# SECOND AMENDED AND RESTATED OPERATING AGREEMENT

**Between**

**CITY AND COUNTY OF DENVER,**
**a municipal corporation and home rule city of the State of Colorado**

**and**

**DENVER HEALTH AND HOSPITAL AUTHORITY,**
**a body corporate and political subdivision of the State of Colorado**

**TABLE OF CONTENTS**

Page


ARTICLE I DEFINITIONS ..... 4
1.1 Definitions ..... 4

ARTICLE II REPRESENTATIONS ..... 10
2.1 Representations and Covenants of the Authority ..... 10
2.2 Representations, and Covenants of the City. ..... 11
2.3 Compliance With Act ..... 11

ARTICLE III SERVICES ..... 13
3.1 Core Services To Be Supplied by the Authority ..... 13
3.2 Non-Core Services To Be Supplied by the Authority ..... 15
3.3 Services To Be Supplied by the City to the Authority ..... 15
3.4 Amendment to Appendices ..... 15

ARTICLE IV OTHER COVENANTS ..... 16
4.1 Charges ..... 16
4.2 Exclusive Arrangement ..... 16
4.3 Payments or Grants from Third Parties ..... 16
4.4 Noncompetition with MHCD ..... 16
4.5 Quality and Priority of Services ..... 16
4.6 Nondiscrimination and Affirmative Action ..... 17
4.7 Cooperation in Litigation ..... 17
4.8 Notification of Suits ..... 17
4.9 Conflict of Interest ..... 18
4.10 Dispute Resolution Process ..... 18
4.11 Denver Health Medical Plan ..... 20
4.12 Releases, Licenses, Permits ..... 20
4.13 Prevailing Wages ..... 20

ARTICLE V ACCOUNTABILITY BY THE AUTHORITY TO THE CITY ..... 21
5.1 Annual Report of Authority to City ..... 21
5.2 Liaison ..... 21
5.3 Meetings With City Officials ..... 21
5.4 Performance Report ..... 21

ARTICLE VI CONFIDENTIAL INFORMATION ..... 22
6.1 Legal Restrictions ..... 22
6.2 Non-Disclosure of Confidential Information ..... 22
6.3 Trademarks and Copyrights ..... 22
6.4 Confidentiality of Medical Records ..... 22

ARTICLE VII MISCELLANEOUS ..... 23

7.1 Amendments ....................................................................23
7.2 Enforceability....................................................................23
7.3 Assignment ....................................................................23
7.4 Governing Law ....................................................................23
7.5 Headings ....................................................................23
7.6 Independent Contractor Status....................................................................23
7.7 No Third-Party Benefit ....................................................................23
7.8 Notice....................................................................24
7.9 Severability; Conflicts ....................................................................24
7.10 Statutory Debt Limitation ....................................................................24
7.11 Waiver....................................................................25
7.12 Counterparts....................................................................25
7.13 No Discrimination in Employment....................................................................25
7.14 Examination of Records....................................................................25
7.15 Entire Agreement . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 26
7.16 Electronic Signatures and Electronic Records…………………...29

# SECOND AMENDED AND RESTATEDOPERATING AGREEMENT

This Second Amended and Restated Operating Agreement is made as of this 1st day of January 2018, between the CITY AND COUNTY OF DENVER, a municipal corporation and home rule city of the State of Colorado (the “City”), and the DENVER HEALTH AND HOSPITAL AUTHORITY, a body corporate and political subdivision of the State of Colorado (the “Authority”).

## RECITALS

A. The parties entered into an Operating Agreement (the “Original Operating Agreement”), and an Amendatory Operating Agreement, both of which are dated as of January 1, 1997, a Second Amendment to the Operating Agreement dated November 10, 1997, a Third Amendment to Operating Agreement dated January 20, 1998, a Fourth Amendment to the Operating Agreement dated February 9, 1998, and a Fifth Amendment to the Operating Agreement dated May 28, 1998, which Agreements are on file with the Clerk of the City.

B. The parties also entered into an Agreement dated December 31, 1996, under which the Authority would provide acute and chronic inmate patient care onsite at the Denver County Jail and the Pre-Arraignment Detention Facility and would provide forensic medicine services, which Agreement is on file with the City Clerk, and which the Third Amendment to Operating Agreement incorporated into the Operating Agreement.

C. These agreements were all incorporated into the Amended and Restated Operating Agreement dated December 1, 1998 which is on file with the Clerk of the City, and has been amended in every fiscal year to provide for changes in funding and programs. The parties now wish to amend and restate the Operating Agreement for fiscal year 2018.

D. The parties also wish to incorporate the Operating Agreement, and all its amendments relating to operations into one document which shall become the Second Amended and Restated Operating Agreement.

E. January 1, 1997, is the Transfer Date agreed to by the City and the Authority as contemplated by Section 25-29-102 of the Act (as defined below), as now in effect, and is referred to in this Agreement as the Transfer Date.

F. The Fifty-Ninth General Assembly (the "Legislature"), in its second regular session, enacted Senate Bill 94-099, which was signed into law by the Governor on April 19, 1994. Such Senate Bill as it currently reads and is currently codified, in part, in Sections 25-29-101 through 25-29-126 of the Colorado Revised Statutes is referred to herein as the "Act".

G. The Legislature found and declared that the City and County of Denver Department of Health and Hospitals:

1. Provides access to quality preventive, acute, and chronic health care for all the citizens of the City regardless of ability to pay;

2. Provides high quality emergency medical services to the citizens of the City and the Rocky Mountain region;

3. Fulfills public health functions as dictated by the City Charter and the needs of the citizens of the City;

4. Provides health education for patients and participates in the education of the next generation of health care professionals; and

5. Engages in research which enhances its ability to meet the health care needs of patients of the City health system.

H. The Legislature further found and declared:

1. In order to carry out its patient care and community service mission in an era of health care reform, it is necessary that the City health system (as defined in the Act) be able to take whatever actions are necessary to enable its continuation as a system which provides the finest possible quality of health care.

2. It is essential that the City health system be able to maximize its economic viability and productivity in order to avoid becoming increasingly dependent on city, state, and other governmental subsidies.

3. Both the quality and economic viability of the City health system will be difficult to maintain in the future under the present constraints imposed by government policy and regulation.

I. The Legislature concluded that the needs of the citizens of the State and of the City and County of Denver will therefore be best served if the City health system is operated by a political subdivision charged with carrying out the mission and programs of the City health system.

