AGREEMENT
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

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AGREEMENT
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

THIS AGREEMENT (the "Agreement") is between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, ("Denver"), for itself and on behalf of the **Division of Workforce Development, a division of the Office of Economic Development** (the "Agency") and the **Denver Workforce Development Board** (the "Local Board"), and together with Denver (the "City") and **ARBOR E&T, LLC, dba ResCare Workforce Services**, a Limited Liability Company, authorized to conduct business in the State of Colorado, with a business address of 9901 Linn Station Road, Louisville, KY 40223 ("Contractor"), each the City and the Contractor a "Party" and jointly the "Parties".

The parties 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 neuter gender includes the masculine and the feminine.

a. "City Law" shall include the Denver Charter, Denver Revised Municipal Code, executive orders, rules, regulations, policies and procedures prescribed by the City which govern funds which are or may after become obligated under this Agreement. City Law may include, but is not limited to, City laws set forth in Section 15 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.

b. "Federal Funds" means an award or appropriation of monies from the Federal Government for purposes of administering the Program.

c. "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 expenditure of Federal Funds which are or may hereafter become obligated under this Agreement.

d. "Federal Law" shall include any laws of the United States of America which govern funds which are or may after become obligated under this Agreement. Federal Law may include, but is not limited to, federal laws set forth in Section 23 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.

e. "Program" means Temporary Assistance for Needy Families (TANF) program, a program created by the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 U.S.C. 601 *et seq*., (PRWORA/TANF-CFDA# 93.558), as supplemented by the Colorado Works Program Act of 1997, as amended,

C.R.S. § 26-2-701, et seq., ("CWPA"). **For purposes of implementing the Program, the Contractor is not a Sub-Awardee.**

f. "State Government" includes 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 Program.

g. "State Law" includes any laws of the State of Colorado which govern funds which are or may become obligated under this Agreement. State Law includes, but is not limited to, the state laws set forth in Section 23 of this Agreement, as well as amendments thereto which may currently or hereafter be in effect.

h. "Subcontractor" means an entity that furnishes to the Contractor services, materials, equipment, or supplies (other than standard office supplies or printing services) pursuant to this Agreement.

2. TERM: The term of this Agreement shall commence on July 1, 2018, and shall terminate on June 30, 2019 (the "Term"). Subject to the Executive Director's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.

3. COORDINATION AND LIAISON: The Contractor shall fully coordinate all services under the Agreement with the Director of Workforce Development, Office of Economic Development (the "Executive Director"), or the Executive Director's designee. The Executive Director, or the Executive Director's designee, will serve as the liaison for the City and the Local Board for purposes of administering this Contract on a day-to-day basis.

4. CONTRACT DOCUMENTS:

a. Order of Preference. This Agreement consists of Sections 1 through 19, 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
Exhibit B – Budget
Exhibit C – Financial Administration Terms and Conditions
Exhibit D – General Program Terms and Conditions
Exhibit E – Certificate of Insurance
Exhibit F – HIPPA/HITECH Business Associate Terms

In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of this Agreement controls. In the event of any conflicts between Exhibits A through and including F, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

Exhibit C (unless the City specifically notifies the Contractor in writing that a provision of Exhibit C prevails over this Agreement)
Exhibit DE (unless the City specifically notifies the Contractor in writing that a provision of Exhibit D prevails over this Agreement
Exhibit A – Scope of Services
Exhibit B - Budget
Exhibit E – Certificate of Insurance
Exhibit F – HIPPA/HITECH Business Associate Terms

b. **Modifications to Exhibits**. The Parties may modify an exhibit attached to this Agreement; provided, however, that no modification to an exhibit 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 any and all modifications to an exhibit by revising and restating that exhibit and referencing this City Contract Control number stated on the signature page below. 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 the Agency for access through the City Clerk. All such modifications shall contain the date upon which the modified exhibit or exhibits shall take effect. Any modification to an exhibit agreed to by the Parties 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.

5. SERVICES TO BE PROVIDED:

a. At the direction of the Executive Director, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth on **Exhibit A, the Contractor's Scope of Services (the "Services"),** to the City's satisfaction.

b. The Contractor is ready, willing, and able to provide the services required by this Agreement.

c. The Contractor shall faithfully perform 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.

6. COMPENSATION AND METHOD OF PAYMENT:

a. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement in accordance with the budget contained in **Exhibit B**. The Contractor certifies the budget line items in **Exhibit B** contains reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E.

b. Reimbursable Expenses: Except as set forth on **Exhibit B**, there are no reimbursable expenses allowed under the Agreement.

c. Invoices.

(1) The Contractor shall provide the City with periodic invoices in a format and with a level of detail acceptable to the City in accordance with **Exhibit B**. The Contractor's invoices must identify reasonable allowable direct costs and allocable indirect costs actually incurred in accordance with the budgeted categories and amounts contained in **Exhibit B**. The amounts invoiced by the Contractor will be payable upon receipt and acceptance of designated work product as set forth herein and as fully documented by the Contractor's periodic invoice. Funds payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only, for work performed during the prior month. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely, and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. The Contractor's invoices will set forth the methodology used to determine costs for services invoiced. The City will have the right to dispute, and withhold payment for, any invoice that does not contain a sufficient statement of the Contractor's methodology used to determine costs for services invoiced.

(2) The Contractor must not allocate costs billed to this Agreement to another Federal award unless the City notifies the Contractor in writing that that the City has shifted costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of an applicable Federal award. 2 C.F.R. 200.405(c).

