COVID-19 TESTING SERVICES A G R E E M E N T

THIS AGREEMENT dated the 6th day of July 2020 and made effective March 30, 2020, by and between the **CITY OF NEW HAVEN** (hereinafter the "City"), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 165 Church Street, New Haven, Connecticut, and acting herein by Justin Elicker, its duly authorized Mayor, and **MURPHY MEDICAL ASSOCIATES LLC** (hereinafter the "Consultant"), a domestic limited liability company with a principal place of business located at 1 East Putnam Avenue, Greenwich, Connecticut, and acting herein by Steven A.R. Murphy MD, its duly authorized Managing Partner.

W I T N E S S E T H

WHEREAS, The City solicited requested proposals for COVID-19 testing services;

WHEREAS, The Consultant submitted a proposal in response to said Request for Proposals; and

WHEREAS, The City has accepted the Consultant's proposal for said work pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **INCORPORATION OF RECITALS.** The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

2. **CONTRACT DOCUMENTS AND SCOPE OF SERVICES.** The Contract Documents consist of this Agreement and the following Exhibits that define the duties, functions, obligations, responsibilities, and tasks of the Scope of Services:

Exhibit A – The Consultant's Proposal;

Exhibit B – The City's Insurance Requirements;

Exhibit C – FEMA Contract Provisions; and

Exhibit D – Business Associate Agreement (HIPAA);

all attached hereto and hereby made a part hereof as if fully set forth herein. The FEMA Contract Provisions set forth in Exhibit C shall control and take precedence to the extent they conflict with the terms of the other Contract Documents;

3. **NO EXCLUSIVE RIGHT TO WORK.** Nothing contained herein shall grant the Consultant an exclusive right to perform the work of this Agreement. The City may enter into similar agreements with other Consultants at its sole discretion on an as-needed basis;

4. **COMPENSATION.** Consultant agrees to waive compensation from the City for services set forth in Section 2. Billing and invoices sent to insurance providers are to be done at rates reasonable and customary, as provided per insurance contracts with said providers. No balance invoice or "co-pay" shall be required of patient.

5. **TERM.** The Term of this Agreement shall commence when signed below by the. City's Mayor and may be terminated at any time by at either party's convenience.

6. **CONSULTANT'S REPRESENTATIVE AND KEY PERSONNEL.** The following representative of the Consultant is hereby authorized to act on behalf of the Consultant with respect to the work that is the subject of this Agreement and shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Consultant at all times.

Consultant Representative: Steven A.R. Murphy MD
Managing Partner

The Consultant's Representative shall not be replaced by the Consultant without fifteen (15) days prior written consent of the City.

7. **SETOFF OF TAXES OWED TO THE CITY.** Pursuant to the City of New Haven Code of Ordinances and Section 12-146b of the Connecticut General Statutes, as amended, the Consultant hereby acknowledges that the City shall have the right to set-off or withhold any payment, or portion thereof, due to the Consultant pursuant to this Agreement if any taxes levied by the City against any property, both real and personal, owned by the Consultant are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Consultant pursuant to this section shall be applied to the Consultant's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding;

8. **LIMITATION OF LIABILITY.** The Consultant's sole remedy for City delays shall be an extension of time to complete the work and the Consultant hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit;

9. INDEMNIFICATION. The Consultant shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of the Consultant, or loss of or damage to property, resulting directly or indirectly from the Consultant's negligent performance pursuant to this Agreement, or by any omission to perform some duty imposed by law or this Agreement upon the Consultant, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement;

10. ASSIGNMENT. The Consultant shall not assign or transfer any portion of the work set forth herein without the prior written approval of the City;

11. BOOKS AND RECORDS. The Consultant shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Consultant's demand for compensation by the City for a period of not less than three (3) years from the date of the final work performed under this Agreement;

12. INSURANCE. The Consultant shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of New Haven Insurance Requirements attached hereto as Exhibit B;

13. REPRESENTATIONS. The Consultant represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work. The Consultant hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

14. INTERPRETATION. The Consultant agrees that, in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits, the City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence, except for those terms relating to the scope of the work or pricing, to which such terms this section shall not apply;

15. SUBCONTRACTING. Aside from those subcontractors or subconsultants disclosed in the Consultant's Proposal, attached hereto as Exhibit A, the Consultant is prohibited from further subcontracting or subconsulting the work of this Agreement or any part of it unless the City first approves such subcontracting or subconsulting in writing and approves, in writing, of the specific subcontractor or subconsultant(s) the Consultant proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the City approve of a proposed subcontractor or subconsultant, the Consultant agrees to comply with the City's Code of Ordinances;

16. CONTRACT EXTRAS. Pursuant to the City's Code of Ordinances, it is specifically understood and agreed by the Consultant that any and all contract extras

regarding this Agreement shall be governed by the City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City's Charter and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at www.municode.com;

17. NON-APPROPRIATION. The Consultant acknowledges that the City is a municipal corporation, and any obligation to make payments under this Agreement may be contingent upon the appropriation by the City's Board of Alders of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that the City may terminate this Agreement by way of written notice to the Consultant if sufficient funds to prove for the payment(s) hereunder are not so appropriated;

18. COMPLIANCE WITH CITY CODE PROVISIONS. The Consultant hereby agrees to fully comply, to the extent applicable, with the requirements of the City's Code of Ordinances regarding consultants in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which the City may unilaterally terminate this Agreement by way of written notice to the Consultant. The provisions of the City Code can be found at www.municode.com ;

19. TERMINATION.

A. TERMINATION FOR CAUSE. If, through any cause, the Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Consultant shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Consultant pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Consultant shall not be responsible for any claims resulting from the City's use of the documents on another project or changes made to the documents without the Consultant's express written permission;
The term "cause" includes, without limitation the following:

1) If the Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;

2) If the Consultant fails to perform to the City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or

3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Consultant shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Consultant and the City may withhold any payment to the Consultant for the purposes of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

B. TERMINATION FOR CONVENIENCE. The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of the City, become property of the City;

20. DISPUTE RESOLUTION.

A. EXECUTIVE MEETING. The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement ("Claims") through a meeting of the chief executives of each party, or their respective designees ("Executive Meeting").