J. Pursuant to the Act, the City and the Authority have entered into a Transfer Agreement dated January 1, 1997 pursuant to which the City transferred the Real Property and the Personal Property (collectively, with the Services (as hereinafter defined) to be supplied by the Authority, the "Authority Health System") and certain of the Liabilities (as such terms are defined in the Transfer Agreement) of the City's Department of Health and Hospitals to the Authority. The City and the Authority also have entered into a Personnel Services Agreement dated January 1, 1997 which sets forth the agreement of the City and the Authority as to personnel and employment matters relating to the transition and on-going operation of the Authority Health System.

K. The City and the Authority entered into the Original Operating Agreement to set forth their agreements relating to the provision of Services set forth in Article III hereof (the "Services") after the Transfer Date, except for matters relating to employment which are described in the Personnel Services Agreement.

L. The City and the Authority also entered into the Original Operating Agreement in order to ensure that the citizens of Denver will have access to quality preventive, acute and chronic health care regardless of their ability to pay. The primary mission of the Authority is to provide access to such health care. The City in its Charter has provided, among other things, that the City's Department of Environmental Health shall exercise all functions of the City pertaining to the physical and mental health of the people. The City has agreed to provide financial support for those of its citizens described in this Agreement in order that they may obtain such quality health care. The Authority and the City intend to be collaborative and supportive in carrying out the Mission subject to annual appropriation. A purpose of this agreement is to set forth the services to be provided and the basis upon which the amount of financial support will be determined.

M. The City Council of the City has adopted an Ordinance approving the execution of this Second Amended and Restated Operating Agreement.

N. The City and the Authority are further authorized to enter into this Second Amended and Restated Operating Agreement pursuant to C.R.S. § 29-1-201, et seq., as amended (1995).

The City and the Authority now agree as follows:

The Authority is at all times subject to the provisions of the Act and will comply with the Act, in any event of a conflict with the terms of this Agreement, the provisions of the Act supersede including, but not limited to, those provisions in C.R.S. § 25-29-104 concerning the Mission and the clause barring discrimination against the City Employees in C.R.S. § 25-29-107.

## ARTICLE I

## DEFINITIONS

1.1 Definitions. All capitalized terms not otherwise defined herein shall have the meaning assigned to such terms in the Transfer Agreement, the Ground Lease or the Personnel Services Agreement. In addition, the following terms, except where the context indicates otherwise, shall have the respective meaning set forth below:

The terms "Act," "Agreement," "Authority," "City," "Legislature," and "Transfer Date" have the meanings given to them in the Recitals.

"Asset Value" means the book value of the Fee Property, Building and Improvements supported by the City's audited financial statements of Denver's Health and Hospital enterprise fund prior to Transfer Date.

"Authority Health System" means the programs, services and facilities transferred to the Authority pursuant to this Agreement and the Transfer Agreement and the programs, services and facilities created by the Authority after the Transfer Date and includes, collectively, the Services provided by the Authority, the Real Property and the Personal Property.

"Authority In-Kind Contribution" means the provision of Patient Care Services, unreimbursed by the City, to the Population in an amount at least equal to the City In-Kind Contribution.

"Buildings and Improvements" means all buildings and improvements (including without limitation, fixtures, trade fixtures, walkways, parking lots and structures, signs, landscaping), and all underground tunnels (such as the tunnel connecting the boiler room to other parts of the hospital complex) now located on, under, attached or appurtenant to the Fee Property.

"City Council" means the legislative body of the City, by virtue of Section B1 of the City's Charter.

"City In-Kind Contribution" means the transfer of the Real Property, Buildings and Improvements from the City to the Authority pursuant to the Transfer Agreement in order to assist the Authority in carrying out its Mission.

"Confidential Information" means information of a Contractor that shall be subject to patent, copyright, trademark, trade name, trade secret or service mark protection; or that is treated as confidential by a party, is not otherwise in the public domain, and is related to the business and operations of the party, including, without limitation, information relating to earnings, volume of business, rates, records, methods, systems, practices or plans of a Contractor, and all similar information of any kind or nature whatsoever which is known only to persons having a fiduciary or confidential relationship with a part except as provided by law.

"Contractor" means either the City or the Authority when it is the party providing the Service.

"Core Services" means the services to be provided by the Authority listed in Section 3.1 hereof and described in Appendix A.

"Cost" means actual outflows of cash or the incurrence of liabilities for goods or services rendered to or by the Authority as substantiated by audited and verified data recorded in the City's or Authority's, as applicable, financial statements but may include indirect or overhead costs.

"Denver Health Medical Plan, Inc." (formerly City Care) means an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, and organized under the laws of the State and formed to be the health maintenance organization sponsored by the Authority offering health insurance and health care services to, among other, City employees.

"DEH" means the City's Department of Environmental Health.

"Dispute" means any claim, controversy or other dispute arising out of this Agreement between the City and the Authority.

"Emergency Medical Services" means any or all health care services relating directly or indirectly to a sudden, unforeseen onset of illness or accidental bodily injury, including, without limitation, ambulance and other transport services and participation in the City's "911" access system for medical emergencies and other similar Services.

"Existing Health System Assets" means all property and rights in property, real or person, tangible or intangible, existing on the Transfer Date, that are used primarily in the normal course of operations of the Existing Health System, excluding only those programs, services and facilities used for Regulatory Functions as listed or set forth herein and regulatory leases.

"Facility Leases" means the City's leasehold interest as tenant pursuant to and as governed by the leases of real property, buildings and improvements listed on Schedule 2.2 of the Transfer Agreement, and all rights of the City to the real property, buildings and improvements described in those leases, subject to the City's obligations under those leases.

"Fee Property" means the real property in the City and County of Denver, Colorado, that is more particularly described on Schedule 2.1 to the Transfer Agreement, together with all air space above the Fee Property and all appurtenant rights, easements, and water rights.

"Fiscal Year" means the Fiscal Year of the Authority as may be determined by the Authority from time to time.

"Liaison" means the person appointed by the Authority to carry out functions described in Section 5.2 hereof.

"Marks" means each Contractor's respective trade names, commercial symbols, trademarks and service marks, whether presently existing or later established.

"MHCD" means Mental Health Corporation of Denver, a Colorado non-profit corporation.

"Mission" means the Authority's statutory mission under Section 25-19-104 of the Act and the provisions of Section 25-29-107 of the Act, as in existence on the date hereof.

"Negotiation Notice" shall have the meaning set forth in Section 4.10(c).

"Non-Core Services" means the services to be provided by the Authority pursuant to Section 3.2 hereof and Appendix B hereto and any other Services the parties may agree from time to time should be provided by the Authority in accordance with Section 4.2 hereof.

