

AGREEMENT

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, ("Denver"), for itself and on behalf of the **Department of Human Services** ("Denver DHS", and together with Denver, "the City"), and **ROCKY MOUNTAIN HUMAN SERVICES**, a not-for-profit corporation licensed and authorized to do business in the State of Colorado, whose address is 9900 East Iliff Avenue, Denver, Colorado 80231 (the "Contractor" or "RMHS"), collectively "the Parties."

RECITALS:

1. Subject to annual appropriations by the Colorado General Assembly, the Colorado Department of Health Care Policy and Financing ("CO-HCPF"), pursuant to Colo. Rev. Stat. §§ 25.5-10-201, *et seq.*, provides funds to community centered boards to provide or purchase authorized services and supports for individuals with intellectual and developmental disabilities.
2. The Contractor has been designated by CO-HCPF as the Community Centered Board for the City and County of Denver ("Denver CCB"). As the Denver CCB, Contractor receives federal and state funds annually under an agreement with the State of Colorado, as amended, (the "Contractor's State CCB Contract") to provide or purchase authorized services and supports to individuals with intellectual and developmental disabilities.
3. Colo. Rev. Stat. § 25.5-10-206(6) provides that boards of county commissioners may levy up to a total of one (1) mill in property taxes to also purchase services and supports for individuals with intellectual and developmental disabilities.
4. In January 2017, the City, under authority of Ord. No. 20161071, Series of 2017, codified § 53-550 in the Denver Revised Municipal Code ("D.R.M.C."). Section 53-550 authorizes a mill levy for the purchase of services for individuals with intellectual and developmental disabilities, designates the permitted uses of the funds, establishes a residency requirement for beneficiaries of the revenue, limits administrative and overhead costs, and requires an annual report from the Denver CCB to the city council.
5. In accordance with §§ 53-550(b)(1) and (c), D.R.M.C., and as set forth in this Agreement, the City desires to obtain, during the Term, additional services and supports from the Contractor, acting as the Denver CCB, for children and adults with intellectual and developmental disabilities who are residents of Denver.

The Parties therefore agree as follows:

1. **DEFINITIONS:** In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to exhibits referenced and attached hereto. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the use of a specific gender includes any other gender, masculine, feminine or neuter. A word importing the neuter gender may extend to and be applied to natural persons as well as things.

A. “Administrative and Overhead Expenses” means the necessary business expenses, including purchases in accordance with § 12, to maintain an organization’s operations such as rent and utilities, insurance, legal, and accounting costs not specific to an individual department directly related to the production of goods or services.

B. “City Funds” means mill levy revenues authorized under § 53-550, D.R.M.C., and available for the purchase of services and supports for individuals with intellectual and developmental disabilities in Denver.

C. “City Law” shall include the Denver Charter, Denver Revised Municipal Code, executive orders, rules, regulations, directives, policies and procedures prescribed by the City which govern the use or expenditure of City Funds, the Services, or this Agreement. City Law includes, without limitation, the permitted uses of City Funds authorized under § 53-550, D.R.M.C.

D. “Federal Funds” means monies from the United States Government available for community centered boards to supply services and supports for individuals with intellectual and developmental disabilities.

E. “Federal Government” shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the use or expenditure of Federal Funds or the provision of services and supports for individuals with intellectual and developmental disabilities.

F. “Federal Law” shall include any laws, rules, or regulations of the United States of America which govern the use of Federal Funds or the provision of services and supports for individuals with intellectual and developmental disabilities.

G. “Other CCB Income” shall mean gross income received or earned by Contractor in excess of the funds provided under this Agreement that is directly generated to finance or support Contractor’s business activities categorized by account description, department business unit and fund source.

H. “Other CCB Expenditures” shall mean all direct, Administrative and Overhead Expenses directly incurred or obligated to finance or support Contractor’s business activities categorized by account description and departments business unit.

I. “State Funds” means monies from the State of Colorado available for the purchase of services and supports for individuals with intellectual and developmental disabilities. State Funds includes, without limitation, funds authorized under Colo. Rev. Stat., Title 25.5, Article 10 and Title 27, Article 10.5.

J. “State Law” includes any laws, rules, or regulations of the State of Colorado which govern the use or expenditure of State Funds or the provision of services and supports for individuals with intellectual and developmental disabilities.

K. “State Government” shall include representatives of the agency, department or office of the State of Colorado which is or may hereafter be empowered to promulgate, review or enforce rules governing the use or expenditure of State Funds or the provision of services and supports for individuals with intellectual and developmental disabilities.

L. “Services” means all services, tasks, deliverables, performance measures, and activities necessary or authorized to supply additional services and supports for individuals with intellectual and developmental disabilities residing in Denver as set forth in this Agreement and Exhibit A, the Contractor’s Scope of Work and Budget.

2. CONTRACT DOCUMENTS:

A. Order of Preference. This Agreement consists of Sections 1 through 44, which precede the signature pages, and the following exhibits which are incorporated herein and made a part hereof by reference:

- Exhibit A – Scope of Services and Budget (Initial Term)
- Exhibit B – Certificate of Insurance
- Exhibit C – Protected Health Information

In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of this Agreement controls.