(3) Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind the Contractor, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of an applicable Federal award or the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed Seven Hundred Thousand Dollars and Zero Cents ($700,000.00) (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.** Any services performed beyond those in **Exhibit A** are performed at the Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to Federal Funds received and budgeted for the Program, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of 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.

e. Recovery of incorrect payments: The City has the right to recover from the Contractor any and all incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation including but not limited to applying a deduction from subsequent payments under this Agreement or other means of recovery by the City as a debt due to the City or otherwise as provided by law. If, as a result of any audit or program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. The foregoing in no way limits the Contractor's obligation to reimburse the City for any costs or expenses paid under this Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable Federal Laws, State Laws, or City Laws.

f. Additional Program Conditions: If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive order, rules and regulations, or other written policy instrument, the Contractor will comply with all such additional conditions. If the Contractor is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to the Contractor of any unearned funds. If the City withholds payment for this reason, the City shall advise the Contractor and specify the actions that must be taken as a condition precedent to the resumption of payments.

g. Return of unexpended funds: In the event the City determines that the Contractor possesses an unexpended balance of funds from any advance payments made to the Contractor, then all such unexpended advanced funds will be returned to the City within ten (10) days written notice to the Contractor. The City's acceptance of any such amounts shall not constitute a waiver of any claim that the City may otherwise have arising out of this Agreement.

h. Federal Funds contingency: All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of Federal Funds for the purposes of the Program. In the event that Federal Funds, or any part thereof, are not awarded to the City or are reduced or eliminated by the Federal Government or the State of Colorado, the City may reduce the total amount of compensation to be paid to the Contractor by revising **Exhibits A and B** or it may terminate this Agreement.

i. No duplication of funds for same services: The monies provided for and received under this Agreement are the only and sole funds received by the Contractor from or through the City and County of Denver for payment of the Services provided under this Agreement. In the event the Contractor shall receive any other monies from or through the City or any other party in order to provide the Services, then the compensation received hereunder may be reduced by such amount or amounts at the sole option of the City. The Contractor shall report promptly, in writing to the Executive Director, all amounts received upon receipt.

7. EMPLOYMENT WITH FUNDS: In connection with the performance of work under this Agreement, the Contractor shall submit pertinent job availability information on each job or position created with the use of the funds provided hereunder to the City's Office of Economic Development in the workforce job system, www.connectingcolorado.com or other system as may be required.

8. STATUS OF CONTRACTOR: 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.

9. ENFORCEMENT REMEDIES/TERMINATION OF AGREEMENT: The City has the following rights of enforcement and termination:

a. Enforcement Remedies: If the Contractor materially fails to comply with the terms of this Agreement; the terms of any other agreement between the City and the Contractor; or any Federal Law, State Law or City Law in performing under this Agreement, and fails to cure any such noncompliance within ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the noncompliance, or if the Contractor experiences financial difficulties as evidenced by its admitting in writing its inability to pay debts generally as they become due; making an assignment of all or a substantial part of its property for the benefit of its creditors; an order from a court of competent jurisdiction that the Contractor is bankrupt or should have a general assignment for the benefit of its creditors; by its seeking or consenting to or acquiescing in the appointment of a receiving or trustee for all or a substantial part of its property or of its interest in this Agreement or if a receiver should be otherwise appointed by order of the Court on account of the Contractor's insolvency which order has not been vacated, set aside or stayed within thirty (30) days from the date of entry appointing a receiver or trustee for all or a substantial part of its property the City may take one or more of the following enforcement actions:

(1) Withhold any or all payments to the Contractor, in whole or in part, until the required or necessary Services, deliverables, or corrections in performance are satisfactorily completed during the authorized period to cure default;

(2) Deny any and all requests for payment and/or demand reimbursement from the Contractor of any and all payments previously made to the Contractor for those Services or deliverables that have not been satisfactorily performed and which, due to circumstances caused by or within the control of the Contractor, cannot be performed or if

performed would be of no value to the Program. Denial of requests for payment and demands for reimbursement shall be reasonably related to the amount of work or deliverables lost to the City;

(3) Disallow or deny all or part of the cost of the activity or action not in compliance;

(4) Suspend or terminate this Agreement, or any portion or portions thereof, effective immediately or (or such longer period as the City may allow) upon written notice to the Contractor;

(5) Deny in whole or in part any application or proposal from the Contractor for funding of the Program for a subsequent program year regardless of source of funds;

(6) Reduce any application or proposal from the Contractor for refunding for the Program for a subsequent program year by any percentage or amount that is less than the total amount of compensation provided in this Agreement regardless of source of funds;

(7) Refuse to award the Contractor, in whole or in part, any and all additional funds for expanded or additional services under the Program;

(8) Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for the Contractor;

(9) Modify, suspend, remove, or terminate the Services, in whole or in part. If the Services, or any portion thereof, are modified, suspended, removed, or terminated, the Contractor shall cooperate with the City in the transfer of the Services as reasonably designated by the City; or

(10) Take other remedies that may be legally available.

b. Termination due to Changes in Program – PROWRA: If the Colorado Works Program Memorandum of Understanding executed by the City and the State of Colorado or any subsequent such Memorandum of Understanding is terminated for any reason, the total amount of compensation to be paid to the Contractor under this Agreement shall be reduced effective as of the date of termination of such Memorandum of Understanding and the parties will revise **Exhibits A and B,** in accordance with Section 2.2 above accordingly.

c. Termination due to Criminal Offenses: The City may terminate the Agreement if the 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 the Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

d. **Termination for Convenience:** The City has the right to terminate the Agreement without cause upon twenty (20) days prior written notice to the Contractor. However, nothing in this Section shall be construed as giving the Contractor the right to perform Services under this Agreement beyond the time when such Services become unsatisfactory to the Executive Director.

