

DOUGLAS COUNTY BENEFICIARY AGREEMENT

This Douglas County Beneficiary Agreement (the "Agreement"), is made and entered into this ____ day of _____, 2024, by and between **THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO** (the "County") and **ROCKY MOUNTAIN ADVENTIST HEALTHCARE FOUNDATION, dba ADVENTHEALTH ROCKY MOUNTAIN FOUNDATION**, a Colorado nonprofit corporation, whose business address is 950 E Harvard Ave, Suite 230, Denver, CO 80210 (the "Beneficiary"). The County and the Beneficiary shall be referred to herein, individually, as a "Party" and, collectively, as the "Parties."

WHEREAS, on March 11, 2021, the American Rescue Plan Act ("ARPA") was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, collectively, the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF"); and

WHEREAS, ARPA provides resources to respond to the COVID-19 public health emergency, its economic impacts, and to rebuild a stronger, more equitable economy as the country recovers; and

WHEREAS, the County received an allocation of SLFRF from the United States Department of the Treasury (the "Treasury") to support recovery efforts including the ability to provide funding to subrecipients and beneficiaries to spend on eligible expenditures under ARPA; and

WHEREAS, Douglas County has also accrued interest on its ARPA allocation that is not subject to program restrictions; and

WHEREAS, pursuant to the terms of this Agreement, the County wishes to disburse to the Beneficiary, and the Beneficiary wishes to receive from the County, accrued interest earned on the County's SLFRF Funds for disbursement through a grant for the benefit of the public; and

WHEREAS, the Douglas County Board of County Commissioners has determined that the grant described herein furthers a valid public purpose by facilitating greater access to improved cancer care in Castle Rock for residents of central and southern Douglas County, where such care is not presently available, resulting in better overall health care for residents of the County, and

WHEREAS, the Douglas County Board of County Commissioners has further determined that there are other fiscal and economic benefits as identified in economic impact analysis produced by Arapahoe/Douglas Works! Workforce Center, which concluded that the direct and indirect impact of the Cancer Center could result in the creation of 50 new medical/surgical jobs paying \$5 million in wages annually, 69 additional jobs paying \$5 million in additional wages annually, and an increase in local taxes of up to \$242,781 annually; and

WHEREAS, these combined potential public benefits cannot be realized by other possible uses of these funds and other possible uses would not yield similar benefits to a commensurate or greater degree; and

WHEREAS, the Parties desire to enter to this Agreement in order to set forth the terms

and conditions pertaining to such Grant.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the County and the Beneficiary agree as follows,

1. Amount of Grant. The County shall provide accrued interest earned on SLFRF funds to the Beneficiary in total amount not to exceed One Million and no/100 (\$1,000,000.00) (the "Grant Funds"). The County shall disburse Grant Funds as described in Exhibit A, attached hereto and incorporated herein.

To the extent any Grant Funds provided to the Beneficiary under this Agreement are not actually expended, or any costs and expenses are subsequently refunded to the Beneficiary, the Beneficiary agrees that it shall return any Grant Funds that are unused or refunded to the County by the date specified in Section 2 below. No provision of Grant Funds by the County shall be construed to operate as a waiver of the Beneficiary's obligation to comply with this Agreement, and any other laws, regulations or rules; nor shall any such provision operate as a waiver or estoppel of the Beneficiary's obligation to return/repay any Grant Funds distributed to the Beneficiary that are subsequently found to not have been used or reimbursed for eligible expenses or the use of which was found to be in violation of this Agreement or otherwise unlawful.

2. Use of Grant Funds. The Beneficiary hereby certifies that it or its affiliate shall use Grant Funds for Eligible Expenses only and shall return any unexpended Grant Funds to the County by December 31, 2027, except where a subsequent date is approved in writing from Douglas County. Uses of the Grant Funds are limited to those described in Exhibit B, attached hereto and incorporated herein. Sub-award of any Grant Funds is not allowed without the written approval of the County.

3. Accounting. Beneficiary agrees to utilize adequate internal controls and maintain necessary source documentation for all costs incurred. The Beneficiary also agrees to be solely responsible for ensuring that it disburses and accounts for the Grant Funds received from the County in strict compliance with this Agreement, and all other applicable statutory and regulatory accounting requirements. The Beneficiary shall maintain a complete set of books and records documenting its use of Grant Funds and its supervision and administration of the various projects funded. Records are to include documentation verifying project eligibility and financial and other administrative aspects involved in use of the Grant Funds.