B. Modifications to Exhibit A. The Parties may modify Exhibit A to increase, decrease, or revise the Services and modify the Budget in accordance with the procedures in Denver DHS’ Budget Modification Policy No. 1703-495, as may be amended from time to time; provided, however, that no modification to Exhibit A shall result in or be binding on the City if any proposed modification(s), individually or collectively, requires an upward adjustment to the Maximum Contract Amount. The Parties shall, in each instance, memorialize in writing all modifications to Exhibit A by revising and restating it and referencing this City Contract Control number stated on the signature page below. All modifications to Exhibit A shall contain the date upon which the modified Exhibit shall take effect. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney’s office, and uploaded into the City electronic contract system by Denver DHS for public access through the City Clerk. A modification to Exhibit A that requires an increase to the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by the Parties in the same manner as this Agreement.

3. CITY LIAISON: The Contractor shall fully report all Services and other activities under this Agreement to Denver DHS or as otherwise directed by the City. The City’s Executive Director of Human Services (“Executive Director”) or the Executive Director’s designee is the City’s representative under this Agreement to whom contractual services performed under this Agreement shall be reported.

4. TERM: The initial term of this Agreement will commence on July 1, 2018, and terminate on December 31, 2018 (the “Initial Term”), subject to unilateral options in the City to

renew for two (2) additional one (1) year periods ending December 31, 2020 (if both renewal options are exercised). The terms "renew" and "extend" shall both mean that this Agreement, if renewed or extended, shall continue without interruption.

The following schedule sets forth the term of each renewal term:

First Renewal Term	January 1, 2019, to December 31, 2019
Second Renewal Term	January 1, 2020, to December 31, 2020

Denver DHS, prior to September 30 of the then current term, may provide Contractor with written notice of intent to seek an extension of the Agreement ("Renewal Notice"); however, each option to renew shall only be exercised by the action of the City Council in appropriating funds for payment of services and supports for this Agreement. If an appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to extend this Agreement for that year, and this Agreement will terminate at the expiration of the then current term; provided, however, that subject to the Executive Director's prior written authorization, the Contractor shall complete any work in progress as of the effective date of termination or expiration and that term will extend until the work is completed or earlier terminated by the Executive Director.

5. SERVICES TO BE PROVIDED:

A. In addition to all other obligations required by law, and subject to the terms and conditions of this Agreement, the Contractor shall diligently undertake, perform, provide, and supply the Services. The Contractor will provide the Services directly or purchase them from approved service providers, subcontractors, subconsultants, or other persons or entities approved to supply Services. The Services supplied by the Contractor under this Agreement, including its selection of, agreements with, and monitoring of approved service providers, subcontractors, subconsultants, or other approved persons or entities, shall be subject to and performed in accordance with Federal, State, and City Laws.

B. For all funds provided by the City and all Services supplied under this Agreement, the Contractor will comply with the residency requirements in § 53-550(c), D.R.M.C. The residency requirement set forth in § 53-550(c), D.R.M.C., and in the preceding sentence includes, without limitation, Services provided by the Contractor directly or supplied through approved service providers, subcontractors, subconsultants, or any other person or entity approved to supply Services.

C. The Contractor shall faithfully perform or supply the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

D. Construction, alteration, remodeling, or renovation of a facility, building, modular unit, or other structure used to supply the Services or for administrative purposes or other activities necessary to carry out the Services ("CCB Facilities") are not permitted as a part of the

Services except as expressly permitted and described in Exhibit A and in accordance with Denver DHS's written policies and procedures addressing the extent to which City Funds may be provided to construct, alter, remodel, or renovate CCB Facilities. Upon request, Contractor shall provide reports identifying the place of performance or delivery including: Street Address, City, County, State, Country, Zip Code+4.

E. The Contractor may purchase tangible personal property or reasonable construction services for the exclusive use and benefit of qualified Services recipients as part of the Contractor's performance of the Services herein; provided that such expenditures are in accordance with Denver DHS' written policies and procedures applicable to contractors addressing the extent to which City Funds may be provided for these purposes.

6. **CONTRACTOR'S RESPONSIBILITIES:** In addition to any and all obligations required by law or stated elsewhere in this Agreement or in any attachments hereto, the Contractor shall:

A. Attend and participate in meetings as reasonably requested by the Executive Director or the Executive Director's designated representative;

B. Utilize individuals who have adequate skills and experience for their respective functions in providing or supplying the Services;

C. Permit the City to carry out reasonable activities to review, monitor, and evaluate any of the procedures used by the Contractor in providing or supplying the Services and make available for inspection all notes and other documents used in performing the work. The Contractor shall require the cooperation of its employees, officers, and board members in such monitoring and evaluation efforts and shall include this requirement for cooperation in its contracts with approved service providers, subcontractors, subconsultants, or any other person or entity approved to supply Services;

D. Establish and maintain record keeping policies in accordance with the requirements established by applicable state law or as reasonably required by the City, including the City Auditor, concerning the provision of Services and expenditure of City Funds including but not limited to establishing and maintaining financial and performance records with respect to all matters covered by this Agreement in sufficient detail and in a manner sufficient to conform to generally accepted accounting principles so as to allow audit of the expenditure of City funds received by the Contractor. The Contractor shall retain such financial and performance records for a period of six (6) years from the date of final payment to Contractor under this Agreement.