"Ordinance" means an official legislative act of the City duly passed and enacted into law in accordance with the laws of the State and the Home Rule Charter of the City.

"Owned Vehicles" means those vehicles identified on Schedule 2.4a of the Transfer Agreement.

"Patient Care Services" means the Core Services (except the Denver Health Medical Plan) as defined in this Operating Agreement provided by the Authority from time to time to the Population.

"Permits and Licenses" means all permits and licenses held by the City as of the Transfer Date that are necessary for or relate to (a) the operation of the Authority Health System, or (b) the use or occupancy of any Real Property or property subject to a Facility Lease, or (c) to the use of any Owned Vehicles, Leased Vehicles or other Personal Property, including, without limitation, those permits and licenses listed on Schedule 2.5 of the Transfer Agreement, health care licenses, Federal Aviation Authority permits, occupancy permits, vehicle registrations, and permits or licenses required by any law or regulations with respect to operation of the Authority Health System or otherwise (including, without limitation, any Environmental Law).

"Personal Property" means all personal property assets owned by the City as of the Transfer Date that are used in or necessary to the operation, management or maintenance of the Existing Health System (but specifically excluding those assets which were used for Regulatory Functions prior to the Transfer Date and will be used for Regulatory Functions after the Transfer Date), including, without limitation:

a. the Existing Health System Assets (as defined in Section 25-29-102 of the Act, as in effect on the Transfer Date);

b. the Owned Vehicles;

c. all trailers and other movable assets that do not have certificates of

title, if such property is now used as part of the Existing Health System;

d. the Permits and Licenses;

e. all personal property assets set forth on the Denver Health and Hospitals Enterprise Fund balance sheet as of the Transfer Date;

f. all sources of revenue and money which have customarily been used for the operation of the Existing Health System;

g. cash on hand in the Enterprise Fund and all cash balances in the Department of Health and Hospitals Enterprise Fund in the Treasurer's pooled funds, less estimated accounts payable and accrued payroll, all of the foregoing determined as of December 31, 1996;

h. all health special revenue fund account balances, other than the environmental health special revenue fund account balances;

i. all accounts receivable relating to the City's operation of the Existing Health System up to the Transfer Date;

j. all gifts, grants, bequests, donations or other endowments specifically given for the benefit of or restricted to the use of Denver General Hospital or any other part of the Existing Health System, including without limitation, those related to the Rocky Mountain Poison and Drug Center Foundation, the NHP, the Denver Health and Hospitals Foundation, and the Denver Department of Health and Hospitals Volunteers Auxiliary, Inc. to be known as Denver Health Volunteers Auxiliary, Inc.;

k. all promissory notes and instruments of debt made by patients of the Existing Health System; and

l. all machinery, furniture, equipment, medical equipment, office equipment, computer hardware and software, computer data, decorations, books, records (excluding personnel records, and financial records retained by the City Auditor), files, patient records, accounting records, business records relating to operation of the Existing Health System, supplies and materials (including, without limitation, office supplies, medical supplies and cleaning supplies), inventory, medications, food products, plans, specifications, surveys, as-built drawings and all other records and assets used in connection with the use, operation and maintenance of the Fee Property, the Buildings and the Improvements, and the property subject to the Facility Leases or any of the Personal Property, or that are in the possession of or under the control of the City as of the Transfer Date and are reasonably necessary to permit the Authority to operate the Authority Health System pursuant to its Mission; provided, however, that (a) the Personal Property specifically excludes the property described on Schedule 1.1(a) attached to the Transfer Agreement, which assets shall be retained by the City and (b) the City shall have a right to continue to utilize the property described on Schedule 1.1(b) to the Transfer Agreement for a period of up to one year so long as the Information Services Division of the General Services

Administration of the General Services Department uses such equipment to provide services for the Authority.

"Personnel Services Agreement" means the Personnel Services Agreement dated as of January 1, 1997, between the City and the Authority, and all amendments and supplements thereto.

"Population" means, collectively, the populations defined as uninsured patients, patients identified as having a government payor as their source of reimbursement for their care, or patients enrolled in the State Medical Assistance Program.

"Real Property" means collectively the Fee Property and the Buildings and Improvements.

"Regulatory Functions" means environmental health services, consumer protection services (including quarantine powers and summary closure), animal control services and the operation of the coroner's office but specifically excludes services related to the medical investigation of disease, medical recommendations to the City for disease control and the providing of disease control (including clinics and the administration of vital records and the maintenance of vital statistics).

"Senior Executives" means the following persons:

a. The Mayor (or a senior assistant or other individual designated by the Mayor);

b. The President of the City Council or a representative of the City Council, as determined by the City Council; and

c. The Chief Executive Officer (or other senior management designee) and the Chairman of the Board of the Authority (or other designated Board member).

"Services" means the services to be provided by the Authority to the citizens of the City and the State, by the Authority to the City and by the City to the Authority as more fully described in Article III hereof and the Appendices hereto.

"Standard of Care" means the then current community standards for health care services by similar health care providers located in the City metropolitan area; provided however, that if no similar health care providers are located in the City metropolitan area, then the then current national standard shall be considered. The performance criteria for each Core Service set forth in the respective Appendix shall be considered a part of the initial Standard of Care for each Core Service.

"State" means the State of Colorado.

"Task Force" means a task force comprised of two members appointed by the

Mayor of the City within his or her sole discretion, two members of or appointed by City Council and four members appointed by the board of directors of the Authority within its sole discretion.

"Transfer Agreement" means the Transfer Agreement dated as of January 1, 1997, between the City and the Authority, and all amendments and supplements thereto.

## ARTICLE II

## REPRESENTATIONS

2.1 Representations and Covenants of the Authority.

a. The Authority is a body corporate and political subdivision of the State, is duly organized and existing under the laws of the State, is authorized pursuant to the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Agreement.

b. This Agreement is a valid and legally binding obligation of the Authority enforceable in accordance with its terms.

c. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which it is bound or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority under the terms of any instrument or agreement.

d. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the best knowledge of the Authority, threatened against or affecting the Authority or any of its properties or rights, which, if adversely determined, would materially and adversely impair its ability to execute and deliver this Agreement, to carry out the transaction contemplated by this Agreement, its right to carry on business substantially as now conducted or as now contemplated to be conducted, or would materially and adversely affect its financial condition, assets, properties or operations, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or other governmental agency, which default would materially and adversely affect its operation or its properties. The Authority is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party.

