

EMERGENCY OCCUPANCY AGREEMENT

THIS EMERGENCY OCCUPANCY AGREEMENT (this "Agreement") is made and entered into as of this ___ day of April, 2020, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the "City" or "Government") and **MHF Denver Manager V LLC, as agent for MHF Denver Operating V LLC, d/b/a the Hampton Inn & Suites Denver-Downtown** whose address is 1845 Sherman Street, Denver, Colorado 80203 (the "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of that hotel facility (the "Building") consisting of one hundred fifty-one (151) hotel rooms (each a "Room" and collectively, the "Rooms") located at 1845 Sherman Street, Denver, Colorado 80203 (collectively, with the parking lot, and all improvements, equipment, building systems and furniture, and the laundry area located thereon or therein, but excluding all areas of the Building other than the Rooms, such excluded areas include, but are not limited to, all ballrooms and meeting rooms, bars, restaurants, kitchen areas, the pool and gym, the "Property");

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. ("City Emergency Declaration"), due to 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 ("Nationwide Emergency Declaration");

WHEREAS, the Assistant Administrator for Recovery of the U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) has the authority to approve non-congregate sheltering under existing policy in FP 104-009-2, *Public Assistance Program and Policy Guide* and pursuant to a FEMA memorandum dated March 18, 2020, under the Nationwide Emergency Declaration, and for the duration of the National Secretary of Health and Human Services' declaration of a Public Health Emergency for COVID-19, the Assistant Administrator delegated such authority to the Regional Administrators;

WHEREAS, pursuant to the foregoing FEMA memorandum, the Executive Director of the Denver Department of Public Health & Environment ("DDPHE"), pursuant to Section 24-16 of the Denver Revised Municipal Code, issued a Non-Congregate Sheltering Order dated March

21, 2020 directing and authorizing the City staff to take all reasonable steps necessary to provide non-congregate sheltering along with necessary support services to members of the public in the City and County of Denver as necessary to protect all members of the public in the City and County of Denver as necessary, especially members most vulnerable to COVID-19;

WHEREAS, the City wishes to contract for the use of the Property from Owner and Owner desires to sell the Rooms on the Property to the City on an expedited, emergency basis for the duration necessary to address the public health needs due to the COVID-19 pandemic on and subject to the terms hereof.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Owner agree as follows:

1. **OCCUPANCY**: The City hereby contracts for the use of the entire Property, including all one hundred fifty-one (151) Rooms within the hotel to be utilized, as more fully set forth in Section 4. The City's Invitees shall only have access to and use of their Room inside the hotel, 24 hours per day, seven (7) days per week, as more fully set forth in this Agreement (the "Occupied Premises"); provided, however, and for the avoidance of doubt, the Occupied Premises shall specifically exclude (and the City's Invitees shall have no right to use or enter) any common areas of the hotel, except as a means of ingress and egress, including, but not limited to the hotel lobby, the fitness center, and pool (if applicable) without the prior written consent of Owner.

2. **TERM**: The term of this Agreement shall begin on the date this Agreement is executed by the City (the "Commencement Date") and terminate at 11:59 P.M. MST on May 31, 2020 ("Term"), *provided, however*, the parties agree that the Term shall not extend beyond: (i) the duration of the Public Health Emergency, as that term is defined under the Nationwide Emergency Declaration, or (ii) May 31, 2020 without the prior written, mutual agreement of both parties. Notwithstanding the foregoing, the City may terminate this Agreement at any time prior to May 31, 2020, upon expiration of the Public Health Emergency or as otherwise stated herein. The Parties shall have the option to extend this Agreement for three (3) additional one-month terms by both Parties executing a letter of extension. The letter of extension shall be executed by both Parties no later than twenty-one (21) days prior to the expiration of the then-current term. On behalf of the City, the City's Director of Real Estate or the Director's authorized designee shall have authority to execute letters of extension.

3. **FEES**: The City shall pay to Owner an amount equal to SIXTY DOLLARS (\$60) per Room per night (regardless of occupancy) during the Term, which amount shall be paid to Owner in arrears on Monday of each week (Monday through Sunday) (the “Weekly Fees”). Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed ONE MILLION SIX HUNDRED TWENTY-FIVE THOUSAND TWO HUNDRED EIGHTY AND NO/100 (\$1,625,280.00) (the “Maximum Contract Amount”).