E. Notify the Executive Director promptly in writing if:

1. Contractor's designation as the Denver CCB is revoked;
2. Contractor fails to submit its annual application to the state of Colorado for designation as the Denver CCB;

3. Contractor receives notice from the federal or state government that it is not in substantial compliance with Federal, State or City laws, rules, regulations, or other requirements concerning services for individuals with intellectual and developmental disabilities or early intervention programs;
4. Any action or proceeding of any nature is commenced concerning the termination or suspension of Contractor's contracts with the State of Colorado for services in the City; or Contractor applies for or obtains another certification, designation, license, accreditation or other credential or qualification impacting the clients served under this Agreement.

F. Convene and maintain an advisory committee that will meet at least four times annually at a time and location determined by Contractor's Board of Directors. The purpose of the advisory committee is to have a forum in which advisory committee members can provide advice to the Contractor. Contractor's Board of Directors is responsible for establishing the official charge of responsibilities to the committee and determining the criteria that will be used to select advisory committee members. Notwithstanding anything to the contrary and at its sole discretion, Denver DHS shall have the authority to unilaterally appoint one member to Contractor's advisory committee for a two-year term. At the end of the two-year term and for as long as this Agreement is in effect, Denver DHS may unilaterally reappoint or assign a new member to the advisory committee for an additional two-year term. Contractor's Board of Directors and Denver DHS will generally base their decisions on each candidate's professional or personal knowledge of services for children and/or adults with developmental disabilities, or on a candidate's awareness of the needs of the Denver community and Denver residency status. The Board will determine the size of the committee, its composition, and terms for each advisory committee member. Each committee member must be approved by majority vote of the Board. The advisory committee will be convened for the primary purpose of receiving briefings on the progress and direction of services that are supported by mill levy funds. Advisory committee members will have an opportunity to provide feedback on current or proposed areas of mill levy expenditures consistent with the purposes of § 53-550 D.R.M.C., and this Agreement. Advice and feedback from advisory committee members will be given fair and reasonable consideration by Contractor's Management and Board of Directors during its annual planning process.

G. For as long as this Agreement is in effect, Contractor shall conduct at least one meeting per calendar year open to the public presenting a general overview of the progress of service delivery based on the use of mill levy funding, and presenting proposed areas of expenditures, and for receiving feedback and recommendations from citizens of the City and County of Denver, which may be factored in to the planning and budget preparation before submitting a future budget request to Denver DHS.

H. In connection with the delivery of the Services, Contractor, its approved service providers, subcontractors, subconsultants, and other approved persons or entities, shall not support or engage in any explicitly religious activities (including without limitation activities that involve overt religious content such as worship, religious education or instruction, or

proselytization) as part of the Services provided with City Funds or in any other manner prohibited by law. If Contractor or any approved service provider, subcontractor, subconsultant, or other approved person or entity providing Services conducts such activities, the activities must be offered separately, in time and location, from the programs, activities, or services supported by the Agreement and participation must be voluntary for program beneficiaries or prospective program beneficiaries of the Services provided with City Funds. If Contractor, or any of its approved service providers, subcontractors, subconsultants, and other approved persons or entities is a faith-based or religious organization, it may to the extent permitted by law use space in its facilities to provide Services funded with City Funds without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith based or religious organization that receives City Funds to provide Services under this Agreement retains its authority over its internal governance.

I. Contractor, its management, staff, officers, and Board of Directors shall maintain personal and organizational knowledge of federal, state, and local laws, rules, regulations, executive orders, or other regulatory requirements concerning the delivery of the Services and any other performance obligations under this Agreement.

J. Contractor shall establish and maintain written policies and procedures to ensure the efficiency, effectiveness, and continuity of the delivery of Services, the use of City Funds, and performance of other obligations under the Agreement. These policies and procedures will include, without limitation:

1. Standards, criteria, and procedures for the public announcement of contracting opportunities under the Agreement with funding timelines; the merit review, selection, and approval of, and notification to, service providers, subcontractors, subconsultants, or other persons or entities seeking to provide services and supports under this Agreement and any exceptions for subcontractors already providing services as a Program Approved Service Agency through Medicaid; and
2. Standards, criteria, and procedures to develop and implement and for Denver DHS to approve "RMHS Initiatives" to the extent those services are authorized in Exhibit A.

Contractor shall submit the policies and procedures required under Sections 6.J.1 and 2 to Denver DHS, on or before September 15, 2018, for review, comment, and approval. Approved policies and procedures will be made available publicly in hard copy format and published on Contractor's website no later than fourteen (14) days after the date of Denver DHS' approval. Subsequent modifications to Contractor's policies and procedures shall be submitted to Denver DHS for review, comment, and approval.