e. **Payment upon Termination:** Upon termination of the Agreement, upon any ground, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation that has not been disallowed by the City for work duly requested and satisfactorily performed or Services satisfactorily provided as described in the Agreement.

f. **Return of Materials and Equipment:** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

10. EXAMINATION OF RECORDS/AUDIT REQUIREMENTS:

a. Any authorized representative of the City, including the City Auditor or the Auditor's representative, the State of Colorado, or the federal government will have the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations whichever is longer. This right of access also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents.

b. The Contractor will keep true and complete records of all business transactions under this Agreement, will establish and maintain a system of bookkeeping satisfactory to the City's Auditor and give the City's authorized representatives access during reasonable hours to such books and records, except those matters required to be kept confidential by law. The Contractor agrees that it will keep and preserve for at least three (3) years all evidence of business transacted under this Agreement for such period.

c. The Contractor acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget including, but not limited to, all applicable laws, rules, regulations, policy statements, and guidance issued by the Federal Government (including the United States Office of Management and Budget), regarding audit requirements and access to records requirements. Non-profit organizations that expend $750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") and applicable federal regulations.

11. 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.

12. INSURANCE:

a. General Conditions: The 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. The 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 two (2) 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 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. If such written notice is unavailable from the insurer, the 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, such information will be stated on the Contractor's certificate of insurance. The 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: The Contractor shall provide a copy of this Agreement to its insurance agent or broker. The Contractor may not commence services or work relating to the Agreement prior to placement of coverage required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit E**, 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 the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. In the event of a claim, 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, Auto Liability and Excess Liability/Umbrella (if required), the Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and those

volunteers who are necessary for the performance of Services under this Agreement as additional insured.

d. Waiver of Subrogation: For all coverages required under this Agreement, the Contractor's insurer shall waive subrogation rights against the City.

e. Subcontractors and Subconsultants: 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. The 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. The 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: The 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. The 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: The 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: The 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): The Contractor shall maintain limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

j. Cyber Liability: If the Contractor supplies software under the Agreement, it shall maintain Cyber Liability coverage with limits of $1,000,000 per claim and $1,000,000 policy aggregate covering liability claims involving privace violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

k. **Commercial Crime including Client Coverage:** The Contractor shall maintain $1,000,000 in commercial crime coverage. Coverage shall include theft of City's money, securities or valuable property by the Contractor's employees.. Policy shall include Client Coverage. The City and County of Denver shall be named as Loss Payee as their interests may appear.

l. **Property Insurance:** The Contractor shall maintain All-Risk Form Property Insurance on a replacement cost basis. The City and County of Denver shall be named Loss Payee as its interest may appear.

m. **Additional Provisions:**

(1) For Commercial General Liability, the policies must provide the following:

(a) That this Agreement is an Insured Contract under the policy;
(b) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
(c) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
(d) Any exclusion for sexual abuse, molestation or misconduct has been removed or deleted

(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) The Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its 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.

13. DEFENSE AND INDEMNIFICATION:

a. The Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees 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 ("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. The Contractor's duty to defend and indemnify City 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 City shall arise even if City 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. The Contractor will defend any and all Claims which may be brought or threatened against City 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 City's 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.

14. TAXES, LATE CHARGES, AND PERMITS: 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 D.R.M.C. § 20-107, *et seq*. The Contractor shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the Services and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

15. ASSIGNMENT AND SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Executive Director's prior written consent. Any assignment or 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.

16. INUREMENT: The rights and obligations of the parties to the Agreement 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.

17. 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.

18. 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.

19. 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.

20. 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; and the Contractor shall not hire, or contract for services with, any employee or officer of the City 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, which 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.

21. 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:

President and CEO
ARBOR E&T, LLC, dba ResCare Workforce Services
9901 Linn Station Road
Louisville, KY 40223

With a copy of any such notice to:

General Counsel
Office of General Counsel
ARBOR E&T, LLC, dba ResCare Workforce Services
9901 Linn Station Road
Louisville, KY 40223

If to the City at:

DWD Director of Workforce Development or Designee
Office of Economic Development
City and County of Denver
201 West Colfax Avenue, Dept. 1011
Denver, CO 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

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.

22. DISPUTES: All disputes between the City and the Contractor arising out of or regarding the Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Agreement.

23. GOVERNING LAW; VENUE: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action

relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).

24. COMPLIANCE WITH APPLICABLE LAWS: The Contractor shall perform or cause to be performed all Services in strict compliance with all applicable laws, rules, regulations, and codes of the United States, State of Colorado, and with the Charter, ordinances, regulations, policies, and Executive Orders of the City and County of Denver, as amended from time to time, whether or not specifically referenced herein. Any references to specific federal, state, or local laws or other requirements incorporated into this Agreement are not intended to constitute an exhaustive list of federal, state, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the Services and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Compliance with all such statutes, regulations and other documents is the responsibility of the Contractor. Contractor shall ensure that any and all subcontractors also comply with applicable laws. In particular, and not by way of limitation, the Services shall be performed in strict compliance with all laws, executive orders, ordinances, rules, regulations, policies and procedures prescribed by the City, the State of Colorado, and the United States Government, and the following additional requirements:

a. PRWORA/TANF: The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, Temporary Assistance For Needy Families, 42 U.S.C. §601, *et seq.*, as may be amended from time to time.

b. Colorado Works: The Colorado Works Program Act, C.R.S. §26-2-701, *et seq.*

c. Colorado Works Memorandum of Understanding: The applicable terms and conditions of the Colorado Works Program Act Memorandum of Understanding, or any subsequent Memorandum of Understanding between the City and the State of Colorado, and as the same may be executed or amended from time to time.