If any of the foregoing representations are untrue, the Authority shall cooperate with the City and use its best efforts to cause such representation and warranty to be true, however, the Authority shall not be liable to the City for monetary damages if any of the foregoing representations are untrue.

2.2 Representations, and Covenants of the City.

a. The City is a municipal corporation and a home rule city, is duly organized and existing under the laws of the State, is authorized pursuant to the Act and the Ordinance to enter into the transactions contemplated by this Agreement and to carry out is obligations hereunder and has duly authorized the execution and delivery of this Agreement.

b. This Agreement is a valid and legally binding obligation of the City enforceable in accordance with its terms.

c. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which it is bound or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement.

d. There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the best knowledge of the City, threatened against or affecting the City or any of its properties or rights, which, if adversely determined, would materially and adversely impair its ability to execute and deliver this Agreement, to carry out the transaction contemplated by this Agreement, its right to carry on business substantially as now conducted or as now contemplated to be conducted, or would materially and adversely affect its financial condition, assets, properties or operations, and the City is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or other governmental agency, which default would materially and adversely affect its operation or its properties. The City is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party.

If any of the foregoing representations are untrue, the City shall cooperate with the Authority and use its reasonable efforts to cause such representation and warranty to be true, however, the City shall not be liable to the Authority for monetary damages if any of the foregoing representations are untrue.

2.3 Compliance with Act.

a. The parties certify and declare that the transactions contemplated by the Transfer Agreement, the Personnel Services Agreement and this Agreement comply with the Act, including, particularly, Section 25-29-105 of the Act.

b. On and after the Transfer Date, except for the power of the City and the Mayor of the City to appoint and remove members of the Authority's board of directors, the City shall have no further control over the operations of the Authority Health System.

c. The Authority shall comply with all of the City regulatory laws, ordinances, and rules and regulations generally applicable to entities and property holders in the City except as may be specifically set forth herein or in the Transfer Agreement.

## ARTICLE III

## SERVICES

3.1 Core Services to Be Supplied by the Authority.

a. The following Core Services shall be provided by the Authority to the citizens of the City and the State and the City shall purchase the Core Services from the Authority as more fully described in Appendix A hereto:

(i) Medical and surgical inpatient, outpatient, ancillary and Emergency Medical Services at the Authority's inpatient, acute care hospital and outpatient facilities.

(ii) Emergency Medical Services, comprised of dispatchers, medical oversight to the first response teams, paramedics and the hospital emergency department, training of the first response team, provided within the City, including all City events where onsite Emergency Medical Services are necessary or appropriate, including special events at City facilities and events connected with visits of dignitaries, heads of state and like personages.

(iii) Public health services related to the medical investigation of disease, medical recommendations to the City for disease control and the providing of disease control (which includes, as of the Transfer Date, the tuberculosis clinic, the sexually transmitted disease clinic, the infectious disease clinic and the immunization clinic) and the administration of vital records and the maintenance of vital statistics.

(iv) Management, clinical and related services for short-term residential and nonresidential detoxification facilities for alcohol abuse, including transportation and treatment services, to be provided at the Denver CARES facility.

(v) Drug abuse treatment services and testing provided both on an inpatient and outpatient basis.

(vi) Services provided by the Rocky Mountain Poison and Drug Consultation Center, including toxicological information and treatment recommendations to consumer and health care professionals for poisonings, consultation to the public and health care professionals and public and professional education.

(vii) Primary and subspecialty care at ambulatory care facilities or clinics.

(viii) Denver Health Medical Plan (formerly City Care) provided as an option to City employees on a nonexclusive basis as described in Section 4.11.

(ix) Medical Services for prisoner care.

(x) Clinical and Laboratory Services for the City's Department of Environmental Health.

(xi) Patient Care Services for the Population.

b. The City recognizes and agrees that the Authority shall be the exclusive provider of the Core Services and that the City shall not engage or permit any other person or entity to perform the Core Services including, but not limited to, the City's Department of Environmental Health. The City shall not remove a Core Service from the Authority unless there has been a material violation by the Authority of the Standard of Care for a Core Service, when considered as a whole.

c. The City recognizes and agrees that the scope of Core Services provided by the Authority pursuant to this Agreement shall be consistent with the scope of health care services generally provided from time to time by the Authority at its facilities. The Authority, in its sole discretion, will determine the medical procedures that will be performed within the Scope of Services. The method and mechanism of delivery of such Core Services will be determined by the Authority and shall conform to the Standard of Care. If a Dispute arises between the parties because of an allegation by the City that the Authority is performing one or more of such Core Services, when considered as a whole, in material violation of the Standard of Care, the Dispute shall be subject to the mandatory processes set forth in Section 4.10 below.

d. The City will pay the Cost of all Core Services provided by the Authority to the City as may be set forth specifically in an individual appendix. Appendix A will also set forth a description of the Core Services, matters related to staffing for each Core Service, and performance criteria for each Core Service.

e. The parties acknowledge and agree that matters relating to personnel are covered by the Personnel Services Agreement.

f. The City agrees that so long as the Authority is providing medical services for City prisoners, the City will either (i) defend the Authority through the City Attorney's office or its designee at the City's expense, for any claim or action brought by any City prisoner on the condition that the initiation of any litigation by the City on behalf of the Authority as plaintiff shall require the approval of the Mayor and the City Attorney; provided further, the Authority shall have the right to consent in advance to the settlement of any claim for which the Authority has agreed to make all or part of the settlement payments and the Authority shall have

the right to retain its own counsel, at its own expense, to participate in or, at the Authority's option, to assume responsibility for the defense of any claims for which the Authority has agreed to make all or part of the settlement payments or (ii) pay the Cost of insurance coverage obtained by the Authority for claims brought by City prisoners.

3.2 Non-Core Services to Be Supplied by the Authority.

a. The Non-Core Services shall be supplied by the Authority to the City and the City shall purchase such Non-Core Services from the Authority as set forth in Appendix B hereto. Except as specifically provided therein or herein, the Non-Core Services shall be subject to the terms of this Agreement and be considered a part of this Agreement as if fully set forth in the forepart hereof. The parties may, from time to time, amend, terminate one or more of the Non-Core Services or add more Non-Core Services to the list set forth in Appendix B, by the addition or substitution of a new appendix or appendices, subject to Section 7.1 hereof.

b. The City recognizes and agrees that the scope of Non-Core Services provided by the Authority pursuant to this Agreement shall be consistent with the scope of health care services generally provided from time to time by the Authority at its facilities. The method and mechanism of delivery of such Non-Core Services will be determined by the Authority and shall conform to the Standard of Care.