7. COMPENSATION AND PAYMENT:

A. Budget/Administrative and Overhead Expenses:

1. **Initial Term.** During the Initial Term, the City shall pay the Contractor and the Contractor shall accept, a sum not to exceed Eight Million Five Hundred Thousand Dollars and Zero Cents (\$8,500,000.00) as the sole compensation for all Services provided, Administrative and Overhead Expenses incurred, and performance measures achieved in accordance with the budget categories contained in Exhibit A.

2. **Renewal Terms.** If the City exercises its option to extend the Initial Term or the First Renewal Term, it will pay the Contractor and the Contractor shall accept as the sole compensation for all Services provided, Administrative and Overhead Expenses incurred, and performance measures achieved a sum not to exceed following amounts:

First Renewal Term - \$14,000,000.00.
Second Renewal Term - \$15,000,000.00.

Within thirty (30) days of the date of Denver DHS's Renewal Notice, the Contractor will provide Denver DHS for its review with a proposed draft of a scope of work and budget for the First or Second Renewal Term, as applicable. A final scope of work and budget will be established in accordance with the procedures set forth in Section 2.B. above prior to December 31 of the then current term. If a scope of work and budget for the First or Second Renewal Term has not been approved by Denver DHS on or before December 31 of the then current term, all Services shall be suspended after 30 days until a new scope of work and budget has been established for the applicable Renewal Term. The budget for this 30-day period shall be the prorated monthly amount of the prior term. If a scope of work and budget for the First or Second Renewal Term has not been approved by Denver DHS on or before the termination of this 30-day extension period, all Services shall be suspended immediately until a new scope of work and budget has been agreed upon in writing.

B. Reimbursable Expenses: Except as set forth on Exhibit A, or a successor exhibit to Exhibit A, established in accordance with Section 2.B. above, there are no reimbursable expenses allowed under the Agreement.

C. Reimbursement; Monthly Expenditure Reports:

1. Funds payable by the City hereunder shall be distributed to the Contractor only on a reimbursement basis for Services provided and reasonable Administrative and Overhead Expenses during the prior month. Contractor will be reimbursed upon receipt and approval of Contractor's Monthly Expenditure Reports. Contractor shall prepare and submit to the City, monthly reports (the "Contractor's Expenditure Report(s)") setting out in detail an itemized description by expense category or fee schedule of the amount of all monies actually earned by Contractor during the month immediately

preceding the date of the Expenditure Report, including but not limited to the following categories: i) expenses for services and supports supplied; ii) Administrative and Overhead Expenses associated therewith; and iii) and purchases of Supplies, Equipment and Controlled Assets (as such terms are defined in § 12).

2. Contractor expressly represents and certifies, as a material representation and certification upon which the City is relying in entering into this Agreement, that it will supply only services and supports: i) not covered by Medicaid, the State of Colorado, or other third-party payers (“non-covered services”), or ii) to persons not eligible for Medicaid, State of Colorado, or other third-party payment (“ineligible persons”). The City’s obligation to pay for services and supports supplied under the Agreement, will only extend to “non-covered services” or services to “ineligible persons”. Contractor must use other sources of revenue including without limitation Medicaid, Medicare, State funds, and other benefit plans, or any other funding, to cover all or a portion of the costs under those programs. Contractor is solely responsible for collecting funds from those other sources.
3. Contractor’s Expenditure Reports will set forth the methodology used to determine costs for services and supports invoiced and will include all documentation necessary to support payment for “noncovered services” or “ineligible persons”. Contractor will identify all persons served and the services provided to them. Charges for “non-covered services” and “ineligible persons” will be identified by Contractor and only those amounts will be invoiced and paid. Each Expenditure Report shall be certified to be correct by an authorized representative of Contractor and shall reference the Contract Control number of this Agreement as designated below on the City’s signature page. Each Expenditure Report shall be supported with official documentation evidencing, in detail, the nature and propriety of the charges including applicable time sheets, payrolls, receipts, and any other document which may be pertinent in light of the nature of services and supports supplied and showing that services and supports were provided within the period for which the payment is requested. Such official supporting documentation shall be maintained by Contractor at its offices listed on page one of this Agreement. Contractor shall provide the City with copies of all documentation supporting its Expenditure Reports upon request.
4. Contractor’s Monthly Expenditure Reports shall be submitted no later than the last day of the following month for which Contractor seeks reimbursement. Expenditure Reports that are not submitted

by this deadline are considered to be untimely, and must be submitted separately to be considered for payment. Payment for such late-submitted Expenditure Reports shall be made only upon a showing of good cause for the late submission.

