

**INTERLOCAL AGREEMENT BETWEEN HARRIS COUNTY  
AND PASADENA INDEPENDENT SCHOOL DISTRICT**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

This Agreement is made by and between **Harris County, Texas**, a body corporate and politic under the laws of the State of Texas (“Harris County” or “County”) and **Pasadena Independent School District (ISD)** (the “School”), pursuant to the Interlocal Cooperation Act, Tex. Gov’t Code Ann. §§ 791.001 – 791.030. The County and School are referred to collectively as the “Parties” or individually as a “Party.”

**RECITALS**

On January 31, 2020, the Secretary of Health and Human Services (“HHS”) declared a public health emergency in the United States in response to COVID-19, which has now been extended through January 2022; and

On March 11, 2020, a Declaration of Local Disaster for Public Health Emergency was issued to enable Harris County to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Harris County residents; and

On March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

On March 16, 2020, the County Judge of Harris County signed an Order outlining measures to protect the public and mitigate the spread of COVID-19; and

On March 20, 2020, Governor Abbott issued the first Public Health Disaster Declaration released in the State of Texas since 1901 and an Executive Order which, among other things, prohibits Texans from gathering in groups of more than ten persons; and

All Disaster Declarations issued thus far giving the County the legal authority to take certain measures to respond to the spread of COVID-19 are still in place as of the date of this Agreement; and

In or around the summer of 2021, the Centers for Disease Control and Prevention (“CDC”) recognized an increased transmission of the more infectious Delta variant of COVID-19, still a predominant strain of the virus in the United States; and

In or around December of 2021, the CDC recognized transmission of the Omicron variant of COVID-19, another strain of COVID-19 that is transmitted more easily than the original COVID-19 virus variant; and

The Federal Emergency Management Agency (“FEMA”) has been authorized to provide Public Assistance funding to eligible applicants for certain costs to facilitate the safe opening and operation of eligible facilities; and

FEMA issued guidance on September 8, 2021 wherein it detailed eligible safe opening and operation work, including COVID-19 diagnostic testing; and

The State of Texas and Harris County have experienced, and continues to experience, a significant surge of COVID-19 positive or presumptive-positive cases, impacting the ability of schools throughout the County to safely open and operate; and

The School acknowledges that it needs COVID-19 diagnostic tests for safe reopening and/or operation of its facilities; and

The School has been unable to procure COVID-19 at-home self-administered rapid antigen tests in sufficient number to allow the School to safely re-open and/or continue operations; and

In its response to the COVID-19 pandemic, the County has taken and will continue to take emergency protective measures at the direction and guidance of federal, State, and local leaders, including public health officials, to contain and combat COVID-19; and

The Parties agree that the County, as a part of its emergency protective measures, may secure COVID-19 diagnostic tests on behalf of the School to help facilitate the safe re-opening of its facilities as expeditiously as possible; and

The County has executed agreements with distributors of COVID-19 at-home self-administered rapid antigen test kits for the provision of COVID-19 tests, and may execute additional agreements to procure additional tests, if necessary, in order to provide tests to the School and other Harris County area schools to facilitate the safe reopening of these facilities; and

The Parties understand that costs incurred by the County under agreements with distributors of COVID-19 at-home self-administered rapid antigen test kits and any subsequent agreements for COVID-19 tests may be reimbursed with FEMA Public Assistance funding and/or other federal sources; and

The School agrees to provide certain documentation and information as to how its COVID-19 tests are used to facilitate the safe reopening of its facilities in order to support eligibility of these costs; and

The Parties acknowledge that providing COVID-19 tests to schools serves a public purpose; and

The Parties acknowledge that payments will come from current revenues available to the paying Party; and

NOW, THEREFORE in consideration of the premises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree the following provisions are hereby incorporated into the Agreement:

## **TERMS**

### **Scope of Work**

- A) The County, in its sole discretion, will provide COVID-19 tests, through its agreements with distributors of COVID-19 at-home self-administered rapid antigen test kits and any subsequent agreement executed for the same purpose, to the School, at no cost, to facilitate a safe reopening and/or operation of the School to ensure continued education of School students, provided that School demonstrates appropriate need for COVID-19 tests and complies with the terms of this Agreement.
- B) By entering into this Agreement, School acknowledges that it does not have a sufficient number of COVID-19 tests to allow for the safe reopening and/or operation of its facilities and therefore requires COVID-19 tests procured by the County as contemplated in this Agreement.