4. **USE**: The Property is to be used by the City for providing quarantined accommodations for high-risk, homeless individuals not yet exposed to (or diagnosed with) COVID-19 during the Public Health Emergency (each invitee of the City shall hereinafter be individually a “City Guest,” or “City Invitee, and collectively the “City Invitees”), and the City shall use the Property in a careful, safe, and proper manner in accordance with all present and future applicable laws, statutes, treaties, rules, orders, ordinances, codes, regulations, and requirements (including, without limitation, those pertaining to health, healthcare, safety or the environment) (collectively, “Laws”). The City acknowledges and agrees that: (i) each City Guest will be pre-screened prior to being on the Property for COVID-19; (ii) any City Guest experiencing COVID-19-like conditions during their stay will be immediately transferred off of the Property to a facility qualified to handle such issues, and to ensure the health and safety of both Owner’s employees and the other City Guests; (iii) each City Guest will be required to remain in their Room and will not be allowed to congregate or use hotel common areas; provided, however, City may implement procedures to allow no more than five (5) City Guests access to a designated space on the Property outside of the hotel for fresh air and exercise; (iv) any and all illegal activity, including, but not limited to drug use is not permitted on the Property, and any City Guest determined to have engaged in any illegal activity will be immediately removed (by the City) from the Property; (v) the City will monitor and enforce capacity restrictions limiting one (1) person per Room for single occupancy rooms, and two (2) people per Room for dual occupancy rooms; and (vi) each City Guest will be required to execute the Indemnification, Waiver and Release form attached hereto as **Exhibit B** (the “Release”), and further agrees that no City Guest will be allowed to occupy a Room without a fully executed Release in hand, with all Releases delivered to Owner daily, as they become available.

5. **“AS IS” CONDITION:** The Property is accepted by the City in its present condition, and the City accepts the Property “AS IS” and “WHERE IS,” with all faults and defects. Owner does not make any, and hereby disclaims all, warranties and/or representations whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to any matter or circumstance affecting the Property, including, without limitation, the location, use, description, design, merchantability, fitness for use for a particular purpose, condition or durability thereof, or as to the quality of the material or workmanship therein or the environmental condition thereof.

6. **SERVICE OPERATIONS COSTS AND CHARGES:**

(a) Included in the Weekly Fees is all day to day utilities, including but not limited to water, gas, sewer, heat, light, power, and telephone service (for local calls only), which shall be paid directly by Owner during the Term. The City shall be responsible, at its sole cost and expense, for all security and regular housekeeping services of the Rooms, as more fully set forth on **Exhibit A**, attached hereto; provided, however, that the City may enter into separate agreements with third parties to provide such services to the Property. The City and Owner shall mutually agree, both acting reasonably, on a trash removal protocol that the Parties will implement and follow during the Term at Owner’s cost and expense. Owner shall be responsible for the laundry service, janitorial services for the Building, daily housekeeping services outside of the Rooms, all day to day maintenance and maintenance of mechanical systems and the Building exterior, interior lobby, hallways, any other interior common areas and will provide front desk reception services at the Building for purposes of issuing keys for Rooms, as more fully set forth on **Exhibit A**, attached hereto. All interactions necessitated by Owner’s maintenance and front desk staff in the performance of their duties will be limited to direct interaction with City representatives, and at no point will Owner’s staff be obligated or expected to interact or come into contact with the City’s Guests occupying the Rooms.

(b) Owner shall pay for and ensure proper performance of all maintenance and repairs, unless caused by the negligence or willful misconduct of the City or its agents, employees, contractors, guests, invitees and permittees, including any of the City’s Guests housed in any Room.

(c) The City shall pay for and provide on-site security service for the Building, which shall include, at a minimum, staffing one on- or off-duty police officer in the lobby of the Building at all times.

(d) After each occupant vacates a Room, and prior to a new occupant using such Room, the City shall cause, at its sole cost and expense, such Room to be sanitized and decontaminated in accordance with the standards and scope of work described on **Exhibit D** attached hereto. The Owner shall launder all linens used during the Term in accordance with Centers for Disease Control and Prevention (“**CDC**”) and Colorado Department of Public Health and Environment (“**CDPHE**”) protocols. All other cleaning and operations by the City must comply with all applicable CDC and CDPHE protocols.