5. The City will have the right to dispute, and withhold payment, or any portion thereof, for any invoice that does not contain a sufficient statement of Contractor's methodology used to determine costs for services and supports invoiced. All incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation shall be recovered from the Contractor: 1) by a deduction from subsequent payments under this Agreement; 2) by refund from the Contractor to the City if no subsequent payments are due to the Contractor; 3) by the City as a debt due to the City; or 4) as otherwise permitted or provided by law. The City reserves the right to reduce, suspend, or withhold funds under this Agreement whenever it determines that Contractor's current spending is inconsistent with the categories, and purposes, listed on Exhibit A, or applicable laws, or if any quarterly or annual reports or information requested as part of an audit or review conducted under this Agreement are not provided by Contractor within fourteen (14) days of the date of request.

D. Maximum Contract Amount:

1. Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under the Agreement, including the First and Second Renewal Terms, if exercised, will not exceed Thirty-Seven Million Five Hundred Thousand Dollars and Zero Cents (\$37,500,000.00) (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A or a successor exhibit to Exhibit A. Any services performed beyond those in Exhibit A or a successor exhibit to Exhibit A are performed at Contractor's risk and without authorization under the Agreement.
2. The City's payment obligation, whether direct or contingent, extends only to funds received and budgeted for services and supports for individuals with intellectual and developmental disabilities, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

8. **REPORTS/CORRESPONDENCE:**

A. **Denver DHS Reports.**

1. **Annual Progress Reports.** Contractor shall submit annual progress reports in a format approved by the Executive Director including performance measures, Other CCB Income, Other CCB Expenditures and any other information reasonably requested by the Executive Director concerning the delivery of Services and payments to Contractor under this Agreement. Each report shall be delivered to the Executive Director within forty-five (45) days after the end of the Initial Term, the First Renewal Term, and Second Renewal Term.
2. **Additional Reports.** Contractor will submit, as reasonably requested by the Executive Director or the Executive Director's designated representative, other reports to the Executive Director concerning the delivery of the Services, all of Contractor's programs and operations as the Denver CCB, program costs and expenditures, and community outreach efforts including performance metrics as specified in Exhibit A.
 - a. **City Council Reports.** During the Initial Term of this Agreement or any Renewal Term, Contractor shall also prepare and deliver on dates mutually agreed upon by the Parties written reports and presentations to the City Council describing its programs and operations as the Denver CCB, program costs and expenditures, and community outreach efforts annually and as requested by the President of the City Council or the Executive Director.
 - b. **Correspondence.** All reports, and other written correspondence concerning procedural or administrative contract matters, other than notices required under Section 20 of this Agreement, shall be delivered electronically to DHS_Contracting_Services@denvergov.org or by U.S. mail to:

Attn: Contracting Services
Denver Department of Human Services
1200 Federal Boulevard, 4th Floor
Denver, Colorado 80204

- c. Invoices. All invoices shall be delivered electronically to DHS_Contractor_Invoices@denvergov.org or by U.S. mail to:
Attn: Financial Services
Denver Department of Human Services
1200 Federal Boulevard
Denver, Colorado 80204

9. **STATUS OF CONSULTANT:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. Contractor is a corporation and as such is responsible for the operational management, errors and omissions of its employees.

10. **TERMINATION OF AGREEMENT:**

A. The City may immediately terminate this Agreement if the Contractor's state certification as the Denver CCB is suspended or revoked for any reason.

B. The City may further terminate this Agreement for cause if the Services or other performance of other obligations under the Agreement are not being satisfactorily performed in accordance with this Agreement. Prior to termination of this Agreement by the City for cause, the City shall notify the Contractor in writing of its intent to terminate the Agreement for cause, identify the deficiencies in the Contractor's performance giving rise to such intent, and shall give the Contractor ninety (90) days to cure such deficiencies before the City may terminate this Agreement for cause.

C. Notwithstanding the preceding provisions, the City may by written Notice of Default to Contractor immediately terminate the whole or part of this Agreement in the event Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

D. No later than thirty days after the date written on the City signature page below or July 31, 2018, whichever is later, the Contractor may terminate this Agreement upon six (6) months prior written notice for failure of required City approvals to a proposed increase of contract administrative costs from 15% to 18%, provided that the effective date of termination will be six (6) months from the date of Contractor's notice of termination.

E. Upon termination of the Agreement, for any reason, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

11. EXAMINATION OF RECORDS:

A. Any authorized agent of the City, including the City Auditor or their representative, has the right to access and the right to examine any directly pertinent books, bank statements, records, returns, cost accounting records, files, audit and financial reports, contracts, subcontracts, and any other records or documents (whether prepared or maintained in hardcopy or electronic format) (the "Contractor's Records") prepared or maintained by the Contractor involving matters or transactions in any way, directly or indirectly, related to the Services or this Agreement except those matters required to be kept confidential by law. Further, the City Auditor shall have the right at any time, and from time to time, to audit Contractor's Records and the Contractor, upon request, shall make all such matters available for such examination. If Contractor's Records exist in electronic form, the Contractor shall maintain a means of transferring said records to hardcopy form. Such right of access and examination shall continue until the latter of six (6) years after the final payment under this Agreement or expiration of the applicable statute of limitations. This right of access also includes timely and reasonable access (not to exceed fourteen (14) days from the date of the City's request) to Contractor's Records and Contractor's personnel for the purpose of interview and discussion related to such documents.

