

FOURTH AMENDMENT AND REVIVAL TO INTERGOVERNMENTAL AGREEMENT

THIS FOURTH AMENDMENT AND REVIVAL TO INTERGOVERNMENTAL AGREEMENT (“Fourth Amendment”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the “City”) and **DENVER HEALTH AND HOSPITAL AUTHORITY, D/B/A DENVER HEALTH MEDICAL CENTER**, a body corporate and political subdivision of the State of Colorado, located at 601 Broadway MC 1919, Denver, Colorado 80203 (the “Agency”), each a “Party” and collectively the “Parties.”

RECITALS:

A. The Parties entered into that Intergovernmental Agreement executed on or about July 22, 2020 (the “Original Agreement”) concerning the allocation of “Grant Funds” to the Agency from “FEMA” pursuant to the terms and conditions of that “Grant Agreement” entered into between the City and the State of Colorado Department of Public Safety, Division of Homeland Security and Emergency Management (“CO Public Safety”); and

B. On June 8, 2022, the Parties executed that First Amendment to Intergovernmental Agreement, thereby amending the Original Agreement to expand the amount and type of Agency costs eligible for reimbursement pursuant to the Grant Agreement (the “First Amendment”); and

C. On September 6, 2022, the Parties executed that Second Amendment and Revival to Intergovernmental Agreement, thereby reviving the Original Agreement and amending the Original Agreement to extend its term to December 31, 2023 and to incorporate a new Exhibit F-2 to the Original Agreement (“Second Amendment”); and

D. On or about January 6, 2023, the Parties executed that Third Amendment to Intergovernmental Agreement, thereby amending the Original Agreement to update the local matching requirement for the receipt of Grant Funds and to incorporate new Exhibits F-3 and F-4, respectively, to the Original Agreement (“Third Amendment”); and

E. Collectively, the Original Agreement, the First Amendment, the Second Amendment, and the Third Amendment shall be referred to herein as the “Agreement;” and

F. In furtherance of the intent and goals of the Parties described in the Agreement, the Agency has performed certain Agency Work in the aggregate amount of Thirteen Million Eight Hundred Ninety-Three Thousand Nine Hundred Ninety-Two Dollars and Twelve Cents

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(\$13,893,992.12) (“Specific Agency Work”), and has submitted a Statement of Agency Work to CO Public Safety in accordance with the Agreement to permit the Agency to seek reimbursement for the Specific Agency Work from the City out of available Agency Funds (“Specific Statement of Agency Work”); and

G. The Agency has notified the City that, due to its technical nature, CO Public Safety has forwarded the Specific Statement of Agency Work to FEMA to further evaluate and, if appropriate, approve the Specific Statement of Agency Work; and

H. It is unknown at this time when or if CO Public Safety or FEMA, as applicable, will approve the Specific Statement of Agency Work and whether such approval, if provided, will be for the entirety of the Specific Statement of Agency Work or only in part; and

I. The Parties desire for the City to immediately provide to the Agency the Agency Funds attributable for the Specific Agency Work while CO Public Safety and FEMA, as applicable, review and consider the approval of the Specific Statement of Agency Work; and

J. In the event that CO Public Safety and FEMA, as applicable, deny, disallow or only partially approve the Specific Statement of Agency Work, CO Public Safety has informed the City that the City would be responsible for paying back to FEMA any amounts of Agency Funds that were reimbursed to the Agency from the City for such fully- or partially-denied or -disallowed Specific Agency Work performed by the Agency; and

K. The Parties desire to provide protection to the City in the event that the Specific Statement of Agency Work is denied or disallowed, in full or in part, after the City has provided reimbursement in full to the Agency for the Specific Agency Work out of available Agency Funds; and

L. Subsequent to the execution of the Agreement, the maximum contract amount for the Agency Work funded by the Agency Funds has decreased from Twenty-Five Million Three Hundred Twenty-One Thousand Sixty Dollars and Fifty Cents (\$25,321,060.50) to Twenty-Four Million Four Hundred Eighty Thousand Seven Hundred Thirty Dollars and Ninety-Three Cents (\$24,480,730.93); and

M. By its terms, the Agreement expired on December 31, 2023; and

N. Rather than enter into a new contract, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the Term, as well

as amend the terms and conditions of the Agreement to memorialize the changes described herein, all for the purpose of business continuity.

NOW THEREFORE, in consideration of the premises and the Parties' mutual covenants and obligations, the Parties agree as follows:

1. Unless otherwise defined herein, all capitalized terms described in this Fourth Amendment shall have the meaning ascribed in the Agreement.

