INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is between the **CITY AND COUNTY OF DENVER**, a municipal corporation 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, CO 80203 ("Agency"), each a "Party" and collectively the "Parties."

RECITALS

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

WHEREAS, the City has entered into that Public Assistance COVID-19 Grant Agreement (along with all incorporated exhibits thereto, the "Grant Agreement") with the Colorado Division of Homeland Security and Emergency Management for emergency COVID-19-related funding in the total amount, including applicable local matching requirements, of Fifty-One Million, Four Hundred and Seventy-Nine Thousand, Five Hundred and Sixty-Five Dollars and Twelve Cents ($51,479,565.12) (collectively, "Grants Funds") from the Federal Emergency Management Agency ("FEMA"); and

WHEREAS, a copy of the Grant Agreement is attached hereto and incorporated herein by reference as **Exhibit A**; and

WHEREAS, per the Grant Agreement, the share of the Grant Funds applicable to be reimbursed to the Agency from FEMA for COVID-19-related emergency measures is, including applicable local matching requirements, Twenty-Five Million, One Hundred and Nineteen Thousand, Five Hundred and Eighty Dollars and Fifty Cents ($25,119,580.50) (collectively, the "Agency Funds"); and

WHEREAS, the Grant Agreement requires twenty-five percent (25%) matching from the City, or any sub-grantees or Subcontractors (as defined in the Grant Agreement), as a condition to receive reimbursement for the expenditure of any Agency Funds; and

WHEREAS, the Agency is defined as a "Subcontractor" under the terms of the Grant Agreement and a "Contractor" under the terms of Exhibit D of the Grant Agreement, and is eligible to receive reimbursement by FEMA from the Agency Funds in conformance with and subject to the terms of the Grant Agreement and this Intergovernmental Agreement; and

WHEREAS, the Agency requires use of the Agency Funds to fund the utilization of contracts for COVID-19-related emergency protective measures, including purchasing personal protective equipment, COVID-19 testing and lab supplies, and intensive care unit surge capacity

rooms and beds, in addition to increasing patient screening at clinics and hospital access points and contracting for the transfer of transitional care patients to Vivage senior living facilities to expand medical and surge capacity (collectively and as further described and incorporated in Exhibit E, Project Worksheet No. 9 of the Grant Agreement, the "Agency Work"); and

WHEREAS, to respond to the COVID-19 crisis in the City, and pursuant to the declarations of emergency described above, the City wishes to memorialize the terms and conditions upon which the Agency may receive reimbursement by FEMA from the Agency Funds in accordance with the terms and conditions of the Grant Agreement; and

WHEREAS, the Parties wish such work to be performed on an expedited, emergency basis.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **RECITALS.** The Recitals are hereby expressly incorporated into this Intergovernmental Agreement.

2. **PURPOSE.** The purpose of this Intergovernmental Agreement is to provide for the availability of reimbursement of the Agency Funds in accordance with the Grant Agreement to the Agency. At the time of execution of this Intergovernmental Agreement, the Parties anticipate that the Agency Funds will be used to fund the Agency Work. This Intergovernmental Agreement is subject to the terms of the current, and any future version, Grant Agreement. This Intergovernmental Agreement may be amended to include future grant activities authorized by applicable grant guidance. Future amendments must be signed by a person(s) duly authorized to validly bind eligible entities.

3. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning ascribed in the Grant Agreement.

4. **COORDINATION AND LIAISON.** The Agency shall fully coordinate all services under this Intergovernmental Agreement with the Risk Manager for the City, or the Risk Manager's designee. The Agency shall assign a project point of contact to act as the Agency representative for all aspects of any Agency Work that directly involve the Agency. During the term of this Intergovernmental Agreement, eligible entities shall fully coordinate all activities and obligations related to or arising out of this Intergovernmental Agreement with the City, including the Risk Manager, or as otherwise directed by the City.

5. **AGENCY WORK REQUIREMENTS.** The Agency shall diligently undertake, perform, and complete the Agency Work during the Term of this Intergovernmental Agreement, as further described in Section 7, below. The Agency Work may include, as relevant to the Agency Funds and without limitation: a) the scope of work and authorized use of the Agency Funds; b) invoicing and payment requirements; c) reporting and submittal requirements; d) procurement requirements;

and e) recordkeeping requirements.