4. Audit/Records of Expenditures. The County and any of its duly authorized representatives shall have reasonable access to any books, documents, papers, and records of the Beneficiary which are pertinent to this Agreement for the purpose of making an audit, examination, or excerpts. Beneficiary shall provide any documentation necessary to prepare all reporting required of or by the County, and shall keep all books, documents, papers and records which are pertinent to the Beneficiary's performance for a minimum period of five (5) years from December 31, 2027, or the date of the last expenditure of Grant Funds, whichever is later. The records shall be sufficient to definitively establish that the Grant Funds were used in a manner consistent with this Agreement. Should Beneficiary fall out of compliance with the requirements of this section, the County shall notify the Beneficiary in writing of their non-compliance and Beneficiary shall have thirty (30) days to meet compliance requirements. If Beneficiary fails to comply with the use criteria or fails to keep and maintain adequate records as provided herein

following the opportunity to cure, it shall be required to return the Grant Funds or any portion thereof upon the written request of the County.

Beneficiary agrees to cooperate with the County fully and completely in any audit of the Grant Funds provided to the Beneficiary pursuant to this Agreement. If the County incurs legal expenses relating to an audit of the Beneficiary's expenditure of Grant Funds, the Beneficiary agrees to pay the County's reasonable attorneys' fees and costs associated with such audit and/or any legal action in which the Beneficiary is alleged to have mis-used or failed to properly account for the Grant Funds.

5. Reporting. The source of Funds for this Agreement is accrued interest earned on SLFRF funds, not subject to SLFRF program restrictions. As such, the County considers the recipient of these funds a Beneficiary rather than an SLFRF Subrecipient. Beneficiaries are not subject to the reporting requirements placed on subrecipients in Federal Uniform Guidance. However, the Beneficiary shall timely provide to the County such information or documents as may be required by Exhibit A or elsewhere in this Agreement, or by applicable federal or state laws, regulations and guidelines.

6. Non-Eligible Use of Grant Funds. Any item of expenditure by Beneficiary under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of County or the County's external auditor to be improper, unallowable, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Beneficiary, shall become Beneficiary's liability, to be paid by Beneficiary from funds other than those provided by County under this Agreement or any other agreements between County and Beneficiary. This provision shall survive the expiration or termination of this Agreement.

7. Disputes/Release. Beneficiary acknowledges that the County's decisions concerning any advancement of Grant Funds, or reimbursement of any submittal or re-submittal are final, and cannot be challenged or appealed in court or otherwise. Beneficiary hereby waives, relinquishes, and forever releases any and all claims or actions for damages, injunctive relief, and any other relief of any kind whatsoever, that it has or may have now or in the future, against Douglas County, its Board of County Commissioners, elected and appointed officials, employees and agents, to obtain advancement or reimbursement of Grant Funds or to obtain damages for the County's failure to advance or pay Grant Funds and/or expenses or to seek any other relief that is inconsistent with this section of the Agreement.

8. Notice. Notices to be provided under this Agreement shall be given in writing and either delivered by hand, deposited in the United States mail with sufficient postage, or via e-mail. The addresses for Notices are as follows:

To the County: Douglas County Attorney
100 Third Street
Castle Rock, CO 80104

To the Beneficiary: AdventHealth Rocky Mountain Foundation
950 E Harvard Ave, Suite 230,
Denver, CO 80210

With a copy to: AdventHealth Rocky Mountain Region
6061 S. Willow Drive
Greenwood Village, CO 80111
Attn: Regional Chief Legal Officer

9. General Terms

A. Beneficiary Representation. Beneficiary hereby certifies that it or its affiliates have the experience and ability to perform its obligations under this Agreement; that it will perform said obligations in a professional, competent, and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or any other rights of any nature whatsoever, or violate any federal, state and/or municipal laws.

B. Governing Law: Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. The venue for any lawsuit concerning this agreement shall be in the District Court for Douglas County, Colorado.

C. Assignment. Beneficiary may not assign any of its rights or obligations hereunder to a third party non-affiliate without the prior written consent of the County.

D. No Joint Venture/Independent Contractor. Nothing in this Agreement is intended or shall be construed to create a joint venture between the County and the Beneficiary. Beneficiary, its agents, employees, contractors, or subcontractors, are independent contractors for purposes of this Agreement and are not to be considered employees or agents of the County for any purpose. Beneficiary and its agents, employees, contractors, or subcontractors, are not subject to the terms and provisions of the County's personnel policies handbook and shall not be considered a County employee for workers' compensation or any other purpose. Beneficiary, its agents, employees, contractors, or subcontractors, are not authorized to represent the County or otherwise bind the County in any way. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Beneficiary to provide services for the use of Grant Funds under this Agreement shall be and remain at all times employees of Beneficiary for all purposes. The County shall never be liable or responsible for any debt, obligation, or liability of the Beneficiary.