7. **IMPROVEMENTS AND ALTERATIONS:**

(a) **By Owner:** Except as expressly stipulated in Section 6 above, the Owner shall not be required to make any improvements to the Property during the term of this Agreement.

(b) **By The City:** The City shall make no alterations in or additions to the Property without first obtaining the written consent of the Owner, which consent may be withheld in Owner’s sole discretion.

8. **ENTRY BY OWNER:** The City shall permit Owner to enter into and upon the Property at all reasonable hours to inspect the same, and make any repairs deemed necessary by the Owner. Prior to entering any Rooms, Owner shall contact James Ginsberg, Denver Department of Housing Stability, cell phone number: (720) 296-6355, email: James.Ginsburg@denvergov.org, the City designated representative, and coordinate with the City designated representative such entry. Notwithstanding the foregoing, all employees of Owner providing the services set forth in Section 6 above shall have the ongoing right, and the City hereby consents to and permits such employees, to enter upon and perform such employee’s duties on the Property as set forth in Section 6, including the Owner’s general manager and engineers.

9. **CARE AND SURRENDER OF THE PROPERTY; DECONTAMINATION:**

At the expiration or earlier termination of this Agreement, the City shall deliver the Property to the Owner in the same condition as the Property was in at the Commencement Date, ordinary wear and tear excepted; *provided, however*, the City shall cause the Rooms to be sanitized and decontaminated in accordance with the standards and scope of work described on **Exhibit D** attached hereto.

10. **CITY'S INSURANCE / LOSS OR DAMAGES:**

(a) **Workers' Compensation Insurance:** The City maintains Workers' Compensation coverage as required by Statute for all City employees. Such insurance is provided on a combination of self-insurance and excess insurance.

(b) **Commercial General Liability –** The City is self-insured for Commercial General Liability insurance. Such self-insurance includes coverage for bodily injury or property damage.

(c) The City qualifies as a Self-Insurer pursuant to State of Colorado Self-Insurer requirements. The City's Self Insurance Letter is accepted as evidence of such coverage.

(d) City shall not be liable or responsible to Owner for any loss or damage to any property or person occasioned by fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity. If the Property, through no fault or neglect of the City, its agents, its employees, invitees, or visitors shall be partially destroyed by fire or other casualty so as to render the Property or any portion thereof untenable, and Owner elects to repair the same, this Agreement shall continue in full force and effect. In the event such repairs cannot be made within 15 days, the City may elect to terminate this Agreement. In the event of the total destruction of the Property, or partial destruction in the event the Owner elects not to repair the Property, without fault or neglect of the City, its agents, employees, invitees, or visitors, or if from any cause the Property shall be so damaged, then all Fees owed up to the time of such destruction shall be paid by the City and this Agreement shall terminate and be of no further force and effect.

(e) By virtue of provisions of Colorado law, the City does not have the authority to, and shall not, indemnify a contractor; provided, however, the City agrees to reimburse Owner for loss, liability or expense up to a maximum of THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) for all loss, liability or expense under this Agreement regardless of nature, including, but not limited to individual or class claims arising in tort, contract or statute, that arises out of or relates to: (i) the City's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the City is established by a court of law or where settlement has been agreed to between the City and Owner, or (ii) third party claims brought against Owner that result from Owner's affiliation with this Agreement. The THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000) maximum liability is the City's total possible liability under this Agreement, and is not a per occurrence, per event,

per claimant, or any other individual liability maximum. This provision shall not be construed to limit the City's rights, claims or defenses that arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the City arising out of its status as an instrumentality of a sovereign state or entity, or under the Eleventh Amendment to the United States Constitution.

11. **REMEDIES UPON BREACH BY CITY:** In the event of a breach of this Agreement by the City, Owner may, in addition to all of the rights and remedies provided at law or in equity, terminate this Agreement, but shall not be entitled to damages other than Fees due for the period occupied, except as set forth in Section 10(e).

12. **REMEDIES UPON BREACH BY OWNER:** In the event of a breach of this Agreement by the Owner, the City may, at the discretion of the Director of Real Estate, deliver written notice to Owner of such breach. Owner shall be given the right to cure any breach or deficiencies noted within ten (10) days of written notice from the City. If such cure is effected within the ten (10) day period, this Agreement will not be terminated. Determination of whether a cure has been effected shall be at the reasonable discretion of the Director of Real Estate. If Owner fails to cure such breach before expiration of the cure period, then the City may terminate this Agreement upon ten (10) days written notice to Owner.

