

**FUNDING AGREEMENT
SOUTH WESTSIDE CLINIC**

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“**City**”), and the **DENVER HEALTH AND HOSPITAL AUTHORITY**, a body corporate and political subdivision of the State of Colorado (“**Denver Health**”), together the “**Parties**”.

RECITALS:

A. The City and Denver Health have entered into an Operating Agreement dated as of January 1, 1997, as amended (the "Operating Agreement") and a Transfer Agreement dated as of January 1, 1997, as amended (the “Transfer Agreement”), conveying responsibilities for the operation, management and ownership of Denver’s health system assets from the City to Denver Health, in order to ensure that the citizens of Denver will have access to quality preventive, acute and chronic health care regardless of their ability to pay. The City has agreed to provide financial support for those of its citizens described in the Operating Agreement in order that they may obtain such quality health care. Denver Health and the City have been and intend to be collaborative and supportive in carrying out the mission of Denver Health to provide quality preventive, acute and chronic health care regardless of their ability to pay to Denver residents, subject to annual appropriation.

B. Denver Health is now planning for construction of a new South Westside Clinic (the “Facility”) to increase capacity and better serve the Westside neighborhood’s health needs (the Project”).

C. In order to assist Denver Health in carrying out its mission, the City has committed to partially fund the Project.

D. Denver Health has also obtained other funds in the amount of \$32,678,800 to fund the Project.

E. The qualified and registered voters of the City approved referred question 1B on November 6, 2007, approving the issuance of general obligation bonds (the “Better

Denver Bonds” or “Bonds”) by the City in the aggregate principal amount of \$48,583,000.00 for the purpose of financing the cost of health and human services system facilities, including improvements and renovations to Denver Health and Hospital Authority buildings.

F. The Parties wish in this Agreement to provide to Denver Health additional amounts from Denver Better Bonds and from the City’s general fund (“Capital Improvement Fund”) as a contribution to the cost of the Project.

G. Denver Health is willing and has the present capacity to satisfactorily complete and operate the Project for the use and benefit of the citizens of the City, as specified herein or in the Operating Agreement.

H. In accordance with Article XIV, Sec. 18 of the Colorado Constitution, §§ 29-1-203 and 25-29-106 (2) of the Colorado Revised Statutes, and Section 2.12.2 (D) of the Denver Charter, the City and Denver Health are authorized to enter into cooperative agreements of this nature.

AGREEMENTS:

In consideration of the above, and the mutual promises and covenants contained herein, the Parties agree as follows:

1. THE PROJECT: The “Project” refers to the land purchase, design cost, construction cost, project management cost, furniture cost, fixtures cost, equipment cost, and moving cost by Denver Health as described in **EXHIBIT A**. The Project will be funded by the amount made available hereunder and through other sources obtained by Denver Health. Denver Health will perform or cause to be performed all work items and provide all supplementary funds necessary to satisfactorily complete the Project in accordance with the terms and conditions of this Agreement.

2. COORDINATION AND LIAISON:

A. The City’s Manager of Environmental Health (the “Manager”), or the Manager’s designee, is vested with the City’s authority to act on behalf of the City in performing the City’s obligations under this Agreement. The City may change its authorized representative at any time by providing written notice to Denver Health of such change. The Manager will

participate as necessary to review and process invoices and payments.

B. Denver Health’s Chief Operating Officer is Denver Health’s authorized representative under this Agreement and, as such, is responsible for overseeing the satisfactory completion of the Project, in accordance with the terms and conditions of this Agreement and other contribution documents. Denver Health may change its authorized representative at any time by providing written notice to the City of such change.