3.3 Services to Be Supplied by the City to the Authority. The Services to be supplied by the City to the Authority are set forth in Appendix C hereto and, except as specifically provided therein or herein, shall be subject to the terms of this Agreement and be considered a part of this Agreement as if fully set forth in the forepart hereof. The parties may, from time to time, amend, terminate one or more of the Services or add more Services to the list set forth in Appendix C, by the addition or substitution of a new appendix or appendices, subject to Section 7.1 hereof.

3.4 Amendment to Appendices. Subject to Section 4.2 and Section 7.1 hereof, the Contractors intend that each individual Appendix to this Agreement may set forth a specific term for the duration of the Services to be provided by either Contractor and may be amended from time to time, by the approval and execution of one or more amendatory agreements approved and executed in the same manner as this Agreement, including amendments to modify payment mechanisms, performance criteria, the scope of Services and other matters. The termination of the provision of any Services by either Contractor will not constitute a termination of any or all of the rest of the provisions of this Agreement. The parties intend that, to the extent practicable, amendments to the Appendices of this Agreement will occur no more often than once per year.

## ARTICLE IV

## OTHER COVENANTS

4.1 Charges, Invoicing, and Payments. For those Services for which there is a charge, the charges for such Service provided by one party to the other shall be based on the actual cost of providing the Service, a flat payment, or a fee for the Service to be calculated, invoiced and paid in the following manner:

a. Services provided by the Authority for which charges are based on actual cost. Charges for each Service billed based on actual cost will include both capital and operating expenses for providing the Service, including but not limited to: salaries, supplies, materials, and third-party charges incurred in providing that Service, and shall be calculated as follows:

    i. the total costs for the Services will be included in the budget request estimate;

    ii. the total from (i) will be adjusted downward by total budgeted revenues related to the Services;

    iii. an estimate or actual of the incremental revenue offset will be applied to each month's invoice; and

    iv. may be capped at an agreed upon amount.

    v. The dollar amount resulting from the calculations pursuant to this Section 4.1(a) shall be paid, on a monthly basis, to the Authority pursuant to Section 4.1(f) below.

        1. A reconciliation of each period of revenue offset will be performed by the Authority and delivered to the City's point of contact no later than the fifteenth (15th) day following the end of each quarter.

        2. A mid-year reconciliation will be performed by the Authority no later than June 30th of each Fiscal Year for which the payment is being made, to determine if the amount estimated in the prior year is sufficient. In the event that additional funding is needed, the Authority may request a supplemental appropriation, in writing, for the City's consideration.

        3. A reconciliation will be performed by the Authority no later than March 31st of the year following the Fiscal Year for which payment is being made, to determine any remaining

shortfall or overage. Subject to 4.1(f) below, any shortfall in funding will be reimbursed by the City. Any overage will be returned to the City unless the City approves, in writing, the Authority retaining all or part of the overage for other Services to the City.

b. Services provided by the Authority for which charges are based on a flat payment. Charges for each Service provided based on a flat payment will be calculated as follows:

   i. the budgeted flat payment for the Service;

   ii. total from (i) will be adjusted downward by total budgeted revenues related to the Services;

   iii. as agreed by the parties, the flat payment may be periodically adjusted to account for revenues received from other sources toward the given Service; and

   iv. may be capped at an agreed upon amount.

   v. The dollar amount resulting from the calculations pursuant to this Section 4.1(b) shall be paid, in monthly installments, to the Authority pursuant to Section 4.1(f) below.

c. Services provided by the Authority for which charges are based on a fee for Service. Charges for each Service provided based upon a for Service will be calculated as follows:

   i. the fee for Service will be a negotiated pre-determined cost per Fiscal Year for a given Service or group of Services;

   ii. as agreed by the parties, the fee for Service may be periodically adjusted to account for revenues received from other sources toward the given Service; and

   iii. may be capped at an agreed upon amount.

   iv. The dollar amount resulting from the calculations pursuant to this Section 4.1(c) shall be paid, in monthly installments, to the Authority pursuant to Section 4.1(f) below.

d. The Authority shall prepare an invoice or statement, which includes applicable Supporting Documentation per the City's Fiscal Accountability Rules, to be delivered to the City by the thirtieth (30th) business day of the month following the month for which the invoice is being made, for each month in the Fiscal Year. Invoices will include the actual costs of straight time, premium overtime, special

overtime, training, equipment costs, indirect cost allocation, and any other cost incurred as agreed to for that Service.

e. Payments will be made for each invoice by the City to the Authority within fifteen (15) days of receipt of a complete invoice pursuant to the City's prompt payment ordinance in D.R.M.C. § 20-107, *et seq*.

f. Subject to Appropriation. The City's obligation to make payments pursuant to the terms of this Agreement shall be contingent upon such funds being appropriated and paid into the City Treasury and encumbered for the purposes of this Agreement on an annual basis by the City.

g. Forms of Payment. Acceptable forms of payment include: mailed check, hand-delivered check, or via Automated Clearing House ("ACH").

4.2 Exclusive Arrangement.

a. In order to ensure the Authority will have the opportunity to be competitive in the changing health care system, the Authority will have the right to provide the Core Services to the City on an exclusive basis and the City shall not engage in competition with, or engage another service provider to compete with the Authority in providing the Core Services.

b. The Authority shall be the provider of first choice to provide any and all Non-Core Services related to health care to the City, although not the exclusive provider for services provided to City employees pursuant to employee health insurance plans and other employee fringe benefits that involve health care.

c. Nothing in this Agreement shall be construed as prohibiting the Authority from providing new health care services that it has not provided in the past.

4.3 Payments or Grants from Third Parties. The City agrees that any payments or grants from the State or federal government for health care services provided by the Authority or in furtherance of the Authority's Mission shall be paid directly to the Authority.

4.4 Noncompetition with MHCD.

a. The City and the Authority acknowledge and recognize that the role of MHCD is to provide mental health services to the chronically mentally ill in the City. The Authority and the City agree that such services are not within the Mission of the Authority, except in the circumstances in which the Authority has a separate contractual obligation to provide (i) emergency psychiatric care or (ii) other psychiatric or medical care to the mentally ill.

b. Notwithstanding the foregoing, the City and the Authority acknowledge and recognize that the role of the Authority is to be a provider of substance and

alcohol abuse treatment.

4.5 Quality and Priority of Services. The Contractor shall provide to the other party Services of the same quality and with the same priority as it provides to itself or other recipients, unless otherwise agreed to under the applicable Appendix.