2. Section 6 of the Agreement, entitled "**MAXIMUM CONTRACT AMOUNT**," shall be replaced and restated in its entirety to read as follows:

"6. MAXIMUM CONTRACT AMOUNT. The maximum contract amount for the Agency Work funded by the Agency Funds shall be Twenty-Four Million Four Hundred Eighty Thousand Seven Hundred Thirty Dollars and Ninety-Three Cents (\$24,480,730.93), with a corresponding local match requirement per the Grant Agreement as detailed in the following schedule: 1) zero percent (0%) matching from the City, or any sub-grantees or Subcontractors (as defined in the Grant agreement), through July 1, 2022; and 2) ten percent (10%) matching from the City, or any sub-grantees or Subcontractors (as defined in the Grant Agreement), from July 2, 2022 until December 31, 2023, all as a condition to receive reimbursement for the expenditure of any Agency Funds. The City shall not be responsible for payment of any Agency Funds matching requirement, and such responsibility shall be solely borne by the Agency. Notwithstanding the foregoing, the Parties acknowledge and agree that the Agency Funds matching requirement detailed herein, as applicable, may be eligible for reimbursement under the Grant Agreement and may be reimbursed from Grant Funds and/or directly paid by FEMA. The City shall not encumber or appropriate any of the Agency Funds for any other purpose during the Term (as defined below in Section 7) without the prior written consent of the Agency."

3. Section 7 of the Agreement, entitled "**TERM**," shall be replaced and restated in its entirety to read as follows:

“7. **TERM.** The Term of the Agreement is from April 21, 2020 and terminates on December 31, 2024. The City may terminate this Agreement, or any part thereof, for the reasons and in the manner provided in the Grant Agreement.”

4. Section 8 of the Agreement, entitled “**REIMBURSEMENT**,” shall be replaced and restated in its entirety to read as follows:

“8. **REIMBURSEMENT.** The Agency may seek reimbursement from the Agency Funds for expenditures identified in the Grant Agreement, subject to the terms and conditions of the Grant Agreement and this Agreement. If, and to the extent, that any Statements of Agency Work prepared and submitted by the Agency are denied, in full or in part, by CO Public Safety or FEMA, as applicable, and CO Public Safety or FEMA, as applicable, seek to recoup or has actually recouped from the City any disallowed Agency Funds that had been previously reimbursed from the City to the Agency (as calculated, “Disallowed Agency Funds”), the Agency shall, upon notice from the City: a) promptly remit to the City an amount equal to the Disallowed Agency Funds within thirty (30) days of written demand by the City; and b) unless excused by the City in its sole discretion, a failure by the Agency to timely remit such amounts to the City shall be a material breach of this Agreement and the City shall be entitled to exercise any and all rights and remedies afforded to it under applicable law and in accordance with this Agreement. The Agency’s obligations and the City’s rights detailed in this Section 8 pertaining to the Disallowed Agency Funds shall expressly survive the expiration or termination of this Agreement.”

5. Section 11 of the Agreement, entitled “**APPROPRIATIONS**,” shall be replaced and restated in its entirety to read as follows:

“11. **APPROPRIATIONS.** The City’s obligations under this Agreement or any renewal or extension thereof, whether direct or contingent, extend only to monies appropriated for the purposes of this Agreement by the Denver City Council, paid into the City Treasury, and

encumbered for the purposes of this Agreement. The Agency's obligations under this Agreement or any renewal or extension thereof, whether direct or contingent, extend only to monies appropriated for the purposes of this Agreement by the governing body of the Agency and encumbered for the purposes of this Agreement. By execution of this Agreement, neither Party irrevocably pledges present cash reserves for payments in future fiscal years and this Agreement does not, and is not intended, created a multiple-fiscal year direct or indirect debt or financial obligation of either Party. Notwithstanding anything in the foregoing to the contrary, the City's payment obligations under this Agreement shall extend only to those Agency Funds actually received by the City. The terms and conditions of this Section 11 shall expressly survive the expiration or termination of this Agreement."

6. A new Section 31, entitled "**LIABILITY**," shall be inserted and incorporated into the Agreement as follows:

"31. LIABILITY. Agency agrees to be responsible for any negligent or wrongful acts or omissions of its officers, employees, and agents arising from this Agreement. The Parties acknowledge that the Agency is covered and self-insured by, and subject to the liability limitations set forth in, the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as amended, and has not waived the monetary limitations and all other rights, immunities and protection provided therein."

7. A new Section 32, entitled "**COMPLIANCE WITH DENVER WAGE LAWS**," shall be inserted and incorporated into the Agreement as follows:

"32. COMPLIANCE WITH DENVER WAGE LAWS: To the extent applicable to the Agency's provision of services hereunder, the Agency shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state,

federal, and City law in accordance with the foregoing D.R.M.C. sections. By executing this Agreement, the Agency expressly acknowledges that the Agency is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Agency, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. sections shall result in the penalties and other remedies authorized therein."

8. Except as explicitly herein amended, and despite a previously-stated expiration date of December 31, 2023, the Agreement is hereby revived and reinstated as it existed prior to the previous expiration of the Term, continues in effect, and is affirmed and ratified in each and every particular.

9. This Fourth Amendment will not be effective or binding upon the City until it has been fully executed by all required signatories of the City and County of Denver and, if required by the City Charter, approved by the City Council.

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number:
Contractor Name:

FINAN-202473599-04 [202054689-04]
DENVER HEALTH AND HOSPITAL AUTHORITY

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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:

FINAN-202473599-04 [202054689-04]
DENVER HEALTH AND HOSPITAL AUTHORITY

By:  _____
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Name: Amanda Breeden
(please print)

Title: Sr. Director, SPARO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)