3. TERM: The term of this Agreement shall commence on January 1, 2014 and end on December 31, 2028.

4. CITY PAYMENT AND RELATED RESPONSIBILITIES

A. As additional consideration for the performance of Denver Health’s mission on behalf of the citizens of the City and in order to enhance the ability of Denver Health to perform the functions and services set forth in the Operating Agreement between the City and Denver Health, the City agrees to pay towards the cost of completing the Project, an amount not to exceed **FOURTEEN MILLION, SIX HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$14,650,000.00)**. This amount shall be paid, subject to appropriations (as more fully described below), according to the following schedule and from the following sources:

- 2014 \$1,400,000 Better Denver Bonds
- 2014 \$450,000 Capital Improvement Fund
- 2015 \$450,000 Capital Improvement Fund
- 2016 \$950,000 Capital Improvement Fund
- 2017 \$950,000 Capital Improvement Fund
- 2018 \$950,000 Capital Improvement Fund
- 2019 \$950,000 Capital Improvement Fund
- 2020 \$950,000 Capital Improvement Fund
- 2021 \$950,000 Capital Improvement Fund
- 2022 \$950,000 Capital Improvement Fund
- 2023 \$950,000 Capital Improvement Fund
- 2024 \$950,000 Capital Improvement Fund
- 2025 \$950,000 Capital Improvement Fund
- 2026 \$950,000 Capital Improvement Fund
- 2027 \$950,000 Capital Improvement Fund
- 2028 \$950,000 Capital Improvement Fund

Total Better Denver Bond Funding	not to exceed	\$ 1,400,000
Total Capital Improvement Fund	not to exceed	\$13,250,000
Total (not to exceed) agreement amount:		\$14,650,000

B. Unless otherwise specified, such funds shall be made available to Denver Health to be expended to pay Project costs incurred in completing the Project including, but not limited to, costs associated with land purchase, design cost, construction cost, project management cost, furniture cost, fixtures cost, equipment cost, moving cost of the clinic as described on Exhibit A. Denver Health may allocate the bond and capital improvement amounts among the Project components described above from time to time.

C. The City shall reimburse Denver Health up to the amount appropriated timely after receiving invoices and supporting documentation from Denver Health.

D. Upon final completion of the Project and as otherwise requested, Denver Health will provide to the City an accounting of all funds expended on the Project and attaching all required or requested supporting documentation. Such accounting, including supporting documentation, shall be sufficient to demonstrate that the City funds have been expended only for actual costs associated with the completion of the Project and in accordance with the terms and conditions of this Funding Agreement. The accounting shall identify each and every expenditure of City funds to Project land purchase, design cost, construction cost, project management cost, furniture cost, fixtures cost, equipment cost, or moving cost category and must provide a total of all expenditures, to date, for each referenced category, regardless of the source of funds.

E. If the actual cost to complete the Project does not exceed the City's payments hereunder, Denver Health agrees to promptly return to the City all payments not expended to pay costs incurred in completing the Project.

F. The City's total payment obligation, whether direct or indirect, under this Funding Agreement, is expressly limited to a maximum amount of **FOURTEEN MILLION, SIX HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS (\$14,650,000.00)**. As such, all other expenditures required to complete the Project or other costs associated with the Project are solely the responsibility of Denver Health, and shall be paid by Denver Health.

G. The parties agree that the obligation of the City for all or any part of its payment obligation hereunder, whether direct or indirect, shall extend only to the payment of funds from the Bond proceeds and Capital Improvement Funds duly and lawfully appropriated by the City Council for the purpose of this Agreement, and paid into the Treasury of the City. The City does not by this Agreement irrevocably pledge present cash reserves for distributions in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

5. DENVER HEALTH PROJECT COMPLETION OBLIGATION AND RELATED RESPONSIBILITIES:

A. Denver Health will provide all administrative functions and staff necessary to complete the Project. Denver Health shall ensure that the Facility meets the specifications necessary for the intended Denver Health operations, and that land purchase, design cost, construction cost, project management cost, furniture cost, fixtures cost, equipment cost, moving cost, and other costs of the Facility comply with all financing and permitting requirements. Specifically, Denver Health shall be solely responsible for and shall carry out through fully qualified and responsive Denver Health representatives, project managers, design professionals, construction contractors and other means, all work or effort necessary to complete the Project including, but not limited to, Project land purchase, design cost, construction cost, project management cost, furniture cost, fixtures cost, equipment cost, moving cost and other services. All such services and other work shall be performed by Denver Health in a lawful, satisfactory and proper manner. Denver Health shall provide the City quarterly reports on the progress made toward Project completion, including funds spent and all other information requested by the Manager.