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

B. MEDIATION. Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. ARBITRATION. Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of the City, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.
Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

D. PERFORMANCE DURING DISPUTE. Unless otherwise directed by the City, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

E. CLAIMS FOR DAMAGES. Each party to this Agreement agrees to waive any and all claims for liabilities associated with or attributable, in part or in full, to damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is otherwise legally liable.

21. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein;

22. COMPLIANCE WITH LAWS. The Consultant shall be responsible for compliance with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures.

23. CONFIDENTIALITY. During and after the term of this Agreement, the Consultant, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity of any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any financial, administrative or other confidential business information, except as require by law.

24. GIFTS. During the term of this Agreement, including any extensions, the Consultant shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City or the New Haven Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in the Consultant. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated; and

25. CODE OF ETHICS. The Consultant shall comply with the City of New Haven Code of Ethics as codified in the City of New Haven Municipal Code of Ordinances and shall be considered an "employee", as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to the City to derive any interest(s) or benefit(s) from other individuals or organizations.

26. MORALS CLAUSE. Neither the Consultant, the Consultant's Representatives nor the Consultant's key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If the Consultant, the Consultant's Representative or the Consultant's key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or the Consultant is accused of performing or committing any act which could adversely impact the Consultant's events, programs, services, or reputation, the City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within

which period the Consultant may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

CITY OF NEW HAVEN

By: _____
Justin Elicker, Mayor
Date: 7/8/2020

Approved as to Form:

_____
Kevin Casini
Asst. Corp. Counsel

Date: 7.6.20

MURPHY MEDICAL ASSOCIATES LLC

By: _____
Steven A.R. Murphy MD, Managing Partner

Date: 7.6.20

EXHIBIT A

MURPHY MEDICAL ASSOCIATES LLC
1 EAST PUTNAM AVENUE
GREENWICH, CT 06830
203-658-6051

PROPOSAL FOR COVID-19 TESTING SERVICES

This is a proposal offered by Murphy Medical Associates LLC (hereinafter referred to as "the Provider") to The City of New Haven (hereinafter referred to as "the Client" or "the City") on this date, April 15, 2020. The Provider's business address is 1 East Putnam Avenue, Greenwich. Services shall be provided at:

1) 1319 Chapel Street, New Haven, CT;
2) 130 Bassett Street, New Haven, CT;
3) 140 Dewitt Street, New Haven, CT; or
4) other such location(s) as determined by the Provider and the Cit, as needed.

The Provider hereby agrees to provide the City with services described herein under "Scope and Manner of Services" with the express udnerstanding that Provider is waiving any collection of or amount due for "Payment for Services Rendered."

SCOPE AND MANNER OF SERVICE

Services to be rendered by Provider: COVID19 Swab Collection for the City's Emergency Response Providers, including, but not limited to, SEMS paramedics and EMTs, career and volunteer firefighters, police officers, 911 dispatchers, health department nurses. Additional members of the Emergency Response Providers may be designated in the discretion of the City's Mayor or his designee from time to time. Satellite testing sites at-large in city locales to members of the public.

Specific protocol and client-specific fee schedule is outlined in Appendix B.

PAYMENT FOR SERVICES RENDERED AND CONTINUATION OF CONTRACT

Initial testing and visit will be submitted to the individual's insurance, if provided. Any services not covered by insurance will not be billed to the City or patient.

APPENDIX A: FEE SCHEDULE

PROCEDURES AND TESTS

First Visit	$0.00
Subsequent Visits	$0.00
	No balance bill to either patient or Client

APPENDIX B: CLIENT SPECIFIC PROTOCOL

Provider will provide nasopharyngeal COVID19 swab collections to the City of New Haven Emergency Response Providers at the locations listed above. Collections will be sent to The Sema4 Group LLC, 125 Field Point Road, Greenwich, CT, or other lab approved by Client, which approval shall not be unreasonably withheld. Positive results will be conveyed by Provider to the Client's Director of Health. Provider shall obtain proper patient authorization for disclosure of positive test results.

Details

Client will strongly encourage asymptomatic Emergency Response Providers to obtain the nasopharyngeal COVID19 swab collection at one of the Provider's locations listed above.

EXHIBIT B
CITY OF NEW HAVEN
INSURANCE REQUIREMENTS
Health Testing Services

The Vendor will be required to submit certificates of insurance, which contain the minimum insurance coverages described below:

1. Standard workers' compensation, which complies with all Connecticut workers' compensation statutes and regulations.

2. Employer's liability insurance, which contains limits of liability of not less than $100,000 each accident, $100,000 disease policy limit and $100,000 disease – each employee.