### **Eligibility**

- A) The School must, at a minimum, meet the following criteria to receive COVID-19 tests from the County:
  - (1) School does not have sufficient number of COVID-19 tests to facilitate the safe reopening and/or operation of its facilities;
  - (2) School shall provide COVID-19 tests to students, teachers, staff members, and any other individual that must enter the School premises in order to ensure the safe reopening and/or operation of its facilities; and
  - (3) School has adequate policies and procedures in place to maintain the necessary documentation as detailed in this Agreement.

### **School's Responsibilities**

- A) The School agrees that it will provide COVID-19 tests to essential personnel, students, and scheduled visitors to facilitate the safe reopening and/or operation of its facilities.
- B) The School maintains policies, procedures, and appropriate governing mechanisms to ensure that COVID-19 tests are provided only to those individuals needed to safely reopen and/or operate the School.

- C) The School maintains policies and procedures that allow for the collection of COVID-19 tests results and mechanisms to ensure that individuals that test positive for COVID-19 are required to isolate or perform any other action in accordance with guidelines in place at the time of the positive test, including CDC guidelines and guidance issued by the Texas Education Agency.

### **Process**

- A) The School will submit to the County a request for COVID-19 tests, including number of tests required and justification for same, and detail of the circumstances that prevented the School from procuring the tests on its own volition.
- B) The County will evaluate the School's request and, in its own discretion and based on the number of available COVID-19 tests and the number of Harris County area schools requesting COVID-19 tests, will determine the number of tests it will provide to the School, if any.
- C) The Parties acknowledge that the County's provision of COVID-19 tests is conditioned upon its ability to procure tests from outside vendors. The County will not be held liable if it is unable to provide COVID-19 tests in response to the School's request.

### **Reporting**

- A) The School shall submit to the County the required reports and supporting documents, as outlined below, necessary to satisfy FEMA eligibility requirements.
- B) The School agrees to maintain and provide to the County documentation evidencing use of COVID-19 tests to facilitate a safe reopening and/or operation of School facilities.
  - (1) School shall provide to the County documentation evidencing daily and/or weekly use of COVID-19 tests, including number of tests administered and number of positive cases, or otherwise report this data in accordance with School policies and procedures already in place
  - (2) The above information shall be provided to FEMA and the Texas Division of Emergency Management ("TDEM"), as requested.
  - (3) The Parties agree that pursuant to FEMA Policy FP 104-010-04(D)(4)(c), the records will not contain, and FEMA will not be provided with, any personally identifiable information ("PII") protected from disclosure under federal or State law.
- C) The School acknowledges and agrees that documentation described herein that is submitted to the County will undergo review by TDEM and/or FEMA.

### **Contract Term**

- A) The initial term of this Agreement shall begin upon execution by all Parties and will remain in full force for a period of six months from the execution date unless earlier terminated in accordance with the terms of the Agreement. At the County's sole

option, the Agreement may be renewed on the same terms and conditions for additional one-week periods (each a renewal term).

- B) While this Agreement is in place, the County will endeavor to provide COVID-19 tests, pending availability, to the School until the parties agree that tests are no longer needed to ensure the safe opening and operation of the School.
- C) Notwithstanding the foregoing, this Agreement will automatically terminate if and when the County's Agreement(s) with providers of COVID-19 tests expires or is terminated, unless otherwise indicated by the County.
- D) The County, after consultation with the School, reserves the right to scale back the provision of COVID-19 tests to the School, as determined by the County in its discretion.
- E) The County will endeavor, but does not guarantee, to give the School no less than forty-eight (48) hours' notice of its intent to scale down the provision of COVID-19 tests to the School.

### **County's Responsibilities**

- A) The County shall determine whether the School will be provided 100% of the requested COVID-19 tests based upon the School's demonstrated need and availability of tests.
- B) During the term (including any renewal terms) of this Agreement, the County and School shall discuss the progress and results of the contractual arrangement between the Parties, including a discussion of ongoing plans to continue administering COVID-19 tests to ensure the safe reopening and operation of the School and its facilities.
- C) The County shall review and analyze School's compliance with the requirements of this Agreement and FEMA guidelines.

### **Payment Terms**

- A) The Parties acknowledge and agree that there will not be any reimbursement or payment by the County or FEMA to the School under this Agreement.
- B) The Parties similarly agree that the School is not obligated to provide compensation or reimbursement to the County for the provision of COVID-19 tests.
- C) The Parties acknowledge and agree that FEMA funding may be used by the County for the provision of COVID-19 tests under this Agreement and, as a result, the County is required to comply with certain FEMA guidelines. The School acknowledges and agrees to assist the County in complying with such FEMA guidelines, including but not limited to, submitting to the County all required reports and supporting documents as set forth in this Agreement.
- D) The School acknowledges that FEMA is legally prohibited from duplicating benefits from other sources. The School acknowledges and agrees that it is expressly prohibited from seeking funding from FEMA or other sources for the costs being incurred by the County under this Agreement.