E. Authorization. By signing on behalf of the Beneficiary below, the undersigned represents that the undersigned is authorized to enter into this Agreement on behalf of the Beneficiary and can attest to and is knowledgeable of the matters stated and certified therein.

F. Entire Agreement/Modifications. This instrument shall constitute the entire agreement between the County and the Beneficiary and supersedes any prior agreements between the parties and their agents or representatives, all of which are merged into and revoked by this Agreement with respect to its subject matter. This Agreement may not be amended or modified except through a writing signed by the Parties.

G. No Waiver. No provision or terms of this Agreement shall be deemed to be waived by the County except in writing signed by the Board of County Commissioners or person authorized to sign by resolution of the Board, and any waiver of a right shall not be construed

to be a waiver of any other right or to be a continuing waiver, unless specifically so stated.

H. Non-appropriation. Pursuant to C.R.S. Section 29-1-110, as amended, the financial obligations of the county as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available.

I. Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to the County and the Beneficiary. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

J. Survival of Terms and Conditions. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that anticipate continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

K. Insurance. Beneficiary shall procure and maintain insurance coverages during the term of this Agreement to cover all liability, claims, demands, and other obligations assumed by Beneficiary in amounts not less than as follows: 1) Workers' Compensation: statutory limits 2) General Liability Insurance or self-insurance for claims of bodily injury, property damage and personal injury liability subject to the Colorado Governmental Immunity Act.

Beneficiary shall satisfy the above insurance requirements with insurance in accordance with the provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and the Colorado Risk Management Act, C. R.S. §24-30-1501, et seq. The Beneficiary's coverages above shall be primary and non-contributory with any insurance or self-insurance carried by the County. Beneficiary shall be solely responsible for any deductible losses under any policy required above. Beneficiary shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

L. Indemnification. The County cannot and by this agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Beneficiary or any other person or entity whatsoever, for any purpose whatsoever. Provided that the claims, demands, suits, actions or proceedings of any kind are not the result of willful misconduct or professional negligence on the part of County or its commissioners, officials, officers, directors, agents and employees ("County Representatives"), the Beneficiary shall defend, indemnify and hold harmless the County Representatives from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever, including Workers' Compensation claims, in any way resulting from or arising out of Beneficiary's use of the Grant Funds or while this Agreement is in effect; provided, however, that the Beneficiary need not indemnify or save harmless the County, its officers, agents and employees from damages resulting from the negligence or willful misconduct of the County Representatives. This provision shall survive the expiration or termination of this Agreement for two (2) years following the date on which this Agreement is terminated or, if later, the date on which /Beneficiary disburses or returns the balance of the Grant Funds.

M. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, notice requirements or other provisions. of the Colorado Governmental Immunity Act, C.R.S. 24-10- 101 *er seq.* as applicable now or hereafter amended. There is no intent to waive or restrict governmental immunity.

IN WITNESS WHEREOF, the County and the Beneficiary have executed this Agreement as of the date(s) set forth below.

**BOARD OF COUNTY COMMISIONERS OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO**

By: _____ DATE: _____
_____, Chair

ATTEST: (seal)

By: _____ DATE: _____
Deputy Clerk to the Board

APPROVED AS TO LEGAL FORM:

By: _____ DATE: _____
_____, Senior Assistant County Attorney

APPROVED AS TO FISCAL CONTENT:

BY: _____ DATE: _____
Andrew Copland, Finance Director

APPROVED AS TO CONTENT:

BY: _____ DATE: _____
Douglas J. Debord, County Manager

AdventHealth Rocky Mountain Foundation

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

Disbursement of Grant Funds/Reporting

- 1. Prerequisite to Receiving Funds.** Prior to disbursement of funds Beneficiary shall provide information and/or complete any forms as required by the County to ensure proper disbursement of fund.
- 2. Disbursement of Funds.** The County shall disburse the Grant Funds directly to the Beneficiary via check or ACH, at the discretion of the County, as follows:

Upon execution of this Agreement and receipt of any forms required in part 1 above, the County shall make a payment under this agreement upon submittal by AdventHealth Rocky Mountain Foundation of an invoice for the funds.