3. Commercial general liability insurance, with a minimum limit of liability of $1,000,000 combined single limit per occurrence for bodily injury and property damage and $2,000,000 in the aggregate. Such coverage shall include the following:

   (a) Products liability and completed operations, which shall be maintained for a period of not less than three (3) years following completion of the services under this Agreement or termination of the Agreement, whichever is later.
   (b) Contractual liability insurance, which insures any indemnities contained in the Agreement between the Vendor and the City of New Haven;
   (c) City of New Haven and its employees, agents and officers designated as additional insureds;
   (d) Policy shall be underwritten on an occurrence basis.

4. Commercial automobile liability insurance, which contains minimum limits of liability of $1,000,000 per accident, and contains, at a minimum, the following coverage provisions:

   (a) Coverage for all owned, non-owned and hired vehicles;
   (b) City of New Haven and its employees, agents and officers designated as additional insureds.

5. Professional liability insurance, which covers the services to be provided pursuant to the Agreement between the City of New Haven and the Vendor with a minimum limit of liability of $1,000,000 per claim.

6. If any insurance is underwritten on a claims made, as opposed to an occurrence basis, the retroactive date in the policy shall be the earlier of the effective date of the Agreement between the Vendor and the City of New Haven or the date the Vendor commences its services for the City. The policy shall also contain an

extended reporting date of not less than three years following termination of the Agreement between the Vendor and the City of New Haven or conclusion of the services rendered by the Vendor, whichever is later.

7. All insurance required hereunder shall contain waivers of subrogation in favor of the City of New Haven and its employees, agents and officers. The Vendor shall waive any right of claim, loss or damage against the City of New Haven and its employees, agents and officers.

8. All insurance policies required under this Agreement shall contain thirty (30) days prior written notice to the City of New Haven's Risk Manager in the event of cancellation, termination or material change to any policy terms or conditions required hereunder.

9. The insurance required hereunder shall in no way serve to limit or reduce the liability of the Vendor under this Agreement.

10. The Vendor shall provide the Risk Manager with certificates of insurance, which evidence the insurance required hereunder. The Vendor shall provide the Risk Manager with renewal certificates of insurance within 15 days prior to the expiration of the policies. Vendor's failure to review said certificates of insurance or insurance policies shall not be deemed to be a waiver of the Vendor's obligations to comply with all provisions of these insurance requirements hereunder.

Client#: 1725782 MURPHMED2

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/17/2020

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

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

PRODUCER	CONTACT NAME: Donna M. Volz	
USI Insurance Services LLC 40 Bey Lea Road, Suite A201 Toms River, NJ 08731	PHONE (A/C, No, Ext): 732-908-5554	FAX (A/C, No): 732-349-0186
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Landmark American Insurance Company	33138
INSURED Murphy Medical Associates 1 East Putnam Ave Greenwich, CT 06830	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N / A						E.L. EACH ACCIDENT	$
	(Mandatory in NH)						E.L. DISEASE - EA EMPLOYEE	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$
A	Prof Liability	x		18636286	07/17/2020	07/17/2021	2,000,000 4,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Job: Covid-19 Testing

Certificate holder City of New Haven and its employees, agents and officers are included additional insured with respects to COVID-19 testing by named insured as per written contract.

Professional liability policy includes contingent bodily injury and property damage coverage

CERTIFICATE HOLDER

City Of New Haven
165 Church Street
New Haven, CT 06511

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Ulle Scott

DXVCN

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EXHIBIT C

FEMA

CONTRACT PROVISIONS TEMPLATE

FEMA Office of Chief Counsel

Procurement Disaster Assistance Team

U. S. Department of Homeland Security
Headquarters
500 C St SW
Washington, D.C. 20042
FEMA

INTRODUCTION

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract **must** contain the applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326. In addition, there are certain contract clauses which are recommended by FEMA.

This document outlines the federally required contract provisions in addition to FEMA-recommended provisions.

- For some of the required clauses, sample language or references to find sample language are provided.
- Sample language for certain required clauses (remedies, termination for cause and convenience, changes) is not provided since these must be drafted in accordance with the non-Federal entity's applicable local laws and procedures.
- For the clauses which require that exact language be included, the required language is provided. Those clauses are specifically identified below.

Please note that the non-Federal entity alone is responsible for ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

U. S. Department of Homeland Security
Headquarters
500 C St SW
Washington, D.C. 20042

FEMA

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U. S. Department of Homeland Security
Headquarters
500 C St SW
Washington, D.C. 20042
FEMA

Required Contract Provisions: Quick Reference Guide

KEY
Required/Recommended Provision ☐
Required/Recommended Provision and Required Exact Language ☐
Not Required for PA Awards (Grants) ☐

	Required Provision	Contract Criteria	Sample Language?
1.	Legal/contractual/administrative remedies for breach of contract	> Simplified Acquisition Threshold ($250k)	No. It is based on applicant's procedures.
2.	Termination for cause or convenience	> $10k	No. It is based on applicant's procedures.
3.	Equal Employment Opportunity	Construction work	Yes. 41 CFR Part 60-1.4(b)
4.	Davis Bacon Act	Construction work	**Not applicable to PA grants**
5.	Copeland Anti-Kickback Act	Construction work > $2k	**Not applicable to PA grants**
6.	Contract Work Hours and Safety Standards Act	> $100k + mechanics or laborers	Yes. 29 CFR 5.5(b)
7.	Rights to inventions made under a contract or agreement	Funding agreement	**Not applicable to PA grants**
8.	Clean Air Act and Federal Water Pollution Control Act	>$150k	Yes
9.	Debarment and Suspension	All	Yes
10.	Byrd Anti-Lobbying Amendment	All (>$100k: Certification)	Yes. Clause and certification
11.	Procurement of Recovered Materials	Applicant is a state or political subdivision of a state. Work involves the use of materials.	Yes