- E) To the extent applicable, the School agrees that the responsibility for payment of any taxes from the benefits received under this Agreement and/or legislative appropriation shall be the sole obligation of the School.

**Termination**

- A) The County may terminate this Agreement at any time without cause by providing three (3) calendar days' prior written notice to the School. The County may terminate this Agreement for cause effective upon written notice to the School if it fails to perform any of its material duties under this Agreement. If not already expired or terminated, this Agreement will automatically terminate upon the termination of the HHS COVID-19 Public Health Emergency Declaration.
- B) The School reserves the right to terminate this Agreement at any time without cause by providing three (3) calendar days' prior written notice to the County. The School must still perform its duties under this Agreement for COVID-19 tests received while the Agreement was still in effect, regardless if the School terminates the Agreement afterward.
- C) The School may, without terminating the Agreement, request that the County scale down its provision of COVID-19 tests depending on the School's needs. Nothing in this provision prohibits the School from requesting that the County provide additional COVID-19 tests if the School later determines that additional tests are required to safely operate its facilities.

**Limitation of Appropriation**

- A) The School understands and agrees, said understanding and agreement also being the absolute essence of this Agreement, that the County is not appropriating any funds under this Agreement.

**Liability of the Parties**

- A) To the extent allowed by law, each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agents, or subcontractors arising out of or under this Agreement and which result from any act, error, omission, intentional tort, intellectual property infringement, or failure to pay committed by the Party or its employees, officials, agents, consultants under contract, or any other entity over which it exercises control, to the extent permitted by law.

**Miscellaneous**

- A) Non-Assignability. The Parties bind themselves and their successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns of such other Party, in respect to all covenants of this Agreement. Neither the County nor the School shall assign, sublet, or transfer its interest in this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

B) Notice. Any notice required to be given under this Agreement (“Notice”) shall be in writing and shall be duly served when it shall have been personally delivered to the address below, deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to County or the School at the following addresses:

School:

Pasadena ISD  
1515 Cherrybrook  
Pasadena, TX 77502

County:

Harris County Judge  
1001 Preston Avenue, 9th Floor  
Houston, Texas 77002-1893  
Attn: Jennifer Kiger

Any Notice given hereunder is deemed given upon hand delivery or three (3) business days after the date of deposit in the United States Mail.

Each Party shall have the right to change its respective address by giving at least fifteen (15) calendar days’ written notice of such change to the other Party.

Other communications, except for Notices required under this Agreement, may be sent by electronic means or in the same manner as Notices described herein.

C) Independent Parties. It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the School for any purpose. Neither the School, nor its employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.

D) No Third Party Beneficiaries. This Agreement shall be for the sole and exclusive benefit of the Parties and their legal successors and assigns. The County is not obligated or liable to any party other than the School for the County’s performance under this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of the County with respect to any third party.

- E) Waiver of Breach. No waiver or waivers of any breach or default (or any breaches or defaults) by either Party hereto of any term, covenant, condition, or liability hereunder, or the performance by either Party of any obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.
- F) No Personal Liability; No Waiver of Immunity.
- (1) Nothing in the Agreement is construed as creating any personal liability on the part of any officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
  - (2) The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
  - (3) Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.
- G) Anti-Boycott. The School warrants and represents, in accordance with Tex. Gov't Code Ann. § 2270.002, that unless School meets an exemption under subsection (a), then, as required by subsection (b), the School's signature on this Agreement constitutes its written verification that it does not boycott Israel and will not boycott Israel during the term of the Agreement.
- H) Foreign Terrorists Organizations. In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, the School warrants and represents that, at the time of execution of this Agreement and for the duration of the term of this Agreement including any renewal terms, it does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.
- I) Applicable Law and Venue. This Agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.
- J) No Binding Arbitration; Right to Jury Trial. The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.
- K) Contract Construction.
- (1) This Agreement shall not be construed against or in favor of any Party based upon the fact that the Party did or did not authorize this Agreement.



- (2) The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- (3) When terms are used in the singular or plural, the meaning shall apply to both.
- (4) When either the male or female gender is used, the meaning shall apply to both.
- L) Recitals. The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.
- M) Entire Agreement; Modifications. This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.
- N) Severability. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.
- O) Survival of Terms. Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.
- P) Multiple Counterparts/Execution. This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.
- Q) Warranty. By execution of this Agreement, the School warrants that the duties accorded to the School in this Agreement are within the powers and authority of the School.