13. **NONDISCRIMINATION:** In connection with Owner's performance pursuant to this Agreement, Owner 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, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts hereunder for work on the Property.

14. **OWNER'S INSURANCE:**

From the Commencement Date of this Agreement, and at all times throughout the Term, Owner shall carry and maintain the following insurance policies. Owner certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. Owner 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. The required insurance shall 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 shall

contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Owner shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties 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. The City shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Owner. The Owner shall maintain any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(a) **Workers' Compensation/Employer's Liability Insurance:** Owner shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims;

(b) **Property Insurance:** Owner shall provide 100% replacement cost for Owner's Property.

(c) **Commercial General Liability:** Owner 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. Owner's coverage is to be primary and non-contributory with any coverage or self insurance maintained by the City. The City and County of Denver, its officers, officials and employees shall be included as additional insureds.

(d) **Waiver of Subrogation and Rights of Recovery** against the City, its officers, officials and employees for all coverages required;

(e) The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Management Office may reasonably require, are to be provided to the City

upon execution of this Agreement. 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 this Agreement shall not act as a waiver of Owner's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

15. **VENUE, GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the State District Court in and for the City and County of Denver, Colorado.

16. **ASSIGNMENT:** The Owner shall not assign, or transfer its rights under this Agreement without first obtaining the written consent of the Director of Real Estate. The City shall have the right (without prior consent of Owner) to grant occupancy of the Rooms to individuals in compliance with the requirements of this Agreement.

17. **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 Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Owner 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 audits pursuant to this paragraph shall require Owner to make disclosures in violation of state or federal privacy laws. Owner shall at all times comply with D.R.M.C. 20-276.

18. **AMENDMENT:** No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, however, the Director of Real Estate shall have the authority as

a representative of the City to execute agreements on behalf of the City which make technical, minor, or non-substantive changes to this Agreement. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

19. **SEVERABILITY**: If any portion of this Agreement is determined by a court to be unenforceable for any reason, the remainder of the Agreement remains in full force and effect.

20. **BINDING EFFECT**: This Agreement when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto, subject to assignment in accordance with Section 16 above.

21. **THIRD PARTIES**: This Agreement does not, and shall not be deemed or construed to, confer upon or grant to and third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

22. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City:	Mayor's Office City and County Building 1437 Bannock Street, Room 350 Denver, CO 80202
With copies to:	Denver City Attorney Denver City Attorney's Office 201 West Colfax Avenue, Dept. 1207 Denver, CO 80202
	Director of Real Estate 201 West Colfax Avenue, Dept. 1010 Denver, Colorado 80202
To Owner:	MHF Denver Operating V LLC c/o Magna Hospitality Group 300 Centerville Road, Suite 300 East Warwick, Rhode Island 02886 Attention: Antonio Lacdao Phone No.: (401) 562-2205

Email:
antonio.lacdao@magnahospitality.com

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the other party.

23. **ENTIRE AGREEMENT**: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. Further, this Agreement supersedes any and all prior written or oral agreements between the parties.

24. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any performance hereunder constitute or be construed to be a waiver by any party or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be deemed or taken to be a waiver of any other default or breach.

25. **NO PERSONAL LIABILITY**: No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of the City or Owner shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

26. **CONFLICT OF INTEREST BY CITY OFFICER**: The City represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interest in this Agreement, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

27. **APPROPRIATION**: The obligations of the City pursuant to this Agreement or any renewal shall extend only to monies appropriated for the purpose of this Agreement by the City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. Owner acknowledges that (i) City does not by this Agreement irrevocably pledge present cash reserves for Weekly Fee payments in future fiscal years; and (ii) this Agreement is not intended to

create a multiple-fiscal year direct or indirect debt or financial obligation of the City. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any matters, except as required by the City's Revised Municipal Code.

28. **REASONABLENESS OF CONSENT OR APPROVAL:** Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider any municipal, state or federal emergency declarations, public and governmental policy, moral and ethical standards, as well as business and economic considerations.

29. **OWNER REPRESENTATIONS AND WARRANTIES:** Owner represents and warrants that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Owner.

30. **SECTION HEADINGS:** The section headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections to which they refer.

31. **CITY'S EXECUTION OF AGREEMENT:** This Agreement shall not be or become effective or binding on the parties hereto until full execution by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council..

32. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The parties consent to the use of electronic signatures hereto. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the applicable party 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.

33. **TERMINATION FOR CONVENIENCE:** In accordance with Federal Acquisition Regulation (FAR), the Contracting Officer (as defined in the FAR), by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment of

provisions of this contract for services rendered before the effective date of termination.

34. **FEMA PROVISIONS:** Owner shall comply, to the extent certain provisions are applicable to the Agreement, with the FEMA provisions attached hereto as **Exhibit E** and incorporated herein. In **Exhibit E**, the terms “Contractor” or “contractor” shall mean the Owner.

List of Exhibits:

Exhibit A – Scope of Services

Exhibit B – Waiver and Release

Exhibit C – Certificate of Insurance

Exhibit D – Sanitize and Decontaminate Standards and Scope of Work

Exhibit E – FEMA Provisions

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number:
Contractor Name:

FINAN-202054346-00
MHF DENVER OPERATING V 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:

FINAN-202054346-00
MHF DENVER OPERATING V LLC

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

OWNER

MHF DENVER Manager V LLC, as agent for
MHF DENVER Operating V LLC,
d/b/a Hampton Inn & Suites Denver-Downtown

By: 

Name: MICHAEL GAUDIN

Title: GENERAL MANAGER

EXHIBIT A
SCOPE OF SERVICES

Owner and City Services

Owner Services:

1. The entire Building will be committed to the City. Owner will not house any other guests.
2. Grab and go bags will be provided for breakfast and may include: fruit, granola bars, bagels and or pastry. No other food and beverage will be provided.
3. Once per week, deliver a weekly supply of coffee pods for each Room. All rooms have a coffee maker.
4. Soap, shampoo and conditioner will be delivered outside the door of each Room once every 3 days.
5. Clean linens will be delivered outside the door of each Room once every 7 days (or upon request in case of emergency).
6. Clean towels will be delivered outside the door of each Room once every 3 days (or upon request in case of emergency).
7. Trash cans will be set outside of each Room next to the Room door and Owner will empty the trash cans once per day (or upon request in case of emergency), in addition to collecting and emptying all trash on the Property.
8. Owner will provide 24-hour front desk staffing.
9. Maintenance staffing from 6am to 11pm daily.
10. Owner will provide staff daily to clean all public areas of the Property.
11. Owner will ensure that no optional or additional services subject to extra costs are available to the Rooms, such as, but not limited to, pay-per-view or premium television, room service food and beverage, and long-distance calling, so that no City Guest can make additional charges to the Room.

City Services:

1. City will provide 24-hour security staffing to ensure (among other things) that there is no congregating of City Guests either outside or in common areas of the Property or illegal activity occurring on the premises.
2. City will screen all City Guests for symptoms of COVID-19 by checking each City's Guest's temperature on a regular basis. Any City Guests exhibiting COVID-19 symptoms or a fever will be moved to other facilities.
3. After departure each Room will be left vacant for 48 hours before the City provided contractors will come in to deep clean it.
4. To the extent that there is any bio-med waste, it will be picked up and disposed of by the City.
5. City will ensure that all City Guests stay confined to their rooms and are not congregating and utilizing the common spaces of the hotel. Any City Guests needing to go outside will be accompanied by City staff in groups of no more than five (5) on a schedule mutually agreed upon by the City and Hotel.
6. City will relocate any unruly City Guests (or guests engaged in illegal behavior) to other facilities.

EXHIBIT B
INDEMNIFICATION, WAIVER AND RELEASE

INDEMNIFICATION, WAIVER AND RELEASE

The undersigned is staying as a guest at the Hampton Inn & Suites Denver-Downtown whose address is 1845 Sherman Street, Denver, Colorado 80203 (the "**Hotel**"), pursuant to an emergency group contract with the City and County of Denver (the "**Contract**") in connection with the Covid-19 pandemic (the "**Emergency Event**"). The undersigned understands that the Hotel's agreement to permit guest access to the Hotel during the Emergency Event is conditioned upon his or her execution of this Indemnification, Waiver and Release.