d. Program Laws: Any and all federal, state, or City rules and regulations promulgated pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act and the Colorado Works Program Act including but not limited to 45 C.F.R. 260, 45 C.F.R. 261, 9 C.C.R. 2503-6 (Volume 3); and 11 C.C.R. 2508-01 (Volume 5); and 12 Code Colorado Regulations 2509-1 (Volume 7).

e. Program instructions, directives, and guidance: All manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the federal government, State of Colorado, or the City and provided to the Contractor concerning the Program or the expenditure of federal funds.

f. Exhibits: The terms and conditions contained in Exhibits C and D and all other Exhibits to this Agreement unless the City notifies the contractor in writing that a specific requirement does not apply to the performance of the Services.

g. Governing Agreements: Any and all Grant Awards, Contracts, or other Agreements governing this Agreement.

h. Requests for Proposals: Any and all Requests for Proposals, or portions thereof, issued by the City for purposes of this Agreement as designated by the Executive Director.

i. OMB: All applicable circulars of the U.S. Office of Management and Budget ("OMB") including without limitation Omni-Circular "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", 2 C.F.R. Part 200, *et seq.*

j. The Deficit Reduction Act of 2005: 109 P.L. 171.

k. Grievance Policy: The Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Contractor. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or Services offered by the Contractor. In order to satisfy this requirement, the Contractor agrees to provide a written "Grievance Policy" as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of Services. The Contractor agrees that a formal "Grievance Policy" will be adopted by its governing body and submitted to the Executive Director for approval at the Executive Director's discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement.

l. Debarment: The Contractor is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. By its signature below, the Contractor assures and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the Executive Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor.

The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" in all covered transactions associated with this Agreement. The Contractor is responsible for determining the

method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations.

m. Prohibited Transactions:

(1) Interest of Contractor: The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed.

(2) Members of Congress: No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.

(3) Employees: No officer or employee of either the City or the Contractor shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other party to this Agreement. 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 one party to this Agreement from being reimbursed by the other party for actual, out- of-pocket expenses incurred on behalf of the other party.

(4) Political Activity: Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.

n. Byrd Anti-Lobbying: If the Maximum Contract Amount exceeds $100,000, the Contractor must complete and submit to the Agency a required certification form provided by the Agency certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

o. Mandatory Disclosures: The Contractor must disclose, in a timely manner, in writing to the Agency all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the work to be performed under this Agreement. Failure to make required disclosures can result in the Agency taking any of the remedies described in 2 C.F.R. §200.338.

p. FFATA: The Federal Funding Accountability and Transparency Act of 2006, FFATA, and implementing rules and regulations.

q. Clean Air and Water: The Clean Air and Federal Water Pollution Control Act, 42 U.S.C. 7606 (Section 306) and 33 U.S.C. 1368 (Section 508), Executive Order 11738, and other applicable Environmental Protection Agency (EPA) regulations. Contractor understands that all violations shall be reported to the Federal awarding agency, the Regional Office of the EPA, and the City.

r. Energy Policies: The Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) concerning energy efficiency and conservation plans.

s. No Employment of Illegal Aliens to perform work under the Agreement (City Ordinance): 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"). 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.

(3) The Contractor also agrees and represents that:

(i) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(ii) It shall not enter into a contract with a subconsultant 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.

(iii) 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.

(iv) It is prohibited from using 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.

(v) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(vi) 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.

(4) The Contractor is liable for any violations as provided in the Certification Ordinance. If the 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 the Contractor from submitting bids or proposals for future contracts with the City.

t. No Discrimination in Employment (City Executive Order No. 8): In connection with the performance of work under this Agreement, the Contractor 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, gender identity or gender expression, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

u. Non-Discrimination and Equal Employment Opportunity (Federal requirements):

(1) In carrying out its obligations under the Agreement, the Contractor and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with 29 CFR Part 37, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations. The Contractor agrees not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. The Contractor will ensure that all qualified applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or

recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training (including apprenticeship), or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status.

(2) The Contractor agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment. The Contractor will affirm that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of Contractor.

(3) The Contractor will incorporate the foregoing requirements of this section in all of its subcontracts.

(4) The Contractor agrees to collect and maintain data necessary to show compliance with the nondiscrimination provisions of this section.

v. <u>No Discrimination in Program Participation (Federal requirements)</u>: The Contractor will comply with any and all applicable federal, state, and local laws, rules, regulations, and executive orders that prohibit discrimination in programs and activities funded by this Agreement including without limitation discrimination on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph. Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). The Contractor hereby warrants and assures that LEP persons with will have meaningful access to all services provided under this Agreement. To the extent Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance. Further, the Contractor acknowledges the City's Office of Human Rights and Community Partnerships, Office of Sign Language Services (OSLS) oversees access for deaf and hard of hearing people to City programs and services. The Contractor will comply with any and all requirements and procedures of the OSLS, as amended from time to time, concerning the provision of sign language interpreter services for all services provided by the Contractor under this Agreement. Further, Contractor acknowledges the public policy requirement of the U.S. Dept. of Health and Human Services that that no person otherwise eligible to participate in programs and services supplied under this Agreement will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability,

sex, race, color, national origin, religion, gender identity, or sexual orientation. The Contractor must comply with this national policy requirement with respect to the performance of work and administration of funds provided under this Agreement and for all programs and services supported by HHS awards. 45 C.F.R. Part 75.300(c).

25. LEGAL AUTHORITY: The Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of the Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into the Agreement.

26. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

27. ORDER OF PRECEDENCE: In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.

28. INTELLECTUAL PROPERTY RIGHTS:

a. Ownership: Except where the City has agreed in writing to accept a license or where expressly prohibited by federal law, the City and the Contractor intend that any and all copyright, trademark, service mark, trade secret, patent, patent applications, or other intellectual property or proprietary rights, both registered and unregistered, whether existing now or in the future ("Intellectual Property") in and to the Services, any other affiliated services supplied by the Contractor, directly or indirectly, and any creative works, inventions, discoveries, know-how, social media accounts, websites, domain names, and mobile applications, and any improvements to and derivative works of any of the foregoing, created, purchased, licensed, used, or supplied by the Contractor, a Subcontractor, or a third party contractor in connection with the Services are the sole property of the City.

b. Copyrightable Intellectual Property:

(1) The City and the Contractor intend that Intellectual Property includes without limitation any and all records, case files, databases, materials, information, text, logos, websites, mobile applications, domain names, templates, forms, documents, videos, podcasts, newsletters, e-mail blasts, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, multimedia or audiovisual materials, negatives, specifications, software, data, products, ideas, inventions, templates, knowhow, studies, reports, and any other work or recorded information created, purchased, licensed, used, or supplied by the Contractor, or any of its Subcontractors or other third party

contractors, in connection with the Services, in preliminary or final forms, in paper or electronic format, and on any media whatsoever (collectively, "Materials"). The Contractor shall not use, willingly allow another to use, or cause any Materials to be used for any purpose other than for the performance of the Contractor's duties and obligations under this Contract without the prior, express written consent of the City. To the extent permitted by the U.S. Copyright Act, 17 U.S.C. §101, *et seq*., 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 rights, 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.

(2) Contractor shall not create, purchase, license, supply or use any logos, software programs, software as a service, websites, mobile applications, domain names, social media accounts, or third party software, social media, applications or websites in connection with the Services or any other affiliated services supplied by the Contractor unless the program, product or service, in each case, is specifically identified as an expense on **Exhibit B** or the Contractor has obtained the Executive Director's prior written permission to create, purchase, license, supply or use the program, product or service and otherwise complied with all requirements of the City concerning said matter. The Contractor shall maintain and keep current an inventory, in such format as designated by the Executive Director, of all such approved Materials. Contractor will submit a copy of the most current version of the Materials inventory with Contractor's periodic request for payment. The City will have final decision making authority to determine and/or edit the final content, design, layout, format, and "look and feel" of any such Materials. The Contractor will ensure that all Materials, or any portion or version thereof, do not, directly or indirectly, in whole or in part, infringe upon any third party's copyright, trademark, patent, or other intellectual property rights, title or interests.

c. <u>Patentable Intellectual Property</u>: The City and the Contractor intend that Intellectual Property includes any and all software that is excluded from copyright materials as well as any improvement, invention, discovery, know-how, business method, or other invention which is or may be patentable or otherwise protectable under the laws of the United States (whether or not produced in the United States) conceived or first actually reduced to practice in the performance of work under this contract by the Contractor, or any of its third party contractors, in connection with the services provided under the Agreement. The Contractor shall immediately notify the Executive Director in writing of any such patentable Intellectual Property and provide the Executive Director with a complete written report describing in detail each specific software, know-how, method, invention, improvement or discovery.

d. <u>Third Party Products, Materials and Processes</u>: The Contractor represents and warrants that the Services, and any other affiliated services supplied by Contractor in connection with this Agreement, will not infringe upon or violate the City's Intellectual Property, any other rights held by the City to any intellectual property, or the intellectual property or proprietary rights of any third party. If the Contractor employs any third party product, design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the third party patentee or copyright owner. The Contractor shall

defend, indemnify, and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of Services. Where the Services, or any other affiliated services provided by the Contractor, contain false, offensive, or disparaging content or portray the City, its appointed and elected officials, agents and employees, or any third party in a disparaging way, either as solely determined by the City or the third party, as appropriate, the Contractor will immediately remove the false, offensive, or disparaging content. If Contractor fails to do so, the City will have the right, at the City's sole election, to immediately enforce any remedies available to it under this Agreement or applicable laws. The requirements and obligations contained in the preceding sentences of this Section 16.4 will not apply to a specific third party patented device, material or processes that the Executive Director has directed, in writing, the Contractor to use.

e. Federal License: The Contractor acknowledges that pursuant to Federal Law, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

f. Restrictions on Other City Intellectual Property: The Contractor will not use, reproduce, transmit, copy, distribute, alter, modify, register, or incorporate any registered or unregistered trademark or service mark, logo, seal, flag, official insignia, name, icon, copyright, patent, or domain name of the Agency or the City without, in each case, the prior written permission of the Executive Director and the City's Director of Marketing, or their designated representatives. Upon receipt of such permission, the Contractor shall fully coordinate all logo use with the City's Director of Marketing or, if and as directed, with a designated employee of the Agency.

29. SURVIVAL OF CERTAIN PROVISIONS: The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the City will 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.

30. ADVERTISING AND PUBLIC DISCLOSURE: The Contractor shall not include any reference to the Agreement or to the Services in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

31. CITY EXECUTION OF AGREEMENT: The Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

32. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

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

d. Software Programs: The Contractor will use the software programs designated or otherwise approved by the City to collect, use, process, store, or generate all data

and information, without or without Personal Information, in connection with the Services, or any other affiliated services provided by the Contractor. The Contractor will fully comply with any and all requirements and conditions associated with the use of such software programs as designated from time to time by the City, the State Government, or the Federal Government.

e. Security of Personal Information and Access to Software Programs: In addition, the Contractor will 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.

f. 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 the Contractor as highly confidential information. The 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. The Contractor has an obligation to immediately alert the City if the Contractor's security has been breached or if the Contractor is aware of any unauthorized disclosure of Personal Information. This Section will survive the termination of this Agreement.

g. Contractor Use of Personal Information: The 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 the 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.

h. Protected Health Information: The Contractor will 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 F.** The Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request thereof, copies of the Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access.

i. Protected Substance Abuse Records: The Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all protected substance abuse treatment information and all requirements contained in **Exhibit F.** 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.

