CONTRACT ADDENDUM

FEDERAL EMERGENCY MANAGEMENT AGENCY'S GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS

The parties acknowledge that the above-referenced contract is subject to the provisions of 2 CFR § 200 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). This addendum is hereby expressly incorporated into the agreement between the City of Longmont, Colorado and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. Nothing in this Addendum shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA's approval or obligation of funds.

The following provisions are hereby added and incorporated into the above-referenced Agreement:

1. **TERMINATION FOR CONVENIENCE OF CITY** *(applicable to all contracts in excess of $10,000; Contract Provisions for Non-Federal Entity Contracts Under Federal Award, 2 CFR pt.200 app. II (B) (2015))*
   - **A.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective
   - **B.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City. Such actions shall include, without limitation:
     - **(1)** Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
     - **(2)** Not placing any further orders or subcontracts for materials, services, equipment or other items.
     - **(3)** Terminating all existing orders and subcontracts.
     - **(4)** At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
     - **(5)** Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
     - **(6)** Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

C. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the City or otherwise disposed of as directed by the City.

D. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

E. In arriving at the amount due to Contractor under this Section, City may deduct:

(1) All payments previously made by City for work or other services covered by Contractor's final invoice;

(2) Any claim which City may have against Contractor in connection with this Agreement;

(3) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and

(4) In instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

F. City's payment obligation under this Section shall survive termination of this Agreement.

2. TERMINATION FOR DEFAULT *(applicable to all contracts in excess of $10,000; 2 CFR pt.200 app. II (B))*

Contractor's failure to perform or observe any term, covenant or condition of this document (Federal Emergency Management Agency's Emergency Management Performance Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

A. Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(2) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(3) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

B. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In

addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

3. **EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** *(applicable to all construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees; 2 CFR pt.200 app. II(C)*)
   Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

4. **ANTI-KICKBACK ACT COMPLIANCE** *(applicable to all contracts and subgrants for construction or repair; 2 CFR pt.200 app. II(D)*)
   Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).

5. **CONTRACT WORK HOURS AND SAFETY STANDARDS** *(applicable to all contracts awarded by grantees and subgrantees in excess of $100,000 that involve the employment of mechanics or laborers; 2 CFR pt.200 app. II(E)*)
   Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702 and 3704) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

6. **RIGHTS TO INVENTIONS** (*applicable to contracts for experimental, research, or development projects financed by FEMA; 2 CFR pt.200 app. II(F))*
   A. **General**. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
   B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as

described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

7. **CLEAN AIR AND WATER REQUIREMENTS** *(applicable to all contracts and subcontracts in excess $150,000, including indefinite quantities where the amount is expected to exceed $150,000 in any year; 2 CFR pt.200 app. II (G))*
   - **A.** Contractor agrees to comply with all applicable standards, orders, or regulations issued under section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).
   - **B.** Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
   - **C.** The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

8. **BYRD ANTI-LOBBYING AMENDMENT** (31 USC 1352)
   Contractors that apply or bid for an award exceeding $100,000 must 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 must 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 non-Federal award.

9. **GOOD STANDING REQUIREMENT** (*2 CFR pt.200 app. II (H))*
   Contractor represents that it is not subject to a System for Award Management (SAM) exclusion and has not been debarred, suspended or otherwise excluded as a party declared eligible under statutory or regulatory authority to receive Federal grant funds.

10. **PROCUREMENT OF RECOVERED MATERIALS** (*2 CFR pt.200 app. II (J))*
    Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and

establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11. ACCESS TO RECORDS

A. The Contractor agrees to provide the City, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).

B. 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.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the City, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.44 CFR§13.36(i)(11).

12. NOTICE OF REPORTING REQUIREMENTS

A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44 CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions

13. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)-(9).

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

14. ENERGY CONSERVATION REQUIREMENTS

A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

15. SOCIOECONOMIC ENGAGEMENT

Contractor will take the following affirmative steps to engage small and minority firms, women's business enterprises, and labor surplus area firms.

A. Place qualified small and minority business and women's business enterprises on sub-contractor solicitation lists.

B. Assure that such firms are solicited whenever they are potential sources.

C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms.

D. Establish delivery schedules, where the requirement permits, which encourage participation by such firms.

E. Use the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.