THIS DOCUMENT IS AN INDEMNIFICATION, WAIVER AND RELEASE, which means by signing it I am waiving and releasing all legal rights (held by myself, and on behalf of my heirs, assigns, personal representatives and next of kin) to claim, sue or attempt to hold liable the parties being released as to any injury, death or property damage sustained in connection with my limited right to remain on the premises of the Hotel during (and in the aftermath of) the Emergency Event. Intending to be legally bound hereby, I voluntarily, knowingly, completely and forever release, waive and discharge the Hotel, MHF Denver V LLC, MHF Denver Operating V LLC, MHF Denver Manager V LLC, Magna Hospitality Group, et al, the City and County of Denver, the franchisor, any applicable lender, and all of their affiliated companies (collectively, the "**Released Parties**"), from any and all claims, actions, costs, losses, expenses, demands, damages or other liabilities, known or unknown, absolute or contingent, and whether or not fixed, which I ever had, now have or might in the future have against any of the Released Parties, resulting in any manner from the my stay (and if applicable, my family's stay) at the Hotel. Without limiting the generality hereof, this release covers claims for personal and emotional injuries, property damage, claims for attorneys' fees and costs, claims for liquidated damages, compensatory, general and punitive damages, and every other kind of relief available at law or in equity, whether accrued now or hereafter.

By executing this Indemnification, Waiver and Release, I hereby assume all risks and dangers (whether known, unknown or hereafter discovered, anticipated or unexpected, real or imaginary, contingent or otherwise) and all responsibility for any losses and/or damages, whether caused in whole or in part by the conduct or omission (including all negligent acts and omissions) of any of the Released Parties.

I hereby further agree to indemnify, hold harmless, and defend the Released Parties, from and against any and all claims, losses, costs, damages, liabilities or expenses of any nature whatsoever (including attorneys' fees) arising out of or relating to my stay (and if applicable, my family's stay) at the Hotel. My duty to indemnify, hold harmless, and defend the Released Parties shall survive the conclusion of the stay at the Hotel.

I acknowledge and agree that (i) due to the Emergency Event my stay may include restricted access to certain parts of the Hotel that may be adjusted on a daily basis in the sole and absolute discretion of the Released Parties, (ii) certain normal hotel services may not be provided or may be interrupted as a direct or indirect result of the Emergency Event, including, but not limited to, housekeeping, food and beverage service, hotel security, and utilities (water, electricity, telephone, etc.), (iii) the Released Parties will have no obligations to provide any replacement services or compensation whatsoever to me in connection with my limited access to the Hotel during (and in the aftermath of) the Emergency Event, and (iv) I (and my family, if applicable) will promptly vacate the Hotel at the request of the Released Parties, if required for any reason in association with the Contract and/or the Emergency Event.

I EXPRESSLY AGREE AND UNDERSTAND THAT THIS INDEMNIFICATION, WAIVER AND RELEASE IS INTENDED TO BE A COMPLETE AND IRREVOCABLE RELEASE OF ALL CLAIMS AND LOSSES AND INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CIRCUMSTANCES OTHER THAN AS PROVIDED FOR HEREIN, COULD INCLUDE AN INDEMNIFICATION BY ME OF RELEASED PARTIES FROM CLAIMS OR LOSSES ARISING AS A RESULT OF THE RELEASED PARTIES' OWN NEGLIGENCE OR THE NEGLIGENCE OF RELEASED PARTIES' EMPLOYEES WHETHER OR NOT SUCH NEGLIGENCE IS PASSIVE OR ACTIVE.

If any provision of this Indemnification, Waiver and Release is declared invalid, the remaining provisions remain enforceable. I may seek advice from legal counsel before signing this Indemnification, Waiver and Release. By signing this Indemnification, Waiver and Release, I acknowledge that either I have sought the advice of legal counsel or wish to waive the opportunity to seek the advice of counsel before signing this Indemnification, Waiver and Release.

I AM AT LEAST 18 YEARS OLD. I HAVE READ THIS INDEMNIFICATION, WAIVER AND RELEASE CAREFULLY. I FULLY UNDERSTAND ITS TERMS. I UNDERSTAND THAT I HAVE GIVEN UP IMPORTANT RIGHTS BY SIGNING IT, AND I HAVE SIGNED IT KNOWINGLY, FREELY AND VOLUNTARILY WITHOUT ANY DURESS OR COERCION, INTENDING TO BE LEGALLY BOUND.