U. S. Department of Homeland Security
Headquarters
500 C St SW
Washington, D.C. 20042
FEMA

Recommended Contract Provisions: Quick Reference Guide

	Recommended Provision	Contract Criteria	Sample Language?
1.	Access to Records	All	Yes
2.	Contract Changes or Modifications	All	No. It depends on nature of contract and end-item procured.
3.	DHS Seal, Logo, and Flags	All	Yes
4.	Compliance with Federal Law, Regulations and Executive Orders	All	Yes
5.	No Obligation by Federal Government	All	Yes
6.	Program Fraud and False or Fraudulent Statements or Related Acts	All	Yes

REQUIRED CONTRACT PROVISIONS

1. REMEDIES

a. Standard. Contracts for more than the simplified acquisition threshold, currently set at $250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

2. TERMINATION FOR CAUSE AND CONVENIENCE

a. Standard. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity, including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

3. EQUAL EMPLOYMENT OPPORTUNITY

If applicable, exact language below in subsection 3.d is required.

a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II(C).

b. Key Definitions.

i. Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

ii. Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines "construction work" as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.

d. Required Language. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause.

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures

authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant 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 applicant so participating 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.

The applicant 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.

The applicant 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 applicant 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 applicant 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.

4. DAVIS-BACON ACT

a. Standard. All prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction). See 2 C.F.R. Part 200, Appendix II(D). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

b. Applicability. The Davis-Bacon Act only applies to the Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It DOES NOT apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

c. Requirements. If applicable, the non-federal entity must do the following:

i. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

ii. Additionally, pursuant 2 C.F.R. Part 200, Appendix II(D), contracts subject to the Davis-Bacon Act, must also include a provision for compliance with

the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

iii. Include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

Suggested Language. The following provides a sample contract clause:

Compliance with the Davis-Bacon Act.

a. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

5. **COPELAND ANTI-KICKBACK ACT**

a. Standard. Recipient and subrecipient contracts must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

b. Applicability. This requirement applies to all contracts for construction or repair work above $2,000 in situations where the Davis-Bacon Act also applies. **It DOES NOT apply to the FEMA Public Assistance Program.**

c. Requirements. If applicable, the non-federal entity must include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). Each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA. Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

Sample Language. The following provides a sample contract clause:

Compliance with the Copeland "Anti-Kickback" Act.

a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment

as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

a. Standard. Where applicable (see 40 U.S.C. §§ 3701-3708), all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II(E). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

b. Applicability. This requirement applies to all FEMA contracts awarded by the non-federal entity in excess of $100,000 under grant and cooperative agreement programs that involve the employment of mechanics or laborers. It is applicable to construction work. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

c. Suggested Language. The regulation at 29 C.F.R. § 5.5(b) provides contract clause language concerning compliance with the Contract Work Hours and Safety Standards Act. FEMA suggests including the following contract clause:

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(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 (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (**write in the name of the Federal agency or the loan or grant recipient**) 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 (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(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 (b)(1) through (4) of this section.

7. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

a. Standard. If the FEMA award meets the definition of "funding agreement" under 37C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II(F).

b. Applicability. This requirement applies to "*funding agreements*," but it **DOES NOT apply to the Public Assistance**, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "fundingagreement."

c. Funding Agreements Definition. The regulation at 37 C.F.R. § 401.2(a) defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

a. Standard. If applicable, contracts must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II(G).

b. Applicability. This requirement applies to contracts awarded by a non-federal entity of amounts in excess of $150,000 under a federal grant.

c. Suggested Language. The following provides a sample contract clause.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as

amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the (**name of applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the (**name of the applicant entering into the contract**) and understands and agrees that the (**name of the applicant entering into the contract**) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. **DEBARMENT AND SUSPENSION**

a. Standard. Non-Federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security's regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and Suspension).

b. Applicability. This requirement applies to all FEMA grant and cooperative

agreement programs.

c. Requirements.

i. 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 and activities. See 2 C.F.R. Part 200, Appendix II(H); and 2 C.F.R. § 200.213. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530.

ii. In general, an "excluded" party cannot receive a Federal grant award or a contract within the meaning of a "covered transaction," to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a "covered transaction," which is any nonprocurement transaction (unless excepted) at either a "primary" or "secondary" tier. Although"covered transactions" do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS's implementing regulations, it does include some contracts awarded by recipients and subrecipients.

iii. Specifically, a covered transaction includes the following contracts for goods or services:

1. The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

2. The contract requires the approval of FEMA, regardless of amount.

3. The contract is for federally-required audit services.

4. A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of $25,000.

d. Suggested Language. The following provides a debarment and suspension

clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by **(insert name of recipient/subrecipient/applicant)**. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to **(insert name of recipient/subrecipient/applicant)**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of2 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.

10. BYRD ANTI-LOBBYING AMENDMENT

a. Standard. 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. FEMA's regulation at 44 C.F.R. Part 18 implements the requirements of 31 U.S.C. § 1352 and provides, in Appendix A to Part 18, a copy of the certification that is required to be completed by each entity as described in 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 Federal awarding agency.

b. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs. Contractors that apply or bid for a contract of $100,000 or more under a federal grant must file the required certification. See 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.

c. Suggested Language.