B. In addition, the Contractor shall permit public inspection of records involving the services and supports provided under this Agreement or the expenditure of tax monies received from the City in accordance with the procedures set forth in §§ 24-72-203 and 24-72-205 of the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, provided that the Contractor shall not be required to permit such public inspection of records to the extent that such public inspection is prohibited by the provisions of C.R.S. §§ 27-10.5-101 to 137, by Rules and Regulations promulgated by the Colorado Department of Human Services, by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and by requirements set forth by the Centers for Medicare and Medicaid Services.

C. The Contractor shall prepare and submit to the Executive Director financial reports including but not limited to an annual financial audit prepared in accordance with generally accepted accounting principles. Contractor will provide a copy of its annual audit within thirty (30) days of the date of completion.

D. Each approved service provider, subcontractor, subconsultant, or other approved person or entity engaged by Contractor to provide services and supports under this Agreement will be subject to and will comply with City standards, policies and procedures for contract performance review and audits. Contractor shall comply with all requests from the City to obtain information from and conduct reviews or financial audits of approved service providers, subcontractors, subconsultants, and other approved persons or entities supplying Services under the Agreement. Contractor shall provide copies of audits and performance reviews, if any, of approved service providers, subcontractors, subconsultants, and all other approved persons or entities supplying services and supports prepared by any entity, other than the City Auditor or a Denver DHS internal auditor, to the Executive Director within thirty (30) days of Contractor's receipt.

E. If, as a result of any audit or review relating to the fiscal performance of Contractor including those performed by a Denver DHS internal auditor, the City receives notice of any irregularities or deficiencies in said audits, Contractor shall correct all identified irregularities or deficiencies within the time frames designated in the City's written notice of irregularities or deficiencies. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then Contractor shall so notify the City in writing and shall identify a date that Contractor expects to correct the irregularities or deficiencies; provided, however, that the irregularities or deficiencies shall be corrected no later than ninety (90) days from the date of the City's notice.

12. **PROCUREMENT:** The Contractor shall spend funds provided under this Agreement in a way that serves the public interest, honors the public trust, and is consistent with Exhibit A. "Supplies" means all tangible personal property other than Equipment as defined below. "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit. "Controlled Assets" means tangible personal property having an initial acquisition cost of no less than Five Hundred Dollars (\$500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99) and tangible personal property that fall in the following categories: computers, laptops, scanners, facsimile machines, copiers, printers, and capital leases with a present value of no less than Two Thousand Five Hundred Dollars (\$2,500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99).

The Contractor shall use funds provided under this Contract solely for the purposes of effectuating the purposes of City Law as this Agreement contemplates and as set forth in Exhibit A. If requested by the Executive Director or the Executive Director's representative, Contractor shall establish and submit to the Executive Director an inventory list, in such format as designated by the Executive Director and within thirty days of said request, of all Equipment and Controlled Assets purchased under this Agreement. Contractor shall update said inventory list as necessary on a timely basis. The inventory shall specify the location of all Equipment and Controlled Assets purchased to supply the Services. Upon the expiration or earlier termination of this Agreement, unless the Agreement is extended by a written amendment executed by the Parties in the same manner as this Agreement, all Equipment and Controlled Assets purchased to supply the Services shall either be returned to the City or disposed of as the City shall direct. The Contractor shall not co-mingle City Funds with funds from other sources to purchase Equipment and Controlled Assets under this Agreement.

13. **LAWSUITS:** If the Contractor is served with a pleading or other document in connection with an official action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect the Contractor's ability to perform its obligations under this Agreement, the Contractor shall, within 7 days after being served, notify the City of such action and deliver copies of such pleading or document to the Executive Director. The Contractor shall not use funds provided under this Agreement to pay for any of its legal fees, costs, or expenses incurred as a result of such legal action or proceeding initiated by or brought against the Contractor (including, but not limited to, administrative actions or proceedings by a governmental entity).

14. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

15. **INSURANCE:**

A. **General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage. Contractor certifies that the certificate of insurance attached as Exhibit B, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability and Auto Liability, Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For all coverages, Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: Except for Commercial Crime coverage or as otherwise permitted in writing by Denver DHS and the City's Risk Management Unit, all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Contractor executes this Agreement.

G. Commercial General Liability: Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Professional Liability (Errors & Omissions): Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

J. Commercial Crime (Fidelity): Contractor shall maintain a Comprehensive Crime Liability with limits of \$1,000,000 for employee dishonesty, \$500,000 for theft, and \$250,000 for depositors' forgery. Coverage shall include theft of City's money, securities or valuable property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

K. Additional Provisions:

1. For Commercial General Liability and Excess Liability, the policies must provide the following:
 - a. That this Agreement is an Insured Contract under the policy;
 - b. Defense costs are in excess of policy limits;
 - c. A severability of interests or separation of insureds provision (no insured vs. insured exclusion);
 - d. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
 - e. No exclusion for sexual abuse, molestation or sexual misconduct.