4.6 Nondiscrimination and Affirmative Action.

a. The Authority shall develop and adhere to an affirmative action policy and to a nondiscrimination personnel policy by which the Authority agrees not to discriminate against individuals on the basis of race, color, creed, religion, national original, sex, sexual orientation, handicap or any other protected class under federal or state law with respect to hiring, promoting, paying compensation or other employment benefits.

b. The Authority shall develop and implement a minority business enterprises program and a women-owned business enterprises program for the construction, improvement and design of Authority facilities. The Authority shall use the Denver Office of Economic Development Division of Small Business Opportunity to assist the Authority in administering its minority and women-owned business enterprises programs. The Authority's minority and women-owned business enterprises programs shall be fully consistent with the law.

c. The City agrees to defend the Authority through the City Attorney's Office or its designee at the City's expense, for any claim or action arising from any Federal or State facial constitutional challenge to the Authority's minority-owned and women-owned business plan ("M/WBE plan"), on the condition that the initiation of any litigation by the City on behalf of the Authority as plaintiff shall require the approval of the Mayor and the City Attorney; provided further, the Authority shall have the right to consent in advance to the settlement of any claim for which the Authority has agreed to make all or part of the settlement payments and the Authority shall have the right to retain its own counsel, at its own expense, to participate in or, at the Authority's option, to assume responsibility for the defense of any claims for which the Authority has agreed to make all or part of the settlement payments.

4.7 Cooperation in Litigation. In the event that there is any litigation, administrative hearing or other legal proceeding involving a third party and either the Authority or the City concerning any aspect of this Agreement, the party not involved in the proceeding shall, at the other party's request and expense, join and participate in any such legal proceeding on the condition that the initiation of any litigation by the City on behalf of the City or the Authority as plaintiff shall require the approval of the Mayor and the City Attorney. However, neither party shall be obligated to join or participate in any such legal proceeding if it reasonably determines that the same constitutes (i) a frivolous action within the meaning of Rule 11 of the Colorado Rules of Civil Procedure or the Federal Rules of Civil Procedure, (ii) an abuse of process, or (iii) a violation of the Code of Professional Responsibility as adopted by the Colorado Supreme Court. Once either party has acknowledged an obligation to participate or join in any such legal proceeding, both parties will make a reasonable and good faith effort to adopt a mutually agreeable remedial strategy. However, neither party is constrained from pursuing the course of action of its choice, so long as each party satisfies the above obligation to exercise reasonable and good faith

efforts for adopting a mutual strategy.

4.8 Notification of Suits. The Authority and the City shall promptly give written notice to each other of any action, suit or proceeding threatened against or affecting the other, or any other information which comes to its attention, that may materially adversely affect the operations, programs or financial position of the other. To the extent that a conflict of interest does not exist, the Authority and the City agree to cooperate in the investigation of any such action, suit or proceeding that involves both parties, even if both parties are not identified as defendants or potential defendants provided, however, this shall not limit either the Authority's or the city's right to retain counsel and direct its defense of all such actions or suits or the payment of any settlements or judgments. The parties agree that neither the Authority nor the city, as separate legal entities, shall be considered the statutory agent of the other for purposes of service of process or service of the notice of claim under the Colorado Governmental Immunity Act, or for any other purposes.

This Section 4.8 shall not be construed to limit either party's right to bring any action against the other.

4.9 Conflict of Interest. No officer or employee of either Contractor shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other Contractor. Any contractual provision that contravenes the provisions of this Section shall be null and void. This Section shall not prohibit an officer or administrator of a Contractor from being reimbursed by the one Contractor for actual, out-of-pocket expenses incurred on behalf of the other Contractor.

4.10 Dispute Resolution Process.

a. Except as provided in subparagraph (h) below, no party may initiate litigation to resolve any Dispute without first attempting to resolve the Dispute pursuant to this Section 4.10.

b. The Liaison first will work with the designated representative of the Mayor, the Auditor (with respect to those matters delegated to the Auditor under the City Charter) and/or the designated representative of the City Council in a good faith and collaborative effort by all parties to resolve the Dispute. The work of the Liaison shall be in addition to ongoing informal discussions and attempts to resolve disagreements, problems, and disputes among the parties and is not intended to limit those ongoing discussions and efforts.

c. If the Dispute cannot be resolved by the processes set forth in (b) above, the parties will then attempt to resolve the Dispute through negotiations between their Senior Executives. The Senior Executives shall have decision-making authority for the parties whom they represent. To initiate the process, a party shall give written notice to the other of the existence of the Dispute and of its desire to resolve the Dispute through negotiations conducted pursuant to this Section 4.10(c). Within five days of the delivery of this notice (the "Negotiation Notice"), the receiving party shall submit a written response to the initiating party. Both the Negotiation Notice and the response thereto shall contain (i) a description of the nature of the

Dispute, (ii) a statement of the party's position and a summary of the reasoning on which that position is based, and (iii) the name and position of the Senior Executives who will negotiate on behalf of that party. Within five days after delivery of the Negotiation Notice, the Senior Executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to promptly attempt to resolve the Dispute.

d. If the Dispute has not been resolved within ten days of the commencement of the discussions by the Senior Executives, a party may request that the parties attempt to resolve the Dispute through the Task Force. A party shall request Task Force discussions by delivering written notice to the other (the "Request for Facilitated Negotiations"). Such notice shall be delivered no later than three days after the conclusion of the negotiations described in Section 4.10(c). The parties shall then attempt to resolve the Dispute by Task Force discussions regarding the Dispute, subject to Sections (f) and (g) below.

e. The Task Force shall be appointed within three days of the delivery of the Request for Facilitated Negotiations. Task Force discussions shall be convened within five days of such appointment and shall endeavor to settle the Dispute within twenty days. Any final action by the Task Force must be unanimous. If any Dispute is not resolved within twenty days after the commencement of the Task Force discussions or such later date as the parties may subsequently agree, either party may proceed with litigation. The City Council in its discretion may by resolution direct the City Attorney to take appropriate action.

f. Notwithstanding the foregoing, if a Dispute has arisen because of the circumstances set forth in Section 3.1(b), the Task Force shall undertake the following actions: (1) determine if a material decline in the performance of a Core Service from the Standard of Care has occurred; (2) if a material decline has occurred, recommend corrective action required to restore the Authority's performance to the Standard of Care; (3) determine the time line for the Authority to complete the corrective action, which shall specify a time of no more than six months from date of the Task Force report to complete the corrective action, depending upon the corrective action that is to be undertaken; and (4) after corrective action has been completed, determine if the corrective action instituted by the Authority has restored the Authority's performance to the Standard of Care. The Task Force shall complete (1), and (2) and (3) above, if necessary, within six weeks after the Request for Facilitated Negotiations is delivered as described in Section 4.10(d). The Task Force shall complete (4) above within two weeks after the deadline established for such corrective action to be completed.