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

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

d. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

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.

The Contractor,_____, certifies or affirms the truthfulness and accuracyof each statement of its certification and disclosure, if any. In addition, the Contractor 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.

_____
Signature of Contractor's Authorized Official

_____
Name and Title of Contractor's Authorized Official

_____
Date

11. PROCUREMENT OF RECOVERED MATERIALS

a. Standard. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. See 2 C.F.R. Part 200, Appendix II(J); and 2 C.F.R. § 200.322.

b. Applicability. This requirement applies to all contracts awarded by a non-federal entity under FEMA grant and cooperative agreement programs.

c. Requirements. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. 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 by 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.

d. Suggested Language.

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
   1. Competitively within a timeframe providing for compliance with the contract performance schedule;
   2. Meeting contract performance requirements; or
   3. At a reasonable price.

ii. 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.

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

RECOMMENDED CONTRACT PROVISIONS

The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts. Although FEMA does not currently require additional provisions, **FEMA recommends** the following:

1. ACCESS TO RECORDS

a. Standard. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. Recipients must give DHS/FEMA access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations *and* other applicable laws or program guidance. See DHS Standard Terms and Conditions: Version 8.1 (2018). Additionally, Section 1225 of the Disaster Recovery Reform Act of 2018 prohibits FEMA from providing reimbursement to any state, local, tribal, or territorial government, or private non-profit for activities made pursuant to a contract that purports to prohibit audits or internal reviews by the FEMA administrator or Comptroller General.

b. Suggested Language.

Access to Records. The following access to records requirements apply to this contract:

(1) The Contractor agrees to provide **(insert name of state agency or local or Indian tribal government)**, **(insert name of recipient)**, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or

his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the (**write in name of the non-federal entity**) and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

2. CHANGES

a. Standard. To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope.

b. Applicability. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

3. DHS SEAL, LOGO, AND FLAGS

a. Standard. Recipients must obtain permission prior to using the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials. See DHS Standard Terms and Conditions: Version 8.1 (2018).

b. Applicability. FEMA recommends that all non-Federal entities place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

c. Suggested Language.

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

4. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

a. Standard. The recipient and its contractors are required to comply with all Federal laws, regulations, and executive orders.

b. Applicability. FEMA recommends that all non-Federal entities place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, anddirectives.

c. Suggested Language.

"This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

5. NO OBLIGATION BY FEDERAL GOVERNMENT

a. Standard. FEMA is not a party to any transaction between the recipient and its contractor. FEMA is not subject to any obligations or liable to any party for any matter relating to the contract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

c. Suggested Language.

"The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, orany other party pertaining to any matter resulting from thecontract."

6. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

a. Standard. Recipients must comply with the requirements of The False Claims Act (31 U.S.C. §§ 3729-3733) which prohibits the submission of false or

fraudulent claims for payment to the federal government. See DHS Standard Terms and Conditions: Version 8.1 (2018); and 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to thecontract.

b. Applicability. FEMA recommends that the non-Federal entity include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

c. Suggested Language.

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

EXECUTED

ELECTRONIC

HIPAA BUSINESS ASSOCIATE AGREEMENT

ORIGINAL

A20-0253

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** ("Agreement") is made this 28 day of April, 2020, by and between **MURPHY MEDICAL ASSOCIATES LLC** ("Business Associate") and **THE CITY OF NEW HAVEN** as "Plan Sponsor" of a group health plan ("Covered Entity").

A. **Introduction.** Covered Entity will make available and/or transfer to Business Associate certain information that is confidential and must be afforded special treatment and protection so Business Associate may perform services for Covered Entity under a separate **COVID-19 Testing Services Agreement** ("Services Agreement"). Business Associate agrees that such information shall constitute Protected Health Information and can be Used or Disclosed only in accordance with this Business Associate Agreement and a collection of federal laws, rules and regulations, including but not limited to, the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936 (codified in scattered sections of 29 U.S.C. and 42 U.S.C.) ("HIPAA") Privacy Rule and Security Rule, the Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. §§17921-17954 ("HITECH Act"), the Omnibus HIPAA Final Rule (78 Fed. Reg. 5566 (Jan. 25, 2013) (to be codified in scattered sections of 45 C.F.R. Parts 160 and 164)) ("Omnibus Rule") (collectively these federal rules are referred to collectively in this Business Associate Agreement as the "HIPAA Rules") and applicable state and federal laws, rules and regulations regarding the privacy, confidentiality and security of specific types of health information.

Murphy Medical Associates, LLC, is a "Business Associate" under the Privacy and Security Rules with respect to its role as a third party administrator for self-funded group health plans, and performs certain administrative services for or on behalf of Covered Entity which involves access to and the disclosure of Protected Health Information.

B. **Definitions.** For the purposes of this Business Associate Agreement, the following terms shall have the following meaning:

1. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, as enacted in the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954. All references to the "HITECH Act" in this Business Associate Agreement shall be deemed to include the Omnibus Rule.

2. "Privacy Rule" means the HIPAA Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E as amended, clarified and supplemented from time to time. All references to the "Privacy Rule" in this Business Associate Agreement shall be deemed to include the Omnibus Rule.

3. "Security Rule" means the HIPAA Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and C as amended, clarified and supplemented from time-to-time. All references to the "Privacy Rule" in this Business Associate Agreement shall be deemed to include the Omnibus Rule.