2. For claims-made coverage:
 - a. The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
 - b. Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

16. DEFENSE AND INDEMNIFICATION:

A. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees (“City Indemnitees”) for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement or the Services (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Contractor’s duty to defend and indemnify the City and City Indemnitees shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify the City and City Indemnitees shall arise even if City or a City Indemnitee is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Contractor will defend any and all Claims which may be brought or threatened against the City and City Indemnitees and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered the City's or City Indemnitees' exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

17. **GOVERNMENTAL IMMUNITY:** Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S., 24-10-101 *et seq.*, as now or hereafter amended. It is acknowledged that any liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, agencies, officials and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act as now or hereafter amended and other applicable laws.

18. **TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance § 20-107, *et seq.* of the Denver Revised Municipal Code (D.R.M.C.). The Contractor shall promptly pay when due, all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by Contractor of all required licenses and permits and all taxes. The Contractor further agrees to pay promptly when due all bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

19. **ASSIGNMENT; SUBCONTRACTING:** The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract its performance obligations, under this Agreement without obtaining the Executive Director's prior written consent; however, Contractor may subcontract the Services as specified in Exhibit A without the prior written approval of Denver DHS. Any assignment or unauthorized subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor

shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

20. **INUREMENT:** The rights and obligations of the Parties inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

21. **NO THIRD-PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

22. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

23. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. Amendments to this Agreement will become effective when approved by both Parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

24. **SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

25. **CONFLICT OF INTEREST:**

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. The Contractor shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include

transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

26. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, and if to the City at:

By Contractor to: Executive Director,
Denver Department of Human Services
City and County of Denver
1200 Federal Boulevard
Denver, Colorado 80204

With a copy of any such notice to: Supervisor

Contracting Services
Denver Department of Human Services
1200 Federal Boulevard
Denver, Colorado 80204

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

27. **DISPUTES:** All disputes of whatsoever nature between the City and Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code 56-106(b)-(f). For the purposes of that procedure, the City official rendering a final determination shall be the City representative identified in Article 1 hereof.

28. **GOVERNING LAW, VENUE:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and promulgated pursuant thereto. Such applicable laws, together with the Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.

29. COMPLIANCE WITH APPLICABLE LAWS: All Services shall be supplied in compliance with all applicable Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein including but not limited to Colo. Rev. Stats., Title 25.5, Article 10, Title 27, Article 10.5, and §53-550, D.R.M.C.

30. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:

A. This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the "Certification Ordinance").

B. The Contractor certifies that:

1. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
2. It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

1. It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
2. It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.
3. It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.
4. It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

5. If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.
6. It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

D. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

31. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender expression or gender identity, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

32. **NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the delivery of services and supports, the Contractor, its approved service providers, subcontractors, subconsultants, or other approved persons or entities performing work under the Agreement shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

33. **USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

34. PERSONAL INFORMATION; DATA PROTECTION; PROTECTED HEALTH INFORMATION; PROTECTED SUBSTANCE ABUSE TREATMENT RECORDS:

A. **“Data Protection Laws”** means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information; and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements.

B. **“Personal Information”** means all information that individually or in combination, does or can identify a specific individual by or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number (full or partial), business contact information, date of birth, national or state identification numbers, and any other unique identifier or one or more factors specific to the individual’s physical, physiological, mental, economic, cultural, or social identity.

C. **Compliance with Law and Regulation:** Contractor confirms and warrants that it complies with all applicable Data Protection Laws relating to the collection, use, maintain, disclosure, and other processing of Personal Information and that it will perform its obligations under this Agreement in compliance with them.

D. **Security of Personal Information and Access to Software Programs:** In addition, Contractor shall establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing.

E. **Confidentiality:** Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated in connection with the Services will be treated by Contractor as highly confidential information. Contractor will have no right, title, or interest in any Personal Information or any other data obtained or supplied by Contractor in connection with the Services. Contractor shall immediately alert the City if Contractor’s security has been breached or if Contractor is aware of any unauthorized disclosure of Personal Information. This Section shall survive the termination of this Agreement.

F. **Contractor Use of Personal Information:** Contractor will: (i) keep and maintain Personal Information in strict confidence and in compliance with all applicable Data

Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information solely and exclusively for the purpose of providing the services hereunder, such use and disclosure being in accordance with this Agreement, and applicable law; and (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Contractor's own purposes or for the benefit of anyone other than the City, the State Government, or the Federal Government without the prior written consent of the City and the person to whom the Personal Information pertains. This Section will survive the termination of this Agreement.

G. Protected Health Information: Contractor shall comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all protected health information and all requirements contained in Exhibit C. Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access.

H. Protected Substance Use Disorder Records: Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all protected substance use disorders and related treatment information, if any. Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of protected substance abuse treatment information to which the Contractor has access.