**[Signature Page Follows]**

PASADENA ISD

HARRIS COUNTY

By: \_\_\_\_\_

Marshall Kendrick, President  
PISD Board of Trustees  
March 29, 2022

By: \_\_\_\_\_

LINA HIDALGO  
COUNTY JUDGE

Date: \_\_\_\_\_

APPROVED AS TO FORM:  
CHRISTIAN D. MENEFE  
COUNTY ATTORNEY

By: \_\_\_\_\_

Sam Kirchhoff  
Assistant County Attorney  
C.A. File No. 22GEN0236

**ORDER OF COMMISSIONERS COURT**  
 Authorizing execution of an Interlocal Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on \_\_\_\_\_, 2022 with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF THE INTERLOCAL AGREEMENT  
 BETWEEN HARRIS COUNTY AND PASADENA ISD**

Commissioner \_\_\_\_\_ introduced an order and made a motion that the same be adopted. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

**IT IS ORDERED** that

1. County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, the Agreement with the School for the provision of COVID-19 tests. The School is not entitled to any compensation under this Agreement. The Agreement is incorporated herein by reference for all purposes as though fully set forth word for word.
2. County Judge Lina Hidalgo is also hereby authorized to execute for and on behalf of Harris County, similar agreements with other Harris County area schools that require COVID-19 tests to safely reopen and operate its facilities, subject to review and approval by the County Attorney, Human Resources, and Health Department.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

## **APPENDIX A – FEMA REQUIRED PROVISIONS**

The federal procurement standards for applicants such as the County are described in Title 2 of the Code of Federal Regulations (C.F.R.), Part 200, sections 200.317-200.327. One such requirement is that the non-federal entity's contracts must contain the applicable provisions described in Appendix II to this part and laid out below. Accordingly, the School agrees to comply with the below provisions to the extent applicable to this Agreement.

### **A. FEMA Funding**

The School acknowledges that FEMA financial assistance will be used to fund all or a portion of the Agreement.

### **B. Compliance with Federal Law, Regulations, and Executive Orders**

The School shall comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

### **C. No Obligation by Federal Government**

The School acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, School, or any other party pertaining to any matter resulting from this Agreement.

### **D. Program Fraud and False or Fraudulent Statements**

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

### **E. DHS Seal, Logo, and Flags**

The School shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

### **F. Access to Records**

In addition to any record requirements found in the Agreement, the following access to records requirements also apply to the Agreement:

1. The School agrees to provide the County, the FEMA Administrator, TDEM, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of School which are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. School shall keep its books, documents, papers, and records available for this purpose for at least five years after the Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
2. The School 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 School agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement, if applicable.
4. In compliance with the Disaster Recovery Act of 2018, the County and the School acknowledge and agree that no language in the Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**G. Environmental Compliance**

1. The School shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
2. The School shall report all violations to the County, and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate Environmental Protection Agency Regional Office.
3. The School shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**H. Contract Work Hours and Safety Standards Act**

All contracts entered into related to this Agreement shall contain the following language:

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 School and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, School 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 \$27 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. FEMA 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 School 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 (B) of this section.

4. Subcontracts. The School 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.

#### **I. Equal Employment Opportunity**

During the performance of this contract, the School agrees as follows:

1. The School will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. School 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. School 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 School 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 School 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 School 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 School 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 School 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 School's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the School 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 School 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 School. School 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 the School becomes involved in, or is threatened with, litigation with a subcontractor or the School 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.

9. The County further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the County is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
10. The County agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

11. The County further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the County agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the County under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

J. **Suspension and Debarment**

1. Federal regulations restrict the County from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. School can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).
2. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, School is required to verify that it, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are not excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
3. The School 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.
4. This certification, found in **Exhibit A**, is a material representation of fact relied upon by the County. If it is later determined that the School 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 TDEM and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
5. The School 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 this Agreement. School further agrees to include a provision requiring such compliance in its lower tier covered transactions.



**K. Byrd Anti-Lobbying Amendment**

1. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as set out in **Exhibit B** of this Appendix. 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 who in turn will forward the certification(s) to the awarding agency.