4. "Standard Transactions Rule" means the HIPAA Standards for Electronic Transactions at 45 C.F.R. Parts 160 and 162.

5. The following terms used in this Business Associate Agreement shall have the same meaning ascribed to them in the HIPAA Rules: Access, Breach, Business Associate, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Electronic Protected Health Information ("Electronic PHI"), Genetic Information, Individual, Individually Identifiable Health Information, Marketing, Minimum Necessary, Notice of Privacy Practices, Personal Health Records, Protected Health Information ("PHI"), Required By Law, Secretary, Security Incident, Business Associate, Unsecured Protected Health Information ("Unsecured PHI"), Use, Payment and Treatment. For purposes of this Business Associate Agreement, unless otherwise specified, all obligations of Business Associate relating to PHI also shall apply to Electronic PHI.

C. **Nature of Use and Disclosure of Information**. Business Associate shall be permitted to Use and/or Disclose PHI provided or made available from Covered Entity solely to provide the services set forth in the Services Agreement and as specifically set forth in this Section C. Business Associate shall not Use or Disclose the PHI provided or made available by Covered Entity for any purpose other than as: (1) expressly permitted by this Business Associate Agreement or the Services Agreement; (2) as Required By Law; (3) permitted with Covered Entity's prior written consent; (4) necessary to Business Associate's employees, agents or representatives who need to know such PHI for the purposes set forth in the Services Agreement; (5) to carry out Business Associate's legal responsibilities; or (6) for Data Aggregation for Covered Entity's Health Care Operations purposes. Furthermore, Business Associate may not Use or Disclose PHI in a manner that would violate 45 C.F.R. Part 164, Subpart E if done by Covered Entity.

D. **Business Associate's Obligations**.

1. Limits On Use And Disclosure. Business Associate agrees that the PHI provided or made available by Covered Entity shall not be Used or Disclosed other than as specifically set forth in Section C of this Business Associate Agreement.

2. Appropriate Safeguards. Business Associate shall establish and maintain appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity and availability of PHI and Electronic PHI and to prevent any use or disclosure of the PHI other than as provided in Section C of this Business Associate Agreement.

3. Compliance with Security Rule. Business Associate shall comply with the Security Rule. Upon request by Covered Entity and not more than once annually, Business Associate shall provide Covered Entity with electronic or paper copies of its policies and procedures evidencing its compliance with the Security Rule.

4. Breach Reports. Following completion of its internal investigation, Business Associate shall report to Covered Entity, any of the following events (collectively referred to in this paragraph as "Breach"): (a) any Use or Disclosure of PHI not permitted under by Section C of this Business Associate Agreement or permitted by law; (b) any Security Incident as defined

in 45 C.F.R. §164.304; (c) any "breach of security" as defined in Connecticut General Statutes §36a-701b any Breach of Unsecured PHI as defined at 42 U.S.C. §§17921 and 17932(h) and 45 C.F.R. §164.402. Business Associate's written report shall:

(i) identify the nature of the non-permitted Access, Use or Disclosure, including the date of the Breach and the date of discovery of the Breach;

(ii) identify the PHI Accessed, Used or Disclosed as part of the Breach;

(iii) upon request, assist Covered Entity in the performance of a risk assessment concerning the Breach;

(iv) identify what corrective action Business Associate took or will take to prevent further non-permitted Access, Use or Disclosure;

(v) identify what Business Associate did or will do to mitigate any harmful effect(s) of the non-permitted Access, Use or Disclosure;

(vi) provide such other information as Covered Entity may require to supplement Business Associate's written report;

(vii) cooperate with Covered Entity in its efforts to mitigate the Breach and comply with the HIPAA Rules and any applicable state breach notification rules; and

(viii) provide such other information as may be required pursuant to subsequently issued regulations issued under the HIPAA Rules.

5. Right of Access to Information & Amendments. If Covered Entity provides Business Associate with PHI that is part of a Designated Record Set, within fifteen (15) days of Covered Entity's request, Business Associate agrees: (a) to provide access to such PHI to Covered Entity or, when directed by Covered Entity, to an Individual in order for Covered Entity to meet the access to information provisions of the Privacy Rule, including providing access to PHI in electronic form (if readily producible) under 45 C.F.R. §164.524 (c)(2) and (b) to make any amendments(s) to such PHI.

6. Providing Accounting. Under the Privacy Rule, Covered Entity must provide Individuals an accounting of certain Disclosures of their PHI for a reason other than Treatment, Payment and Health Care Operations. To assist Covered Entity in providing this information to Individuals, Business Associate agrees to document Disclosures of PHI and information related to such Disclosures for reasons other than Treatment, Payment and Health Care Operations during the Term of the Agreement to enable Covered Entity to respond to an Individual's request for an accounting of disclosures of PHI and make available such information to Covered Entity within ten days of Covered Entity's request for the information. If Business Associate (or its

agents or subcontractors, if applicable) receives a request for an accounting of disclosures directly from an Individual, Business Associate shall forward such request to Covered Entity within fifteen (15) days of receipt. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

7. Audits By the Secretary. Business Associate agrees: (a) to make its internal practices, books and records relating to the Use or Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Rules; (b) to cooperate fully with Covered Entity when responding to such regulatory audits and investigations; and (c) to concurrently provide Covered Entity with copies of the information it provides to the Secretary.