Signature: _____

Print Name: _____

Date: _____

EXHIBIT C
OWNER'S CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/06/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh USA, Inc.
3031 N. Rocky Point Drive West, Suite 700
Tampa, FL 33607
Attn: Tampa.CertRequest@marsh.com; FAX: 212-948-0529

CONTACT NAME:	
PHONE (A/C, No, Ext):	FAX (A/C, No):
E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE	
INSURER A: Liberty Mutual Fire Insurance Company	NAIC # 23035
INSURER B: The First Liberty Insurance Corporation	33588
INSURER C: QBE Insurance Corporation	39217
INSURER D: Employers Insurance Company Of Wausau	21458
INSURER E:	
INSURER F:	

CN101440483-AII-GAWUL-19-20

INSURED
Magna Hospitality Group, LC
The Summit @ Warwick Exec. Park
300 Centerville Road, Suite 300 East
Warwick, RI 02886

COVERAGES

CERTIFICATE NUMBER:

ATL-005052137-01

REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	SUBROGATION	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			TB2691542512069	05/01/2019	05/01/2020	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER:			AS6691542512049	05/01/2019	05/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ COMP/COLL DED \$ 500
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CCU3977161	05/01/2019	05/01/2020	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WCC691542512039	05/01/2019	05/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Liquor Liability			TO2691542512079	05/01/2019	05/01/2020	Each Common Cause 1,000,000 Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The City and County of Denver are included as additional insured where required by written contract with respect to general liability. The general liability is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured and where required by written contract. Waiver of subrogation is applicable where required by written contract. 30 Day Notice of Cancellation to Third Parties

CERTIFICATE HOLDER

The City and County of Denver

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.

Susan B. Vignone



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
04/06/2020

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Marsh USA, Inc. 3031 N. Rocky Point Drive West, Suite 700 Tampa, FL 33607 Attn: Tampa.CertRequest@marsh.com; FAX: 212-948-0529		PHONE I/C, No, Ext: 813-207-8100	COMPANY Zurich American Insurance Company	
CN101440483-Magna-Prop-19-20				
FAX I/C, No:	E-MAIL ADDRESS:			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #:				
INSURED Magna Hospitality Group, LC The Summit @ Warwick Exec. Park 300 Centerville Road, Suite 300 East Warwick, RI 02886		LOAN NUMBER	POLICY NUMBER ERP028146802	
		EFFECTIVE DATE 05/01/2019	EXPIRATION DATE 05/01/2020	CONTINUED UNTIL TERMINATED IF CHECKED <input type="checkbox"/>
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED	BASIC	BROAD	<input checked="" type="checkbox"/> SPECIAL
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COVERAGE / PERILS / FORMS

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
All risks of direct physical loss or damage, as defined and limited herein, on Real Property, Personal Property, Business Interruption, including the Extensions of Coverage applying at the covered locations. Policy Limit	500,000,000	SEE ATTACHED

REMARKS (including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

ATL-005052244-01

NAME AND ADDRESS The City and County of Denver	ADDITIONAL INSURED	LENDER'S LOSS PAYABLE	LOSS PAYEE
	MORTGAGEE		
LOAN #			
AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Susan B. Vignone <i>Susan B. Vignone</i>			

ACORD 27 (2016/03)

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ADDITIONAL REMARKS SCHEDULE

AGENCY Marsh USA, Inc.		NAMED INSURED Magna Hospitality Group, LC The Summit @ Warwick Exec. Park 300 Centerville Road, Suite 300 East Warwick, RI 02886	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: 27 FORM TITLE: Evidence of Property Insurance

Coverage for Terrorism, Ordinance & Law, sinkhole collapse included. Policy written on All Risk Form, Replacement Cost with Agreed Amount & No Coinsurance. No wind or hail exclusion on policy. Policy includes coverage for Electric, HVAC, Sprinklers, Refuses & Piping Systems under either Boiler & Machinery or Real & Personal Property Coverage. Equipment Breakdown Coverage Limit \$100,000,000 for damage to covered objects, loss of business income & extra expense. \$25,000,000 Blanket Limit for Demolition & Increased Costs of Construction. Extended Business Income & Extra Expense - 365 Days. \$5,000,000 Decontamination Costs
 Ordinance or Law; Coverage A included / Coverages B & C \$25,000,000

Flood -

\$200,000,000 per loss event / \$200,000,000 annual aggregate

Except;

\$50,000,000 per loss event / \$50,000,000 annual aggregate as respects locations with any part of the legal description within a Special Flood Hazard Area (SFHA) and not otherwise listed herein but not to exceed \$10,000,000 per loss event / \$10,000,000 annual aggregate for locations which are deemed to be within a SFHA - Baltimore, MD, Revere, MA and San Diego, CA

\$25,000,000 as respects locations with any part of the legal description within a Moderate Flood Hazard Area (MFHA) and not otherwise listed herein.