35. CONFIDENTIAL INFORMATION; OPEN RECORDS:

a. City Proprietary and Confidential Information: Contractor a c knowledges 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 34, 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 will survive the expiration or earlier termination of this Agreement. Contractor will 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.

36. <u>ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS</u>: 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 Services
Exhibit B – Budget
Exhibit C – Financial Administration Terms and Conditions
Exhibit D – General Program Terms and Conditions
Exhibit E – Certificate of Insurance
Exhibit F – HIPPA/HITECH Business Associate Terms

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By_____

_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By_____

By_____

By_____

Contract Control Number: OEDEV-201842500-00

Contractor Name: ARBOR E&T, LLC

By: _____

Name: Mark Douglass
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: Jennifer Smith
(please print)

Title: Executive Assistant
(please print)

SCOPE OF SERVICES
One-Stop Service Provider and Comprehensive Services Provider City and County of Denver Office of Economic Development/ Denver County Workforce Development Board
and Arbor E&T, LLC dba ResCare Workforce Services
and Temporary Assistance for Needy Families (TANF)
July 1, 2018 through June 30, 2019

Federal Award ID (FAIN) #:	N/A – Vendor
Contract **Federal Award Date:**	N/A – Vendor
Contract **Federal Awarding Agency:**	N/A – Vendor
Contract **Pass-Through Entity:**	N/A-Vendor
Contract	
Awarding Official:	N/A – Vendor contract
DUNS #:	108490483

1.1 INTRODUCTION

This Scope of Services outlines Program, Administrative, and other requirements that must be satisfied by Arbor E&T, LLC dba ResCare Workforce Services, the One Stop Service Provider (the "Service Provider") and Service Provider (the "Service Provider") receiving funds from the City and County of Denver Office of Economic Development (OED) on behalf of the Denver Workforce Development Board (OED/WDB) to operate limited programs as Denver Department of Human Services (DDHS). The funds will ensure Denver County workforce services to be provided within the identified locations; Richard T. Castro located at 1200 Federal Blvd. and Arie P. Taylor located at 4685 Peoria Street.

As policies and/or procedures are revised or updated, OED/WDB will release formal instructions and procedures wherever they differ from this Scope of Service which will be understood to replace those elements of this Scope of Service with which they differ. Any future procedures that are released are to be considered addenda to this Scope of Service and therefore part of the agency's contract with the Service Provider as they are updated or revised.

The Service Provider shall be prepared to expand or reduce the delivery of services to businesses and job seekers if reductions and/or changes in project services or scale are required due to actual funding allocations throughout the contract's term.

For the purposes of this agreement, this Service Provider is considered a "Contractor"

and the following reference from the Uniform Guidance Circular is applicable:

> The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities.
>
> Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. §2 CFR Section 200.92
>
> Characteristics that support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

1. Determines who is eligible to receive what Federal assistance;
2. Has its performance measured in relation to whether objectives of a Federal program were met;
3. Has responsibility for programmatic decision making;
4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

> Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward. 2CFR §200.22
>
> Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program; and

Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirement may apply for other reasons. 2CFR §200.330

2.0 RELATIONSHIPS

2.1 Relationship with the OED/WDB

2.1.1 In order to ensure the best possible performance of the Denver Workforce system in Denver County, and to derive a maximum return on public investment, the OED/WDB intends to support the Service Provider by providing certain services and supports. The OED/WDB (in conjunction with DHS/FAAD when appropriate) shall provide the Service Provider with the following:

a. Orientation to federal, state and local Temporary Aid To Needy Family (TANF) policy and procedures;
b. Training on the OED/WDB's of record, Connecting Colorado;
c. Training regarding Office of Economic Development and Department of Human Services policies/procedures related to TANF programs;
d. Ongoing technical assistance, including information on best practices, and assistance in implementing effective management practices, customer service practices, etc.;
e. Support from OED/WDB Business Services team which may include technical assistance, employer outreach and alignment, job fairs, customized recruitments, work-based learning program support and other services as deemed necessary;
f. Labor market information (LMI);
g. Support from OED/WDB Education Services team including Career Pathways Information and workshop curricula
h. Ongoing responsive support; and
i. Opportunities to share successful practices and discuss issues with other contracted service providers and partners.
j. The Service Provider and Service Provider shall be required to participate in technical assistance and training as designated by OED/WDB throughout the term of this contract.

2.2 Relationship with Denver Department of Human Services (DDHS/FAAD)

2.2.1 The Denver Department of Human Services/Family Adult Assistance Department (DDHS/FAAD) determines an individual's eligibility and serves as the case manager of record for the Temporary Assistance for Needy Families/Colorado Works (TANF/CW) program.

a. The Service Provider shall work with OED/WDB and DDHS/FAAD to continue and/or develop effective procedures and communication processes to accommodate the flow of referrals between DDHS/FAAD and the Service Provider.
b. The Service Provider shall be required to participate in all technical assistance and training as designated by OED/WDB and/or DDHS/FAAD throughout the term of this contract.
c. The Service Provider will comply with related DHS/FAAD policies, procedures and regulations for the TANF program.