g. Further, notwithstanding the foregoing, if a Dispute arises because the Authority has determined to limit Patient Care Services or reduce the Population served in accordance with Section 1.3 of the Indigent Care Appendix attached hereto, the Task Force shall undertake the following action: the Task Force shall determine whether or not the Authority's proposed reduction in the Population served and/or Patient Care Services provided is or is not reasonable under the circumstances, and if not reasonable, recommend total dollar amount of the reduction and the appropriate mix between the reduction in Population served and/or Patient Care Services provided to the Population. Under no circumstances shall the Task Force make a determination as to the method of delivery of Patient Care Services, which shall be solely within the discretion of the Authority. The Task Force shall complete its recommendations within six

weeks after the delivery of Notice set forth in Section 4.10(d).

h. The procedures set forth in this Section 4.10 shall be the sole and exclusive procedures for resolving any Dispute, and the parties must follow the procedure before instituting litigation, except for a Dispute involving the City's failure to make timely payments of otherwise lawfully appropriated funds as required by this Agreement which may proceed directly to litigation at the election of either party; however, either party may initiate litigation to obtain a temporary injunction or other preliminary relief where necessary to prevent irreparable injury or preserve the status quo pending the completion of those procedures. All applicable statutes of limitations will be tolled pending the completion of those procedures.

i. Each party will honor all reasonable requests for information from the other party during the negotiations and Task Force discussions. Unless otherwise provided by applicable law or by agreement of the parties, all information disclosed shall be deemed confidential and as having been disclosed during the course of settlement negotiations for purposes of the Colorado and Federal Rules of Evidence.

4.11 Denver Health Medical Plan. The City agrees to offer the Denver Health Medical Plan at all times as a health plan which is part of the employee benefits the City offers to City employees, so long as the Authority is the sponsor of the Denver Health Medical Plan. The parties agree that the City may, in its discretion, offer other health plans to its employees as part of its employee benefits package, in addition to the Denver Health Medical Plan.

4.12 Releases, Licenses, Permits. Each Contractor shall obtain all releases, licenses, permits or other authorizations required to fulfill its obligations under this Agreement.

4.13 Prevailing Wages. The Authority will require payment of "prevailing wages" to every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition of Authority buildings, or engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or in similar custodial or janitorial work in connection with the operation of any such Authority buildings.

The Authority will use the City's determination of the prevailing wage. The Authority will receive and maintain records of payroll records of all workers paid the prevailing wage, which records shall be subject to audit by the City Auditor under Section 7.14 of the Agreement. If any contractor is unable to deliver to a worker the wages to be paid, the proceeds shall be deposited in a special trust fund established by the Authority for payment to such employee, or after two years, for Patient Care Services. The Authority shall enforce these provisions.

# ARTICLE V

## ACCOUNTABILITY BY THE AUTHORITY TO THE CITY

5.1 Annual Report of Authority to City. The Authority shall deliver a written annual report to the City within six months of the end of its Fiscal Year, commencing with Fiscal Year 1997, which report shall include (i) the latest financial statements of the Authority which have been audited by an independent auditing firm selected by the Authority, (ii) an executive summary of the results of all regulatory and accreditation surveys with respect to the Authority which have been completed during such last Fiscal Year, and (iii) a report of the disposition of all matters regarding the Authority that have been referred to the Liaison by the Mayor or any member of City Council during such Fiscal Year.

5.2 Liaison. The Authority agrees to appoint within three (3) months of the Transfer Date an individual to act as the Liaison between the Mayor, the Auditor (with respect to those matters delegated to the Auditor under the City Charter), the Authority and the City Council. The Liaison shall be an employee of the Authority. The Liaison shall attempt to facilitate resolution of the Mayor's and each City Council member's individual concerns and constituent concerns regarding the Authority's performance in meeting the Standard of Care.

5.3 Meetings with City Officials. The Authority agrees to make the chief executive officer or chairman of the board of the Authority available from time to time upon the request of the City, to meet with the Mayor, City Council or committees of City Council to discuss issues of mutual concern.

5.4 Performance Report. The Authority agrees to make the applicable performance reports to the City that are set forth in each individual Appendix.

## ARTICLE VI

## CONFIDENTIAL INFORMATION

6.1 Legal Restrictions. No party hereto shall be in breach for failure to supply information which such party, in good faith, believes cannot be supplied due to prevailing law, or for supplying information which such party, in good faith, believes is required to be supplied due to prevailing law.

6.2 Non-Disclosure of Confidential Information.

a. Each party acknowledges that (i) due to the nature of this Agreement, the Transfer Agreement and the Personnel Services Agreement, each party shall have access to and acquire Confidential Information related to the business and operations of the other party; (ii) all Confidential Information is solely the property of the party disclosing such information and constitutes confidential and proprietary information; (iii) the disclosure of Confidential Information to third parties would cause substantial loss to the goodwill of a party; (iv) disclosure of Confidential Information to a party shall be made due to the position of trust and confidence that such party shall occupy and due to the agreement by such party to the restrictions contained herein; (v) disclosure of Confidential Information would cause a party irreparable harm; and (vi) the restrictions imposed upon each party herein would not hamper such party in doing business.

b. In consideration of the acknowledgments set forth in subsection (a) above and in consideration for this Agreement, each party (and their respective officers, directors, employees, agents, successors and assigns) shall hold any and all Confidential Information in the strictest confidence as a fiduciary and shall not, voluntarily or involuntarily, sell, transfer, publish, disclose, display or otherwise make available to others any portion of the Confidential Information without the express written consent of the other party, unless a party determines in good faith that such disclosure is required under the provision of Article 72 of Title 24, Colorado Revised Statutes, or Article 6 of Title 24, Colorado Revised Statutes, both as amended. Otherwise, each party shall use its best efforts to protect the Confidential Information consistent with the manner in which such party protects its own confidential business information.

6.3 Trademarks and Copyrights. Each party acknowledges each other party's sole and exclusive ownership of its Marks. No party shall use the other parties' Marks in advertising or promotional materials or otherwise without the owner's prior written consent.

6.4 Confidentiality of Medical Records. The Authority and the City agree that medical records of all patients treated in the Authority Health System shall be treated as confidential, in compliance with state and federal laws governing the confidentiality of patient's medical records.