8. Additional Business Associate(s). Business Associate shall enter into a written agreement to ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI. If the agreement entered into between Business Associate and its subcontractors(s) permits additional subcontracting, Business Associate shall ensure that its subcontractor requires its subcontractors to agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI.

9. Minimum Necessary. Business Associate warrants, on its behalf and on behalf of its subcontractors, if any, that it will only request and use the minimum amount of PHI necessary to perform the stated purpose(s) of the Services Agreement as set forth in Section C of this Business Associate Agreement.

E. **Additional Business Associate Obligations.**

1. Mitigation Procedures. Business Associate shall mitigate to the maximum extent, any harmful effect(s) arising out of or from the intentional or inadvertent Use or Disclosure of PHI that is or could be contrary to this Business Associate Agreement, the HIPAA Rules or that could damage third parties.

2. Sanctions. Business Associate shall develop, implement and maintain sanction procedures for any employee, subcontractor agent who violates the terms of this Business Associate Agreement or the HIPAA Rules. Such sanction procedures shall be made available to Covered Entity within fifteen (15) days of its reasonable request during the term of the Services Agreement or with fifteen (15) days of Covered Entity's request in the event of a Breach as set forth in Section D (4) of this Business Associate Agreement.

3. Indemnification. The indemnification provisions of the Services Agreement shall apply to any breach of this Business Associate Agreement.

4. Property Rights. The PHI shall be and remain the property of Covered Entity. Neither Business Associate nor its subcontractor(s), if any, shall acquire title or rights to the PHI,

excluding any de-identified information, as a result of this Business Associate Agreement or the Services Agreement, unless such PHI also include proprietary information of Business Associate.

5. Response to Government Authorities. Business Associate shall notify Covered Entity within fifteen (15) business days of receipt of a governmental or administrative subpoena(s) or any informal request(s) from a governmental entity relating in any way to the PHI provided pursuant to this Business Associate Agreement and allow Covered Entity to seek a protective order or otherwise challenge the subpoena or request before responding thereto.

6. No Sale of PHI. Business Associate shall not directly or indirectly receive financial or in-kind remuneration in exchange for any PHI in compliance with 45 C.F.R. §164.502(a)(5)(ii).

7. Marketing. Business Associate shall not make or cause to be made any marketing communications about its products or services that is prohibited by 42 U.S.C. §17936(a) or 45 C.F.R. §164.508(a)(3).

8. Fundraising. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 45 C.F.R. §164.514(f).

9. Restriction Requests. If applicable, Business Associate shall abide by any restriction request agreed to by Covered Entity under 45 C.F.R. §164.522(a) within fifteen (15) business days of receiving notice of such by Covered Entity.

10. Confidential Communications. If applicable, Business Associate shall abide by any confidential communication requirements that Covered Entity is subject to under 45 C.F.R. §164.522(b) within fifteen (15) business days of receiving notice of such by Covered Entity.

11. Genetic Information. If applicable, Business Associate shall not Use or Disclose PHI that is Genetic Information for underwriting purposes, as defined at 45 C.F.R. §164.502(a)(5), conducted on behalf of Covered Entity.

12. No Offshoring of PHI. Neither Business Associate nor its subcontractor(s), if any, shall provide the services contemplated under the attached agreement or Access, Use and Disclose any PHI outside of the Continental United States unless Covered Entity provides its express written consent, which may be unreasonably withheld.

13. Audits, Inspection and Enforcement. Within fifteen (15) days of a written request by Covered Entity, Business Associate and its agents or subcontractors, if any, shall allow Covered Entity to conduct a reasonable inspection of its facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of PHI and the implementation of appropriate security safeguards pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Business Associate Agreement; provided, however, that: (a) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (b) Covered Entity shall

protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; (c) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate; and (d) such inspection shall not occur more than once annually or, in the event of a Breach described in Section D (4) of this Business Associate Agreement, within thirty days of the Breach in question. The fact that Covered Entity inspects, or fails to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this Business Associate Agreement, nor does Covered Entity's: (i) failure to detect; or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Agreement.

14. Standard Transactions. If Business Associate conducts in whole or in part Standard Transactions for or on behalf of Covered Entity, Business Associate shall comply with the Standard Transaction Rule.

15. De-Identified Information. Business Associate may store, analyze, access and use components of PHI that have been de-identified in accordance with 45 C.F.R. §164.514 and that do not contain any PHI or Individually Identifiable Health Information, provided that any such use is consistent with applicable law.

F. **Disclosure of PHI to Covered Entity**. Covered Entity makes the following representations to Business Associate:

1. Plan Sponsor. Covered Entity is the Plan Sponsor.

2. Plan Document. The plan document has been amended as required under 45 CFR §164.504(f)(2), and contains all other provisions necessary to comply with the Privacy and Security Rules and the HITECH Act, and to permit Business Associate to disclose PHI to Covered Entity.

3. Certification and Adequate Separation. Covered Entity shall provide Business Associate with a Plan Sponsor Certification that it:

(i) will use and disclose PHI it receives from Business Associate only to perform the plan administrative functions;

(ii) has implemented procedures to provide for adequate separation between employees of Covered Entity who have access to PHI received from Business Associate to perform the plan administrative functions and all other employees of Covered Entity;

(iii) has safeguards in place, and satisfies all other requirements under law with respect to any PHI and Electronic PHI it receives from Business Associate; and

(iv) has amended the Plan Document as required by 45 CFR §164.504(f)(2), and will take all other action necessary to comply and continue to comply with the Privacy and Security Rules or the HITECH Act which are necessary to permit Business Associate to disclose PHI to Covered Entity consistent with this Agreement.