**L. Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms**

1. If the School intends to subcontract any portion of the work covered by this Agreement, it must take all necessary affirmative steps to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:
  - a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**M. Domestic Preference Requirements**

1. As appropriate and to the extent consistent with law, the School should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
  - a. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

N. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

1. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services as used in this paragraph—
2. Prohibitions
  - a. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - b. Unless an exception in this paragraph applies, the School and its Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from FEMA to:
    - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
    - iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
    - iv. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
3. Exceptions
  - a. This paragraph does not prohibit the School from providing—
    - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

- ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
  - b. By necessary implication and regulation, the prohibitions also do not apply to:
    - i. Covered telecommunications equipment or services that:
      - Are not used as a substantial or essential component of any system; and
      - Are not used as critical technology of any system.
      - Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- 4. Reporting requirement
  - a. In the event the School identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or School is notified of such by a Subcontractor at any tier or by any other source, School shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.
  - b. The School shall report the following information pursuant to this paragraph:
    - i. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
    - ii. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, School shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- 5. Subcontracts
  - a. The School shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

O. **Procurement of Recovered Materials**

- 1. In the performance of Agreement if applicable, the School shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
  - b. Meeting Contract performance requirements; or
  - c. At a reasonable price.
2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
3. The School also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

P. **Remedies**

1. The Parties agree that any work performed pursuant to the Agreement is compliant with the Agreement terms and applicable Federal, State, and local laws, regulations, and/or ordinances.
2. If any work performed and/or goods delivered by the School fails to meet the requirements of the Agreement, any other applicable standards, codes, or laws, or otherwise breaches the terms of the Agreement, the County may in its sole discretion:
  - a. elect to have the School re-perform or cause to be re-performed, at School's sole expense, any of the work which failed to meet the requirements of the Agreement;
  - b. in the case of goods, reject the goods and require School to provide replacement goods that meet the needs of the County and the terms of the Agreement;
  - c. hire another contractor to perform the work and deduct any additional costs incurred by the County as a result of substituting contractors from any amounts due to School; or
  - d. pursue and obtain any and all other available legal or equitable remedies.
3. The remedies in this Section are in addition to any remedies set out in the Agreement. This Section shall in no way be interpreted to limit the County's right to pursue and obtain any and all other available legal or equitable remedies against School.

## EXHIBIT A

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS**

“Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.” (2 CFR 200.212)

This certification is required by regulations implementing Executive Order 12549, Debarment and Suspension, for all lower-tier transactions meeting the threshold and tier requirements. (2 CFR 180.300)

#### **Terms Defined**

- *Nonprocurement Transaction*: A transaction under federal non-procurement programs, which can be either a primary covered transaction or a lower-tier covered transaction. (2 CFR 180.970)
- *Lower-Tier Covered Transaction*: (1) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction; (2) any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed \$25,000; (3) any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount
- *Participant*: Any person who submits a proposal for or who enters into a covered transaction, including an agent or representative of a participant. (2 CFR 180.980)
- *Principal*: An officer, director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the participant or paid with federal funds, who (1) is in a position to handle federal funds; (2) is in a position to influence or control the use of those funds; or (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction. (2 CFR 180.995)
- *System for Award Management (SAM) Exclusions*: The list maintained and disseminated by the General Services Administration (GSA) containing names and other information about persons who are ineligible. (2 CFR 180.945).
- *Debarment*: Action taken by a debarring official to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR 180.925)
- *Suspension*: Action taken by a suspending official that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR 180.1015)

- *Ineligible or Ineligibility*: A person or commodity is prohibited from covered transactions because of an exclusion or disqualification. (2 CFR 180.960)
- *Person*: Any individual, corporation, partnership, association, unit of government, or legal entity, however organized. (2 CFR 180.985)
- *Proposal*: A solicited or unsolicited bid, application, request, invitation to consider, or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.
- *Voluntary Exclusion*: A person's agreement to be excluded under the terms of a settlement between the person and one or more agencies. Voluntary exclusion must have governmentwide effect. (2 CFR 180.1020)
- *Voluntarily Excluded*: The status of a person who has agreed to a voluntary exclusion. (2 CFR 180.1020)

### **Instructions for Certification**

1. By signing or certifying and submitting this application, the prospective lower-tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower-tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by signing or certifying and submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower-tier participant further agrees by signing or certifying and submitting this application that it will include the clause titled Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower-Tier Covered Transactions, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A

participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the non-procurement list.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—  
Lower-Tier Covered Transactions**

1. The prospective lower-tier participant certifies, by signing or certifying and submitting this application, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
School

\_\_\_\_\_  
Contract Number

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Exhibit B**  
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, 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 section 1352, title 31, U.S. Code. 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.

School, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, School understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
School

\_\_\_\_\_  
RFP or ITB No.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date