6. **MAXIMUM CONTRACT AMOUNT.** The maximum contract amount for the Agency Work funded by the Agency Funds shall be Eighteen Million Eight Hundred and Thirty-Nine Thousand Six Hundred and Eighty-Five Dollars and Thirty-Eight Cents ($18,839,685.38), with a corresponding Agency match requirement per the Grant Agreement of Six Million Two Hundred and Seventy-Nine Thousand Eight Hundred and Ninety-Five Dollars and Twelve Cents ($6,279,895.12). The City shall not be responsible for payment of any Agency Funds matching requirement, and such responsibility shall be solely borne by the Agency. 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.

7. **TERM.** The Term of the Agreement is from April 21, 2020 and terminates on June 12, 2022. The City may terminate this Agreement, or any part thereof, for the reasons and in the manner provided in the Grant Agreement.

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 Intergovernmental Agreement.

9. **STATEMENT OF AGENCY WORK REQUIREMENTS.**

    a. The City acknowledges that it has received Nine Million Four Hundred and Fifty-Six Thousand Four Hundred and Two Dollars and Seventy-Five Cents ($9,456,402.75) of the Agency Funds for immediate use by the Agency to reimburse it for performing Agency Work (the "Immediate Agency Funds"). A portion or all of the Immediate Agency Funds shall be distributed to the Agency upon the City's receipt of the appropriate documentation required pursuant to the Grant Agreement and this Intergovernmental Agreement, as further described in Section 9.b, below. All remaining Agency Funds shall be reimbursed to the Agency in conformance with and subject to the requirements of the Grant Agreement and this Intergovernmental Agreement.

    b. The Agency, as a sub-grantee and Subcontractor as described in the Grant Agreement, shall be required to follow all requirements of a Subcontractor thereof. Specifically, and without limitation, The Agency shall comply with the processes set forth in Sections 1, 2, 3, 4, 5 and 7 of Exhibit A to the Grant Agreement (collectively, the "Statement of Agency Work") in the exact same manner as the City as condition to receiving reimbursement of a portion or all of the applicable Agency Funds regarding:

        i. The Agency Work
        ii. Deliverables
        iii. Reporting Requirements
        iv. Testing and Acceptance Criteria

v. Payment
vi. Administrative Requirements

The City shall be copied on all documentation sent to the State of Colorado related to the Agency's performance of the Statement of Agency Work and all reimbursement requests for Agency Funds.

10. **FEDERAL REQUIREMENTS.** The Agency shall strictly comply with all applicable Federal guidelines, as further described in Exhibit D to the Grant Agreement, as a "Contractor" thereof.

11. **APPROPRIATIONS**. The City's obligations under this Intergovernmental Agreement or any renewal or extension thereof, whether direct or contingent, extend only to monies appropriated for the purpose of this Intergovernmental Agreement by the Denver City Council, paid into City Treasury, and encumbered for the purposes of this Intergovernmental Agreement. By execution of this Intergovernmental Agreement, neither Party irrevocably pledges present cash reserves for payments in future fiscal years and this Intergovernmental Agreement does not, and is not intended to, create 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 Intergovernmental Agreement shall extend only to those Agency Funds actually received by the City.

12. **TAXES, CHARGES, AND PENALTIES**. The City shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by the City's Revised Municipal Code.

13. **WHEN RIGHTS AND REMEDIES NOT WAIVED**. In no event will performance by a Party constitute or be construed to be a waiver by that Party of any breach of term, covenant, or condition or any default that may then exist on the part of the other Party, and the tender of any such performance when any breach or default exists (or is claimed to exist) impairs or prejudices any right or remedy available to the other Party with respect to the breach or default. No assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Intergovernmental Agreement is or may be construed to be a waiver of any succeeding or other breach.

14. **CONFLICT OF INTEREST**. No employee of either Party has or may have any personal or beneficial interest whatsoever in the services or property described herein. The Agency shall not knowingly hire or contract for services with any employee or officer of the City that would result in any violation of the Denver Revised Municipal Code, Chapter 2, Article IV, Code of Ethics, or City Charter provisions 1.2.8, 1.2.9, 1.2.12.