## ARTICLE VII

## MISCELLANEOUS

7.1 Amendments. This Agreement may be amended from time to time, by approval and execution of one or more amendatory agreements approved and executed in the same manner as this Agreement.

7.2 Enforceability. This Agreement, and all terms and conditions of this Agreement, shall be binding on, shall be enforceable against and shall inure to the benefit of both parties and their respective successors, transferees and assigns.

7.3 Assignment. This Agreement may not be assigned by the parties hereto except as provided in Section 3.1(c) hereof and except that the Authority may make a partial assignment of its rights and obligations pertaining to the Services it provides at any time and from time to time in its sole discretion. The Authority also may assign its obligations to perform one or more of the Services it provides in its entirety with the prior approval of the City Council of the City set forth in an Ordinance. Any assignment by the Authority hereunder shall not relieve the Authority from its agreements or primary responsibilities and liabilities under this Agreement.

7.4 Governing Law. This Agreement and all matters relating to it shall be governed by the laws, rules and regulations of the State, as are now in effect or as may be later amended or modified, without reference to the choice of law or rules of any state. In the event that any provision of this Agreement conflicts with or is inconsistent with the provisions of those laws, rules or regulations, the provisions of the laws, rules and regulations shall govern and supersede. This Agreement, and all matters relating to it, may be enforced in and both parties do now submit to the exclusive jurisdiction and venue of any court having subject matter jurisdiction located in the City and County of Denver, in the State, including the United States District Court for the District of Colorado, in the event of any litigation concerning this Agreement and regardless of where this Agreement may be executed.

7.5 Headings. The headings in this Agreement are for reference purposes only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

7.6 Independent Contractor Status. The relationship between the parties under this Agreement is that of independent contractors. Neither party is authorized nor permitted to act as an agent or employee of the other. Neither party, by virtue of this Agreement, assumes any liability for any debts or obligations incurred by the other party to this Agreement.

7.7 No Third-Party Benefit. This Agreement shall benefit and burden the City and the Authority in accordance with its terms and conditions and is not intended, and shall not be deemed or construed, to confer any rights, powers, benefits or privileges on any person, firm, corporation or any other entity other than the City and the Authority, including, but not limited to, any resident or employee of the City, any patient of the Authority Health System or any employee of the Authority.

7.8 Notice. Unless otherwise stated in this Agreement, all notices, requests, consents, payments or other communications shall be in writing and shall be deemed to have been given at the time of mailing, if sent by certified mail, first-class postage prepaid, or at the time received, if hand delivered or sent by facsimile or similar means. All notices shall be sent to the parties at the following addresses or at such other address as either party may designate in writing:

If to the City:

Office of the Mayor
City and County Building, Room 350
Denver, Colorado 80202
Attn: Mayor of Denver

and to

Department of Law
City and County Building, Room 353
Denver, Colorado 80202
Attn: City Attorney.

If to the Authority:

Denver Health and Hospital Authority
777 Bannock Street, Mail Code 0278
Denver, Colorado 80204
Attn: Chief Executive Officer

and to

Office of the General Counsel
777 Bannock Street, Mail Code 1919
Denver, Colorado 80204
Attn: General Counsel.

7.9 Severability; Conflicts. No term, condition or section of this Agreement is dependent on the validity of any other term, condition or section. If any term, condition or section is found to be invalid, such finding shall not affect the other terms, conditions or sections, which shall remain in full force and effect. In the event that any term or condition of an Appendix is in conflict with this Agreement, this Agreement shall supersede and control.

7.10 Statutory Debt Limitation.

a. It is understood and agreed that the Colorado Constitution and the City Home Rule Charter prohibit the City from creating any debt against the City or incurring any expense beyond the City's ability to pay from its annual income for the current Fiscal Year. No term or condition of this Agreement shall be construed or interpreted so as to cause the City to violate this provision of law (including, without limitation, any amendments to these laws) or any similar law which is subsequently enacted.

b. It is understood and agreed that the Colorado Constitution and the Act prohibit the Authority from creating any debt against the Authority or incurring any expense

beyond the Authority's ability to pay from its annual income for the current Fiscal Year. No term or condition of this Agreement shall be construed or interpreted so as to cause the Authority to violate this provision of law (including, without limitation, any amendments to these laws) or any similar law which is subsequently enacted.

7.11 Waiver. The waiver of strict compliance or performance of any term or condition of this Agreement by either party shall not be deemed a waiver of any other failure to comply strictly with or to perform such term or condition or any other term or condition of this Agreement.

7.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7.13 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Authority agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and the Authority agrees to insert the foregoing provision in all subcontracts hereunder.

7.14 Examination of Records. The Authority shall keep and maintain and shall cause its subcontractors and outside consultants to keep and maintain, books, records, accounts and other documents (hereinafter collectively referred to as "records") that are sufficient to accurately and completely reflect the operations of the Authority. Such records shall be kept and maintained in the Denver metropolitan area, and the Authority shall upon the request of the Auditor of Denver (hereinafter referred to as "Auditor") make such records available in the Denver metropolitan area. Such records shall include, but not be limited to, receipts, memoranda, vouchers, and accounts of every kind pertaining to the performance of the work by and for the Authority, as well as complete summaries and reports setting forth all man-hours expended, payroll incurred and monthly salary and hourly rate of each and every employee whose payroll warrant(s) are issued by the Auditor. In addition, the Authority shall keep a detailed inventory of all property, plant, and equipment and shall furnish copies of such inventory records if requested by the Auditor. All records of the Authority referred to herein shall be kept in a form and manner satisfactory to the Auditor and in accordance with a system of accounting acceptable to the Auditor.

The City, including the Auditor, its representatives and any firm of auditors designated by the City shall have the right at any time to all such records, as referred to herein, maintained by the Authority and its subcontractors. The City shall have the right to reproduce any such records, and the Authority and its subcontractors and consultants shall keep and preserve all such records for a period of at least three (3) years from and after completion of the Agreement, or until an earlier time agreed to by the Authority and the Auditor.

7.15 Entire Agreement. This Agreement together with the Personnel Services Agreement and Transfer Agreement represent the entire agreement of the parties with respect to the subject matter of such agreements as of the date hereof.

7.16 Electronic Signatures and Electronic Records. The Authority 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.

As amended and restated in this Second Amended and Restated Operating Agreement, the Operating Agreement and all other amendments on file with the Clerk of the City are hereby ratified and reaffirmed in all particulars.

IN WITNESS WHEREOF, the parties have executed this Second Amended and Restated Operating Agreement as of the day and year first above written.