B. Denver Health will direct all project administration functions and staff necessary to complete the Project.

C. Denver Health will provide and install at the Project construction site, Project signs, in a form mutually agreeable to the City and Denver Health, stating the scope of the Project and acknowledging the participation of the City and the City's Bond and Capital

Improvement Fund contributions to the Project.

D. Denver Health shall be responsible for assuring that all phases of the Project are properly contracted and performed and that the work done and the materials used are in conformance with all applicable laws (local, state, and federal) that govern the performance of the work, including (to the extent applicable) the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations.

E. Denver Health agrees to complete the Project within three (3) years of the date of this Agreement.

6. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, Denver Health agrees not to refuse to hire, discharge, promote or demote, or 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, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts entered into in furtherance of this Agreement.

7. **PUBLIC WORKS REQUIREMENTS:** In addition to compliance with the above-mentioned laws, Denver Health shall be governed and controlled by all limitations and provisions that are imposed on the City Department of Public Works, by the Charter or ordinances of the City. Specifically, such work shall be performed in compliance with them. No solicitation for bids or requests for proposals shall be issued to potential contractors, and no construction contracts shall be entered, until Denver Health has established to the City's reasonable satisfaction that these Charter and ordinance requirements have been fully and appropriately satisfied.

8. **M/WBE REQUIREMENTS:**

A. Denver Health shall comply with the City's, equal employment opportunity programs and with Denver Health's MBE/WBE program

B. Any costs incurred by Denver Health in administering these programs shall be borne by Denver Health.

9. **PAYMENT OF PREVAILING WAGES:** The Parties acknowledge that all construction performed in connection with the Project must comply with the prevailing wage requirements of the Operating Agreement at Section 4.13. As such, Denver Health agrees to cooperate fully with the City Auditor's Office in implementing, administering and enforcing all applicable requirements of the City's Payment of Prevailing Wages Ordinance, Sections 20-76 through 20-79, DRMC, as such ordinances may be amended from time to time.

A. Denver Health shall require that all contractors performing work relating to the construction of the Project comply with these provisions of the Operating Agreement and the DRMC in formulating their bids and, if awarded a contract, in paying all wages to workers and trades.

B. Denver Health shall include, as part of any construction contract let hereunder, the contract language acceptable to the City regarding implementation, administration and enforcement of the prevailing wage requirements.

C. In order to ensure contractor compliance with the prevailing wage requirements, Denver Health shall take any action provided for in the construction contract, or otherwise provided for in the prevailing wage requirements, including withholding funds due and owing any contractor found to be in violation of the prevailing wage requirements.

D. Any costs incurred by Denver Health in facilitating the implementation, administration or enforcement of the prevailing wage requirements shall be borne by Denver Health.

10. **PUBLIC ART:** Denver Health acknowledges that notwithstanding the source of funding, the Project is subject to City ordinances concerning public art in the Project (§§ 20-85 through 28-90, DRMC).

11. **OWNERSHIP, OPERATION AND MAINTENANCE OF COMPLETED PROJECT:** Denver Health shall own and shall be solely responsible and shall pay all costs associated with the operation and maintenance of the completed Project, and the Project shall be treated as a component of the "Real Property" within the meaning of the Transfer Agreement and

shall be fully subject to the terms and conditions of that Agreement unless otherwise agreed to between the City and Denver Health.

12. TAXES AND LICENSES: Neither the City nor Denver Health shall be liable for the payment of taxes, late charges or penalties of any nature.