Named Storm -

\$500,000,000 not to exceed the following limits in the annual aggregate -

\$10,000,000 property located in Zone 1 for Named Storm

\$25,000,000 property located in Zone 1 for Named Storm for 821 Gravier Street, New Orleans, LA 70112

\$25,000,000 property located in Zone 2 for Named Storm

Earthquake -

\$200,000,000 Earth Movement Blanket Limits but not to exceed the following limits in the annual aggregate -

\$5,000,000 for property located in Zone 1 for Earth Movement

\$10,000,000 for property located in Zone 1 for Earth Movement for 595 Hotel Circle South, San Diego, CA 92108

\$10,000,000 for property located in Zone 2 for Earth Movement

Deductibles:

\$25,000 Deductible Except as Follows:

\$50,000 Earth Movement;

\$100,000 Flood Except as respects locations in or with any part of the legal description within a Special Flood Hazard Area (SFHA) deductible is \$1,000,000;

Earth Movement - \$50,000 Deductible. Zone 1 5% of value as of date of loss subject to Minimum of \$250,000. Zone 2 2% of value as of date of loss subject to minimum of \$250,000

Named Storm - \$25,000 combined PD/Time Element. Zone 1 5% of the value at date of loss minimum of \$250,000. Zone 2 2% of value at date of loss minimum of \$250,000.

[With regard to Property coverage.] Other deductibles may apply as per policy terms and conditions.

EXHIBIT D

SANITIZATION AND DECONTAMINATION STANDARDS; SCOPE OF WORK

CLEANING/DISINFECTION PROTOCOL

- The Cleaning and Disinfectant Techs (CDTs) will enter the building by spraying the external doors, entering the foyer or entrance cleaning the doors, door handles and push-bars behind them. Remember work in teams. Turn around and make sure to clean/disinfect any high-touch surfaces that were missed. All surfaces are to be cleaned a minimum of two times.
- Moving through the facility the team member with the low-pressure sprayer will treat all entry ways, floors, building core areas, high traffic areas, common areas, bathrooms, elevators, stairwells, and trash receptacles and all other places deemed necessary. Another team member with a small spray bottle and microfiber cloth will assist the sprayer.
- The CDTs will wipe down the all high-touch surfaces that cannot be sprayed. Again, all surfaces are to be cleaned at least two times. Electronics, keyboards, call buttons, glass surfaces, inanimate objects and all other items deemed necessary to be cleaned will be wiped with a moist microfiber cloth. **DO NOT TOUCH, SPRAY OR MOVE PERSONAL ITEMS SUCH AS PHOTOGRAPHS, DRAWINGS AND COFFEE CUPS.**
- Wet waste-stream trash, such as in bathrooms, lounges, break areas and cafeterias, will be sprayed and collected after the building cleaning/disinfection treatment process is completed. This trash will be collected at the end of the day for multiple day projects.
- The CDTs will start at the main entrance and parking garages, if any, and migrate from the building entrance to the affected workspace or area.
- The CDTs will collect all treated trash and place into large trash bags. Remove the closed trash bags and remove from the building.
- Once facility has been completely treated per plan, and all areas have been logged as treated, the CDT will exit the building and enter the decontamination area.
- If the building treatment takes longer than two hours, the team will exit the building for the scheduled breaks. They will exit the facility near the support station, go through decontamination process before sitting for break or removing PPE. Each team member will need to stand in the decontamination pool and be lightly sprayed with disinfectant. The team member must remain in full PPE for 10 minutes after being sprayed.

EXHIBIT E
FEMA PROVISIONS

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 City 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."

[FOR AGREEMENTS IN EXCESS OF \$150,000 the Clean Air Act and Federal Water Pollution Control Act provisions apply]

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 Colorado Department of Public Health and Environment ("CDPHE") and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, 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 CDPHE and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, 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 the City. 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 the City, 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.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

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 any agency or department of the State of Colorado, the City, 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 DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS 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.