4. Additional Representations.

(i) Covered Entity will notify Business Associate immediately if any of its representations in this Section are no longer true.

(ii) Covered Entity will not request PHI from Business Associate, or request Business Associate to use or disclose PHI, beyond what is minimally necessary to accomplish the intended purpose or in any other manner not permitted under the Plan Document, the Plan's notice of privacy practices, the Privacy and Security Rules or the HITECH Act.

5. Minimum Necessary Disclosure. Except in the case of disclosure of PHI to Covered Entity pursuant to a HIPAA-compliant authorization, Business Associate will make reasonable efforts to insure that the amount of PHI disclosed to Covered Entity in accordance with this Section will be the minimum amount necessary to accomplish the intended purpose, as required, but subject to the exceptions provided under 45 CFR §164.502(b).

G. **Term and Termination.**

1. Term. This Business Associate Agreement shall become effective on the Effective Date of the Services Agreement and shall continue until terminated by Covered Entity or the Services Agreement expires or is terminated. In addition, certain provisions and requirements of this Business Associate Agreement shall survive its expiration or other termination of this Business Associate Agreement as noted herein.

2. Material Breach. A breach by Business Associate of any material provision of this Business Associate Agreement, as determined by Covered Entity, shall constitute a material breach and shall provide grounds for immediate termination of the Agreement by Covered Entity.

3. Reasonable Steps to Cure Breach. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of Business Associate's obligations under the HIPAA Rules or the provisions of this Business Associate Agreement and does not terminate the Business Associate Agreement, then Business Associate shall take reasonable steps to cure such breach or end such violation, as applicable. If Business Associate's efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall either: (a) terminate this Business Associate Agreement and the Services Agreement, if feasible; or (b) if termination of the Business Associate Agreement and the Services Agreement is not feasible, Covered Entity shall report Business Associate's breach or

violation to the Secretary. The obligations set forth in this Section are reciprocal and shall apply to Business Associate if it knows of a pattern of activity or practice of Covered Entity that constitutes a violation of Covered Entity's obligations under the HIPAA Rules and Business Associate shall cause this obligation to apply to its subcontractors, if permitted under the Services Agreement.

4. Judicial or Administrative Proceedings. Either party may terminate this Business Associate Agreement and the Agreement, effective immediately, if: (a) the other party is named as a defendant in a criminal proceeding for a violation of the HIPAA Rules or applicable state law; or (b) a finding or stipulation that the other party has violated any standard or requirement of the HIPAA Rules or applicable state laws is made in any administrative or civil proceeding in which the party has been named.

5. Effect of Termination. Upon termination of this Business Associate Agreement for any reason, Business Associate shall return or destroy all PHI that Business Associate or its agents or subcontractors, if any, still maintain in any form and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Sections C, D and E of this Business Associate Agreement to such PHI, limit further Use of such PHI to those purposes that make the return or destruction of such PHI infeasible and retain such PHI for six years from the date this Business Associate Agreement terminates. If Business Associate elects to destroy the PHI, Business Associate shall cause one of its authorized corporate officers to certify in writing to Covered Entity that such PHI has been destroyed. This provision shall survive the termination of this Business Associate Agreement for any reason.

H. **Miscellaneous.**

1. Amendments. Any amendment to this Business Associate Agreement needed to comply with the HIPAA Rules, shall be adopted automatically, without need for the parties' signatures, and deemed incorporated into this Business Associate Agreement as of the compliance date of the applicable HIPAA Rules.

2. Ambiguity. Any ambiguities in this Business Associate Agreement or its defined terms shall be resolved in favor of a meaning that promotes the parties' compliance with the HIPAA Rules.

3. Survival. The confidentiality and security obligations hereunder are perpetual and shall survive the termination of the Services Agreement or this Business Associate Agreement for any reason.

4. Disclaimer. Each party is solely responsible for all decisions it makes regarding the Use, Disclosure and safeguarding of PHI.

5. No Agency. The parties agree and acknowledge that Business Associate is an independent contractor and it is not the intention of either party, whether expressed or implied, to create an agency relationship under the Federal Common Law of Agency.

IN WITNESS WHEREOF, the parties have duly executed this Business Associate Agreement concurrently with the execution of the Services Agreement

MURPHY MEDICAL ASSOCIATES LLC

By: _____

Print Name: Stephen A.R. Murphy MD

Title: Managing Partner

THE CITY OF NEW HAVEN

DocuSigned by:

By: Justin Elicker, Mayor
9D7BBCABC19B4A1...

Print Name: Justin Elicker

Title: Mayor 5/5/2020 | 9:06 PM EDT

Approved as to Form & Correctness

K M. Casini
C9858D8C47C5437...

Kevin Casini

Assistant Corporation Counsel

Dated: 4/30/2020 | 7:31 PM EDT

New Haven COVID-19 Testing

Murphy Medical Associates

Offers non-symptomatic COVID-19 testing.

Testing for all New Haveners

New Haven Green
Wednesday, May 27, 2020
8AM to 4PM

Insurance will be processed for those insured.
No out of pocket costs for anyone uninsured.
Preregister online at coronatestct.com

NH HD

New Haven Health Department
Prevent. Promote. Protect.

NH Health Dept. COVID Hotline: (203) 946-4949

Murphy Medical Associates: https://coronatestct.com/