13. INDEMNIFICATION: To the extent permitted by law, Denver Health agrees to release, indemnify and save harmless the City, its officers, agents and employees from and against any and all loss of or damage to property or injuries to or death of any person or persons, including property and employees or agents of the City, and shall defend, indemnify and save harmless the City, its officers, agents and employees, from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind or nature whatsoever, including Workers' Compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, the construction or operation of the Permanent Facility, and including acts and omissions of Denver Health's employees, representatives, suppliers, invitees, contractors and agents; provided however, that Denver Health need not indemnify or save harmless the City, its officers, agents and employees, from liability or damages resulting from the negligence of the City's officers, agents and employees. Denver Health's obligations set out in this paragraph shall survive the termination of this Agreement. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Denver Health. Denver Health shall maintain, at its own expense, any additional kinds and amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

14. INSURANCE: Denver Health shall procure and maintain insurance in the following types and amounts.

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. Denver Health shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured. Policy will be primary and non-contributory, with no

separation of insured, severability of interests or cross liability provision. This Agreement shall be an Insured Agreement under the policy.

B. Denver Health shall be self-insured for worker's compensation insurance pursuant to the requirements of Colorado law.

C. All-risk property insurance in an amount not less than 100% of the full replacement cost of the Permanent Facility and all improvements thereto. With respect to any period during which construction of the clinic is continuing following disbursement of funds hereunder, Denver Health will require the general contractor to purchase Builders' Risk insurance in an amount not less than 100% of the full replacement cost of the Permanent Facility and all improvements thereto including coverage for soft costs, and, if applicable, equipment breakdown including testing. The City and County of Denver and Denver Health shall be Named Insured under the Builders' Risk policy.

D. Denver Health shall require all design professionals who perform design and services in connection with the Project, including architectural and engineering services, to maintain professional liability insurance coverage for such services in the minimum amount of \$1,000,000.00.

E. Certificates of Insurance evidencing the above shall be submitted to City prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the City's Director of Risk Management.

15. CONFLICT OF INTEREST: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Project or related services or property described herein.

16. NOTICES: Any notice given hereunder may be sent by first class mail. Any notice to the Denver Health shall be addressed to:

Denver Health
Director of Construction
770 Bannock St.
Denver, Colorado 80204.

Any notice to the City shall be addressed to:

Department of Environmental Health
Attn: Manager 200 W. 14th Ave.
Denver, Colorado 80204.

Each party may change its address at any time by notice in writing to the other party.

17. NO THIRD PARTY BENEFICIARIES: The parties agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Denver Health; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. The parties expressly intend that any person other than the City and Denver Health receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. SUBJECT TO LOCAL LAWS; VENUE: Each and every term, provision or condition of this Funding Agreement is subject to and shall be construed in accordance with the provisions of Colorado law, the Charter of the City and County of Denver, and the applicable ordinances, regulations, executive orders, or fiscal rules, enacted or promulgated pursuant thereto. In constructing the Project, Denver Health shall comply with all City regulatory laws, ordinances, rules and regulations generally applicable to entities and property holders in the City. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated into this Agreement as if fully set out by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

19. EXAMINATION OF RECORDS: Denver Health agrees that, for a period of at least three (3) years from completion of the Project, any duly authorized representative of the City, including the City Auditor or his designee, shall have access to and the right to examine any directly pertinent books, documents, papers and records of Denver Health involving the

transactions and other activities related to this Agreement.

20. PARAGRAPH HEADINGS: The captions and headings are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions of this Funding Agreement.

21. EXECUTION OF AGREEMENT: This Agreement is expressly subject to, and shall not be or become effective or binding on the City and Denver Health until fully executed by all signatories of the Denver Health and the City and County of Denver.

22. LEGAL AUTHORITY: Denver Health and the City each represent that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

23. AGREEMENT AS COMPLETE INTEGRATION: AMENDMENTS: This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment shall have any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective only when approved by both parties and executed in the same manner as this Agreement.

24. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of 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.

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