2.3 Relationship with the Community

2.3.1 Hours

a. AJCs must be consistently open Monday-Friday between 8 a.m.-5 p.m. MST unless a City and County of Denver holiday is observed.
b. Additionally, the Service Provider must coordinate alternate appointment and outreach hours beyond traditional 8 a.m. to 5 p.m. system-wide to determine adequate access, unless precluded by external factors approved by OED/WDB. This alternate hours' schedule should be submitted to OED/WDB prior to July 30, 2018, to which it will be posted to OED's webpage, as appropriate.

2.4 Denver Workforce Center Coordination

2.4.1 Coordinate System-wide Talent Recruitment

2.4.1.1 The Service Provider shall share and/or coordinate job leads, if unable to fill a job order or in handling a large hiring need, with the other OED/WDB and /or DDHS/FAAD service providers and coordinate resume collection, screening, and eventual referral to the employer. This sharing of job leads is done with the goal of making the best possible fit between job opening and job candidate and to ensure that all job ready candidates in the Denver Workforce System have full access to open job opportunities. All job orders should be posted on the Connecting Colorado job portal system for TANF programs.

2.4.2 Collaborative Partnership

2.4.2.1 The Service Provider must actively participate in work teams organized by the DDHS/FAAD and/or OED/WDB with other TANF vendors, and other required partners as well as participate in center level meetings with co-located partners. These partnerships may also include collaboration with other community or regional partners as directed by Colorado's Department of Human Services, the Welfare Reform Board, OED/WDB and/or DDHS/FAAD. These partnerships are designed to provide coordinated responses to businesses and TANF participants and improve overall services to customers.

2.4.3 The Service Provider is also responsible for contributing to the broader TANF goals and the following shared program metrics:
2.4.3.1 Work Participation Rate - a minimum of 40% of all families are in a countable activity with verified hours of participation
2.4.3.2 Entered Employment - 10% of all cases are engaged in some type of employment activity with corresponding data entry in CBMS and documentation in the case file
2.4.3.3 Engagement rate - 52% of all cases are engaged in meaningful activities for progression to barrier removal and employment outcomes as appropriate

3.0 PUBLIC RESOURCE AREA

3.1 The OED/WDB requires that all AJCs maintain a publicly, accessible resource area (including access for disabled persons) as part of their TANF services. OED/WDB and DDHS, as lease holders will ensure accessibility of the building structure and parking areas, the One Stop Service Provider must ensure that the resource center computers and all equipment are operational and are ADA compliant.

3.1.1 This public space and the resources available within it should include:

a. Computers with internet access,
b. Tutorials for career exploration,
c. Job searching and resume writing,
d. Job postings,
e. Periodicals,
f. Information on:
   i. unemployment Insurance filing,
   ii. services
   iii. financial aid from local non-WIOA training,
   iv. the labor market, education programs
   v. partner programs.

3.1.2 The resource area must be staffed with knowledgeable employees, partner employees and/or volunteers to assist with customer questions

6.0 SERVICE DELIVERY FOR TANF/COLORADO WORKS CUSTOMERS

6.1 Services

6.1.1 Upon assessment, the Colorado Works case manager of record deems a Colorado Works participant in need of further career interest, technical, job search and/or basic education evaluations to assist in development of the participant's Individual Plan (IP). The Colorado Works case manager will provide a formal referral that will include the current IP and any other appropriate background information to the Service Provider. Upon this determination and referral, the Service Provider will conduct appropriate outreach and engagement opportunities to the individual, and will provide further formal assessment in two or more of the following areas:

a. Strengths Assessment
b. Career Assessment
c. Technical Skills Assessment
d. Test for Adult Basic Education

6.1.2 Upon completion of the appropriate assessments, the Service Provider will meet with the customer to discuss and analyze the results. Based on those results the Service Provider will develop a plan with each customer that establishes appropriate career goals, and details recommendations related to basic skill remediation, vocational/post-secondary education, career interests and abilities, and other supports suggested for success. These recommendations will come in a portfolio format to the case manager of record and may include recommendations and potential access to Workforce Investment and Opportunity Act (WIOA) supports and services. The Service Provider will work in coordination with the case manager of record to support the success of the employment plan, and will continue to work directly with the customer on stated goals.

6.1.3 Assist clients with accessing self-help and informational resources as needed in the Resource Room

6.1.4 Service Provider will make available workshops and group sessions, as appropriate, instructing clients on various job search skills, including use of the Connecting Colorado system, resume writing, interview preparation/techniques, internet job search, online applications, and other related topics.

6.1.5 Leverage WIOA program to provide work-based learning and classroom training opportunities as appropriate. Customers who are eligible and interested in WIOA shall be co-enrolled when appropriate.

6.1.6 Make appropriate job referrals and develop job leads based on knowledge of employer requirements.

6.1.7 Provision of Labor Market Information (LMI) to ensure that services are aligned with employer and labor market needs.

a. Facilitate the participant's exploration of the job requirements, duties, local Job market and labor market demand, wages, working conditions, advantages and disadvantages, along with employment opportunities in the field of study selected by the participant.
b. Documentation and client case information is updated within 2 working days of activities commencing and being completed, especially related to job entry or exit. This will involve communication to the case manager of record via email, as well as a carbon copy of that email to the supervisor. Connecting Colorado information will be updated within the same time frame.

6.1.8 All TANF participants will be informed about and have access to the WIOA programs and services described in the previous sections, as capacity allows.