15. **STATUS OF PARTIES**. Neither Party is an employee of the other; no officer, employee, agent or contractor of one Party is an officer, employee, agent, or contractor of the other Party for any purpose, including unemployment compensation and workers' compensation.

16. **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 the Agency's performance pursuant to this Intergovernmental Agreement, provision of any goods or services to the City, and any other transactions related to this Intergovernmental Agreement. The Agency 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 final closeout by FEMA or expiration of the applicable statute of limitations. When conducting an audit of this Intergovernmental 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 the Agency to make disclosures in violation of state or federal privacy laws. The Agency shall at all times comply with D.R.M.C. 20-276.

17. **ASSIGNMENT AND SUBCONTRACTING**. The Agency covenants and agrees that it will not assign or transfer its rights hereunder without first obtaining the written consent of the Manager of the City's Department of Finance. Any attempts by the Agency to assign or transfer its rights hereunder without such prior written consent of the Manager shall, at the option of said Manager, automatically terminate this Intergovernmental Agreement and all rights of the Agency hereunder. Such consent may be granted or denied at the sole and absolute discretion of said Manager. A change in control of the Agency shall not constitute and assignment hereunder.

18. **NO THIRD-PARTY BENEFICIARY**. The enforcement of this Intergovernmental Agreement, and all rights of action relating to enforcement, are strictly reserved to the Parties. Nothing in this Intergovernmental Agreement gives or allows any claim or right of action by any person or other entity on this Intergovernmental Agreement, including subcontractors and suppliers. Any person who or other entity other than the Parties that receives services or benefits under this Agreement is an incidental beneficiary only.

19. **GOVERNING LAW; VENUE**. Each term, provision, and condition of this Intergovernmental Agreement is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances, and regulations enacted pursuant thereto. Unless otherwise specified, any general or specific reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders (including memoranda thereto), or contracts, means statutes, laws, regulations, charter or code provisions, ordinances, and executive orders (including memoranda thereto) and contract as amended or supplemented from time to time and any corresponding provisions of successor statues, laws, regulations, charter or code provisions, ordinances, or executive orders (including memoranda thereto) and contracts. Venue for any legal action relating to or arising out of this Intergovernmental Agreement will be in the District Court of the Second Judicial District of the State of Colorado.

20. **SEVERABILITY**. Except for the provisions of this Intergovernmental Agreement requiring appropriation of funds, if a court of competent jurisdiction finds any provision of this Intergovernmental Agreement or any portion thereof to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

21. **PARAGRAPH HEADINGS**. The captions and headings set forth in this Intergovernmental Agreement are for convenience of reference only and do neither define nor limit its terms and may not be construed to do so.

22. **SURVIVAL OF CERTAIN PROVISIONS**. The terms of this Intergovernmental Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Intergovernmental Agreement survive this Intergovernmental Agreement and will continue to be enforceable.

23. **NOTICES**. Notices concerning termination of this Intergovernmental Agreement, alleged or actual, violation(s) of the terms or conditions of this Intergovernmental Agreement, and notices of similar importance, as well as bills, invoices, or reports required under this Agreement, must be mailed by United States mail, postage prepaid, if to the Agency at its address written above, and if to the City at the addresses listed below. Notices must be delivered by prepaid U.S. mail and become effective three (3) days after deposit with the U.S. Postal Service. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but these substitutions are not effective until actual receipt of written notification.

City and County of Denver
201 W Colfax Ave., Department 1010
Denver, Colorado 80202
Attn: Risk Manager

With copies of termination and violation notices to:

Office of the Mayor
1437 Bannock Street, Room 350
Denver, Colorado 80202

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

24. **COLORADO GOVERNMENTAL IMMUNITY ACT AND INSURANCE.** Neither Party shall have any liability or responsibility to anyone for any act or omission of the other. Each Party will be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq*. ("CGIA"). Nothing in this

Section or any other provision of this Intergovernmental Agreement or any Exhibit hereto shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City or the Agency may have under the Colorado Governmental Immunity Act or to any other defenses, immunities, or limitations of liability available to the City or the Agency by law. At all times during the term of this Agreement, including any renewals or extensions, the Agency shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. Proof of such insurance shall be provided upon request by the City. This obligation shall survive the termination of this Intergovernmental Agreement.

