the Contractor fails to duly pay for any labor, services, supplies, equipment, or materials performed, used or consumed by Contractor or its subcontractors in performance of the services contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment, all amounts due as the result of the use of such machinery, tools or equipment in the prosecution of the services, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to contracts with others in connection with the Agreement, or the services to be performed there under, or any Notice to Proceed, shall in any way affect its obligation on this bond and it does hereby waive notice of any change, extension of time, alteration or addition to

the terms of the Agreement, any Notice to Proceed, or the services.
IN WITNESS WHEREOF, Contractor and Surety have executed these presents as of

November 30, 2020

Attest:

Kimberly Kendrick
Secretary

Matrix Design Group, Inc.

Contractor

By: [Signature]
President C.G.O.

Lexon Insurance Company
Surety

By: [Signature]
Attorney-In-Fact Kristin L. Salazar



(Accompany this bond with Attorney-in-Fact's authority from the Surety to execute bond, certified to include the date of the bond).

APPROVED AS TO FORM:
COUNTY
Attorney for the City and County of Denver

APPROVED FOR THE CITY AND
OF DENVER

*****Signatures by CAO and the Mayor will be provided later and shall be fully incorporated herein.*****

By: _____
Assistant City Attorney

By: _____
MAYOR



By: _____
Manager
Department of Public Health and Environment



SOMPO INTERNATIONAL

INSURANCE

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that **Endurance Assurance Corporation**, a Delaware corporation, **Endurance American Insurance Company**, a Delaware corporation, **Lexon Insurance Company**, a Texas corporation, and/or **Bond Safeguard Insurance Company**, a South Dakota corporation, each, a "Company" and collectively, "**Sompo International**," do hereby constitute and appoint: **Kristin L. Salazar**

as true and lawful Attorney(s)-In-Fact to make, execute, seal, and deliver for, and on its behalf as surety or co-surety, bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Company for any portion of the penal sum thereof in excess of the sum of Five Million Dollars (\$5,000,000.00).

Surety Bond No.: 1043210

Principal: Matrix Design Group, Inc.

Obligee: City and County of Denver

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Company as fully and to the same extent as if signed by the President of the Company under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019, a copy of which appears below under the heading entitled "Certificates".

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the sole shareholder of each Company by unanimous written consent effective the 15th day of June, 2019 and said resolution has not since been revoked, amended or repealed:

RESOLVED, that the signature of an individual named above and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, each Company has caused this instrument to be signed by the following officers, and its corporate seal to be affixed this 15th day of June, 2019.

Endurance Assurance Corporation
By: *Richard M. Appel*
Richard Appel: SVP & Senior Counsel



Endurance American Insurance Company
By: *Richard M. Appel*
Richard Appel: SVP & Senior Counsel



Lexon Insurance Company
By: *Richard M. Appel*
Richard Appel: SVP & Senior Counsel



Bond Safeguard Insurance Company
By: *Richard M. Appel*
Richard Appel: SVP & Senior Counsel



ACKNOWLEDGEMENT

On this 15th day of June, 2019, before me, personally came the above signatories known to me, who being duly sworn, did depose and say that he/she is the Officer of each of the Companies; and that he executed said instrument on behalf of each Company by authority of his office under the by-laws of each Company.

By: *Amy Taylor*
Amy Taylor, Notary Public - My Commission Expires 5/9/23



CERTIFICATE

I, the undersigned Officer of each Company, DO HEREBY CERTIFY that:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of each Company and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;
2. The following are resolutions which were adopted by the sole shareholder of each Company by unanimous written consent effective June 15, 2019 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Company any and all bonds, undertakings or obligations in surety or co-surety with others: RICHARD M. APPEL, BRIAN J. BEGGS, CHRISTOPHER DONELAN, SHARON L. SIMS, CHRISTOPHER L. SPARRO, MARIANNE L. WILBERT

; and be it further

RESOLVED, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Company."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this _____ day of _____ 20____.

By: *Daniel S. Lufne*
Daniel S. Lufne, Secretary

NOTICE: U. S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

No coverage is provided by this Notice nor can it be construed to replace any provisions of any surety bond or other surety coverage provided. This Notice provides information concerning possible impact on your surety coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations, and narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's website - <https://www.treasury.gov/resource-center/sanctions/SDN-List>.

In accordance with OFAC regulations, if it is determined that you or any other person or entity claiming the benefits of any coverage has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, any coverage will be considered a blocked or frozen contract and all provisions of any coverage provided are immediately subject to OFAC. When a surety bond or other form of surety coverage is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments may also apply.

Any reproductions are void.

Surety Claims Submission: LexonClaimAdministration@sompo-intl.com

Telephone: 615-553-9500 Mailing Address: Sompo International; 12890 Lebanon Road; Mount Juliet, TN 37122-2870

EXHIBIT F-1

CHANGE RIDER

Notice to Proceed No. _____

TO BE ATTACHED TO AND FORM PART OF

_____ NO: _____
(TYPE OF BOND)

IN FAVOR OF: _____
(OBLIGEE)

ON BEHALF OF: _____
(PRINCIPAL)

EFFECTIVE: _____
(ORIGINAL EFFECTIVE DATE)

IT IS AGREED THAT, in consideration of the original premium charged for this bond, and any additional premium that may be properly chargeable as a result of this change rider,

The Surety, _____, hereby gives is consent to:

- INCREASE BOND PENALTY CHANGE THE NAME OF PRINCIPAL
- DECREASE BOND PENALTY CHANGE THE ADDRESS OF THE PRINCIPAL
- CHANGE THE EFFECTIVE DATE CHANGE THE EXPIRATION DATE
- OTHER: _____

of the attached bond FROM: _____

TO: _____

EFFECTIVE: _____

PROVIDED, however, that the attached bond is subject to all its agreements, limitations, and conditions except as herein expressly modified, and that the liability of the Surety under the attached bond as changed by this rider is not cumulative.

SIGNED AND SEALED THIS _____ DAY OF _____ 201__.

_____ **INSURANCE**

(witness)

By: _____
(Attorney-in-Fact) (Seal)

ACCEPTED BY OBLIGEE

(witness)

By: _____

EXHIBIT G

FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS

During the performance of this contract, the contractor agrees as follows:

Federal Equal Opportunity Clause.

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld,

from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

Federal Water Pollution Control Act

(4) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(5) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in tum, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS."

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the

making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

PROCUREMENT OF RECOVERED MATERIALS

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired-

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm> ."

ADDITIONAL PROVISIONS:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, HHS or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator, HHS or authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

The contractor shall not use the DRS seal(s), logos, crests, or reproductions of flags or likenesses of DRS agency officials without specific FEMA or HHS pre- approval."

This is an acknowledgement that FEMA or HHS financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA or HHS policies, procedures, and directives.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.