I. Loss of Personal Information: In the event of any act, error or omission, negligence, misconduct, or breach by the Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of Personal Information, Contractor will, as applicable: (i) notify the person affected and the City as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (ii) cooperate with the person affected and the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the person affected or the City; (iii) in the case of Personal Information and if required by applicable law, at the affected person's sole election: (A) notify the affected individuals in accordance with any legally required notification period; or, (B) reimburse the person affected for any costs in notifying the affected individuals; (iv) in the case of Personal Information and if required by applicable law, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law; (v) perform or take any other actions required to comply with applicable law as a result of the occurrence; (vi) indemnify, defend, and hold harmless the City and the person affected for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City or the person affected in connection with the occurrence; (vii) provide assistance to recover lost data and information quickly without charge to the City or the person affected, and (viii) provide to the City and the person affected a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, will comply with applicable law, be written in plain terms in

English and in any other language or languages specified by the affected individual, and contain, at a minimum: (i) name and contact information of Contractor's representative; (ii) a description of the nature of the loss; (iii) a list of the types of data involved; (iv) the known or approximate date of the loss; (v) how such loss may affect the affected individual; (vi) what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; (vii) contact information for major credit card reporting agencies; and (viii) information regarding the credit and identity monitoring services to be provided by Contractor. This Section shall survive the termination of this Agreement.

35. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. City Proprietary and Confidential Information: Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, Contractor may have access to proprietary information and confidential information that may be owned or controlled by the City, and that the disclosure of such information may be damaging to the City or third parties. Contractor agrees that all proprietary information and confidential information or any other data or information provided or otherwise disclosed by the City to Contractor will be held in confidence and used only in the performance of its obligations under this Agreement. Contractor will exercise the same standard of care to protect such proprietary information and confidential information as a reasonably prudent contractor would to protect its own proprietary or confidential data. For purposes of this Section 33, the City's proprietary information and confidential information will include, without limitation, all information that would not be subject to disclosure pursuant to the Colorado Open Records Act or Denver ordinance, and provided or made available to Contractor by the City. Such proprietary information and confidential information may be in hardcopy, printed, digital, electronic, or other format.

B. Use and Protection of Proprietary Information and Confidential Information:

1. Except as expressly provided by the terms of this Agreement, Contractor agrees that it will not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any proprietary or confidential information or any part thereof to any other person, party, or entity in any form of media for any purpose other than performing its obligations under this Agreement. Contractor further acknowledges that by providing proprietary information or confidential information, the City is not granting to Contractor any right or license to use such information except as provided in this Agreement. Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the proprietary information or confidential information without written authorization from the City and will immediately notify the City if any proprietary information or

confidential information is requested from Contractor from a third party.

2. Contractor agrees, with respect to the proprietary information and confidential information, that: (A) Contractor will not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the City; (B) Contractor will retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (C) Contractor will, upon the expiration or earlier termination of this Agreement, at the City's election, either destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.
3. Contractor will develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, the City. It is the responsibility of Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for the services to be provided under this Agreement, the proprietary information, or the confidential information. This includes, without limitation, industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.
4. Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. Contractor shall not disclose proprietary information or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.
5. If the City is furnished with proprietary data or confidential information that may be owned or controlled by Contractor ("Contractor's Confidential Information"), the City will endeavor, to the extent provided by law, to comply with the requirements provided by Contractor concerning Contractor's Confidential Information. However, Contractor understands that all the material provided or produced by Contractor under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. In the event of a request to the City for disclosure of such information, the City will advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any

of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section 34 including, without limitation, prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

C. **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Contractor acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

D. **Open Records:** The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. (2017), and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

36. **INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, drawings, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by Contractor and paid for by the City pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Materials are a

“work made for hire,” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the Contractor hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

37. LEGAL AUTHORITY:

A. The Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.

38. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions, have been prepared by a particular Party.

39. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS: The Parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor’s obligations for the provision of insurance, for indemnity to the City, for the return of unused Supplies Controlled Assets, and for preserving confidentiality of trade secrets and other information shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

40. INUREMENT: The rights and obligations of the Parties shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

41. TIME IS OF THE ESSENCE: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

42. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions of the Agreement.

43. **CITY EXECUTION OF AGREEMENT:** This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been approved by the Denver City Council and fully executed by the City and County of Denver.

44. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

End.

Signature pages and Exhibits follow this page.

EXHIBIT A SCOPE OF WORK/BUDGET
EXHIBIT B CERTIFICATE OF INSURANCE
EXHIBIT C PROTECTED HEALTH INFORMATION

Contract Control Number: SOCSV-201841930-00

Contractor Name: Rocky Mountain Human Services

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of June 19, 2018.



SEAL

CITY AND COUNTY OF DENVER

ATTEST:

Debra Johnson

Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the City and
County of Denver

By

Michael B. Hancock
Michael B. Hancock, Mayor

APPROVED AS TO FORM:

Attorney for the City and County of
Denver

REGISTERED AND COUNTERSIGNED:

By

Brendan J. Hanlon
Brendan Hanlon, CFO of Finance

By Victoria Ortega

Victoria Ortega, Assistant City
Attorney

By

Timothy M. O'Brien
Timothy M. O'Brien, Auditor



Contract Control Number: SOCSV-201841930-00

Contractor Name: Rocky Mountain Human Services

By: Shari Repinski

Name: Shari Repinski
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