- 3. Reporting Requirements.** The source of Funds for this Agreement is accrued interest earned on SLFRF funds, not subject to SLFRF program restrictions. As such, the County considers the recipient of these funds a Beneficiary rather than an SLFRF Subrecipient. Beneficiaries are not subject to the reporting requirements placed on subrecipients in Federal Uniform Guidance. However, the Beneficiary shall timely provide to the County such financial, performance, and compliance reporting and/or records, in such form, as may be requested by the County, including, but not be limited to, the following:

Documentation of the Grant Funds used to date to include a description of the expenditure, date of the expenditure, amount, vendor/payee, and typical supporting information for the expense such as contracts, invoices, vouchers, receipts, payroll records, or other official documentation and a certification that the expenses were in compliance with the requirements of this Agreement.

Beneficiary further agrees that it shall keep adequate records in such form and substance as may be requested by the County for a minimum period of 5 years from December 31, 2027, or the date of the last expenditure of Grant Funds, whichever is later. The records shall be sufficient to definitively establish that the Grant Funds were used in a manner consistent with the above criteria in Exhibit B.

EXHIBIT B Use of Grant Funds

1. **Use of Grant Funds.** Beneficiary shall use the Grant Funds as follows:

Beneficiary shall use the Grant Funds for the acquisition and installation of a Vision RT Radiation Therapy system more specifically described below:

Vision RT hosts state-of-the-art technology that enhances patient safety by linking a patient's biometric signature with their personalized treatment plan. **Vision RT** has a number of extension products including **AlignRT**, an optical tracking system that ensures radiation is delivered only where necessary. Every patient is positioned and monitored to less than 0.5 mm of accuracy, meaning healthy tissues are protected from radiation. The system is so accurate, that if a patient were to cough or sneeze, the instant they move out of the prescribed tolerances, the radiation is immediately turned off. Studies have shown the use of **AlignRT** shortens the amount of time needed to treat a patient by an average of 22% per session.

MapRT is another technical extension of **Vision RT**. It images the entire surface of the patient and the instruments needed to provide the most effective treatment to generate a clearance map. The software detects potential hazards which allows our team members to create the safest and most customized treatment plan possible while minimizing any delays in care.

Vision RT enables us to be among the first clinical environments *in the world* to offer a new radiation visualization system called **DoseRT**. This technology uses a specialized camera system that makes the invisible light produced by these treatments visible to the naked eye allowing our clinicians to verify in real time the accurate delivery of radiation treatments.

Finally, **VisionRT** takes a patient's movements from breathing into account with **Sim RT** which will allow us to account for respiratory motion during planning and treatment. By tracking this motion, the radiation beam turns off and on, decreasing the radiation dose to sensitive areas.

At AdventHealth Castle Rock, patient safety and well-being is our non-negotiable priority. By using these technologies, we will keep patients safe and decrease treatment times enabling more time for patients to return to their personal lives and families. A gift of **\$1,112,600** will enable the purchase the total comprehensive package of Vision RT technologies and position our Cancer Center at the forefront of modernization from day one. An additional amount of **\$113,537** will generously support the first year of service and support fees assuring hospital team members are expertly trained, cover subscription fees, and install customized mounting.

AdventHealth's Vision RT representatives assure that AdventHealth Castle Rock could be one of only three hospitals in the US with this comprehensive level of Vision RT technologies: AdventHealth Orlanda and AdventHealth Parker, making Douglas County an even greater place to receive healthcare and contributing to our standards of excellence. Here are a few resource links for any further review of these products:

Cherenkov Imaging - Vision RT – Real Time Dose Visualization
MapRT - Vision RT – Dose Maximization & Collision Avoidance
AlignRT® InBore™ - Vision RT – Only SGRT inside of Bore Based Linac
GateRT® - Vision RT – Free breathing Gating of Beam
SimRT - Vision RT – FB & DIBH Sim SGRT

2. Period of Performance

The Beneficiary shall fully expend Grant Funds by December 31, 2027 unless otherwise extended in writing by Douglas County.

2. Additional Performance Standards

- The Beneficiary shall secure applicable matching funds in a timely manner to ensure Foundation fundraising goals are met.
- The Beneficiary shall recognize the contribution contemplated under this agreement in a manner commensurate with the contribution. As suggested by the Beneficiary, the recognition shall consist of naming the planned “Healing Terrace” in recognition of the County, or similar commemoration as mutually agreed upon by the Parties.
- The Beneficiary may invite County representatives to participate on the Foundation Impact Team at the Beneficiary’s discretion.