25. **DISPUTES**. All disputes of any nature between the City and the Agency regarding this Intergovernmental Agreement will be resolved by the administrative hearings pursuant to Denver Revised Municipal Code 56-106(b)-(f). For purposes of that procedure, the Manager of the Department of Finance, or the Manager's designee, is the City official to render a final determination.

26. **ORDER OF PRECEDENCE**. In the event of any conflict between the terms contained in the numbered sections, including subparts to them, of this Intergovernmental Agreement and those of any exhibit such that the full effect cannot be given to both or all provisions, then the terms contained in the numbered sections, including subparts to them, of this Intergovernmental Agreement control.

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

28. **LEGAL AUTHORITY**. The Parties represent and assure that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action necessary, to enter into this Intergovernmental Agreement. The persons or person signing and executing this Intergovernmental Agreement on behalf of a Party, represent(s) that he or she is fully authorized to execute this Intergovernmental Agreement on behalf of their jurisdiction and to validly and legally bind their jurisdiction to all the terms, performances, and provisions herein set forth. If there is a dispute as to the legal authority of either the Agency or the person signing this Intergovernmental Agreement to enter into this Intergovernmental Agreement, at its option, the City may temporarily suspend or permanently terminate this Intergovernmental Agreement or both. The City will not be obligated to perform any of the provisions of this Intergovernmental Agreement after it has suspended or terminated this Agreement as provided in this Intergovernmental Agreement.

29. **FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS**. During the performance of this Intergovernmental Agreement, the Agency agrees as follows:

a. **Federal Equal Opportunity Clause.**

i. The Agency will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Agency 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 Agency 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.

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

iii. The Agency 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 Agency 's legal duty to furnish information.

iv. The Agency 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 Agency 's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

v. The Agency 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.

vi. The Agency 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.

vii. In the event of the Agency 's noncompliance with the nondiscrimination clauses of this Intergovernmental Agreement or with any of the said rules, regulations, or orders, this Intergovernmental Agreement may be canceled, terminated, or suspended in whole or in part and the Agency 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.

viii. The Agency will include the portion of the sentence immediately preceding Section 29.a. and the provisions of Sections 29.a and 29.a.i through 29.1.vii 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 Agency 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 Agency may request the United States to enter into such litigation to protect the interests of the United States.

b. **Compliance with the Contract Work Hours and Safety Standards Act**

i. **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-halftimes the basic rate of pay for all hours worked in excess of forty hours in such workweek.

ii. **Violation; liability for unpaid wages; liquidated damages**. In the event of any violation of the clause set forth in paragraph 29.b.i of this Section the Agency 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 29.b.i 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 39.b.i of this Section.

iii. **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 29.b.ii of this section.

iv. **Subcontracts**. The Agency or subcontractor shall insert in any subcontracts the clauses set forth in Sections 29.b.i through 29.b.iii 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 Sections 29.b.i through 29.b.iv of this section.

c. **For Agreements in Excess of $150,000 the Clean Air Act and Federal Water Pollution Control Act Provisions Apply.**

i. **Clean Air Act**. The Agency 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*. The Agency 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. The Agency 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.

ii. **Federal Water Pollution Control Act**. The Agency 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.* The Agency 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. The Agency

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.

d. **Suspension and Debarment.**
   i. This Intergovernmental Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Agency is required to verify that none of the Agency, 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).
   ii. The Agency 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.
   iii. This certification is a material representation of fact relied upon by the City. If it is later determined that the Agency 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.
   iv. 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.

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

f. **Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying.**
   i. Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding $100,000)
   ii. The undersigned certifies, to the best of his or her knowledge, that:
   iii. 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.

iv. 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.

v. 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.

vi. 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.

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

g. **Procurement of Recovered Materials.**

i. In the performance of this Intergovernmental Agreement, the Agency shall make maximum use of products containing recovered materials that are EPA items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule;

ii. Meeting contract performance requirements; or

iii. At a reasonable price.

iv. 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.

h. **Additional Provisions.**

i. The Agency 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 Agency which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

ii. The Agency agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The Agency 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 Agreement.

iv. The Agency 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.

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

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

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

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