7.0 SERVICE DELIVERY FOR EMPLOYERS

7.1 Business Services are a critical component of service delivery, providing direct value to employers, employer associations or other such organizations. Customized business services shall be delivered to employers for the purpose of placing job seekers into subsidized and unsubsidized employment. Business services may include:

a. Job posting
b. Candidate referrals
c. Candidate screening and assessment
d. Recruitment events
e. OJT and work-based learning

8.0 PERFORMANCE MANAGEMENT AND OUTCOMES

8.1 TANF Performance Measures

8.1.1 All TANF performance measures will be tracked in Connecting Colorado with specified codes, provided by OED/WDB.

a. Serve 300 TANF customers*
*Estimated number based on anticipated number of DHS referrals. Service Provider will serve additional referrals over the estimated number
b. 80% of accepted referrals will complete 2 or more assessments
c. 80% of accepted referrals will receive a customized employment plan and support to accomplish stated goals
d. 50% of accepted referrals will enter employment

8.2 Periodic Reporting and Meetings

8.2.1 The Service Provider must comply with all Local, State and Federal reporting requirements.

8.2.2 Specifically, and as required by the OED/WDB, the Service Provider shall document, record, and report actual outcomes, on a monthly basis, and provide timely and accurate monthly reports in the format designated by the OED/WDB. The Service Provider may also be required to assist with the completion of other annual, or quarterly reports as designated by the CDLE, CDHS or CWDC.

8.2.3 The Service Provider is also required to have staff representation at all administrative meetings and staff training workshops as determined by the OED/WDB.

8.2.4 The OED/WDB will hold monthly/quarterly review meetings with the Service Provider to review progress toward planned versus actual benchmarks.

8.2.5 Periodic reports will be required and should be anticipated. Reporting requirements will be mutually agreed upon by OED/WDB and the Service Provider.

8.2.6 The Service Provider must have skilled and/or trained staff who will design and/or maintain an information system that will provide data on who is served (i.e. customer demographic information), when and how they are served (i.e. service delivery information) and the outcomes achieved (i.e. performance data).

8.2.7 The Service Provider will be continually evaluated based on their performance on both the CDLE and DHS performance measures/incentives and the OED/WDB benchmarks. The Service Provider will review progress toward benchmarks at quarterly meetings. In the event that the Service Provider is failing to meet benchmarks they shall submit corrective action plans and/or participate in training/technical assistance meetings.

8.2.8 Service Provider and Service Provider contract renewals will be largely based on achievement of benchmarks. The OED/WDB also reserves the right to impose additional conditions and/or restrictions on the contract award, implement probationary periods, undertake any other corrective action, reduce funding or end contracts based on poor performance on any of the benchmarks.

8.2.9 Where required or permitted by law or regulations, the OED/WDB reserves the right to add, remove or change measures, targets, conditions, or restrictions as it deems reasonable.

9.0 PAY FOR PERFORMANCE

9.1 Employment Placement

9.1.1 OED/WDB agrees to the following incentive plan:

a. Pay $300 per unique customer who meets the following criteria:

i. Placed into unsubsidized employment for 30+ hours each week

b. It is anticipated that 300 referrals will be accepted by the Service Provider. Incentives will be paid for up to 60% of successful employment placements.
Maximum incentive to be paid:
300 referrals x 60% placed = 180 successful placements
$300 per unique customer x 180 placements = $54,000 maximum incentive.

10.0 PROGRAM STAFFING

10.1 Job Search Consultant Roles and Responsibilities

10.1.1 The career advising/coaching function is a critical piece to effective service delivery.

10.1.2 Career planning is the process by which Job Search Consultant perform career development, implementation of the career plan, retention support and tracking of customers. OED/WDB has set up minimum skill and duties for Job Search Consultant within the WIOA system as noted below:

a. Provision of educational, job development, job placement and job retention services
b. Quality referrals for job order; including professionally prepared resumes and materials.
c. Workforce development technology systems to track services used by the participant and to provide the participant with information on growth industries in the Denver metro area and training Service Provider performance. These technologies will include, at a minimum: Connecting Colorado, CBMS, and/or any other OED/WDB system of record.
d. Refer participants for ancillary services as appropriate.
e. Follow-up services must be made available for a minimum of 30 days following the first day of employment.

10.2 Staff Training and Professional Development Plan

10.2.1 AJCs may provide different methods of professional development and ongoing training for their staff. The Service Provider is expected to provide staff with opportunities for continuous development of skills related to TANF and/or placement services. The format may be third-party training, in-house training provided by the agency, training provided by the OED/WDB or any combination; the specific skills focused on, the curriculum and delivery methods are choices of the agency. All AJCs must participate in the OED/WDB sponsored professional development activities. The OED/WDB also encourages the attainment of the Certified Workforce Development Professional (CWDP) credential offered through the National Association of

Workforce Development Professionals.

10.3 Staff Orientation and Onboarding

10.3.1 AJC's are expected to provide orientation for those newly hired to deliver TANF assessments and WIOA co-enrollment services. Such orientation should include overview of WIOA and TANF policies and processes/procedures; overview of relationship between the service providers, the OED/WDB, and WIOA mandated partners and other TANF funded service providers; basic skills and best practices for service delivery; and other topics as indicated at any point by the OED/WDB.

10.4 Staff Retention

10.4.1 Since staff quality has a significant impact on the quality of service delivery, and since the Service Provider will be devoting effort to hiring and training good staff, the Service Provider is expected to take effective steps to ensure the retention of quality staff. The Service Provider shall have a plan of retention in place and make it available to the OED/WDB upon request.

10.5 Salary and Wage Requirements

10.5.1 In accordance with its values, the OED/WDB seeks to provide high quality services to our customers. We believe in the increased professionalization of the workforce development field and strive to ensure that our system reflects the dignity of work. Consequently, the OED/WDB is requiring that all full-time staff receive a minimum salary that is in line with similar positions in the Denver metro area. The OED/WDB also strongly encourages the Service Provider to pay professional staff a competitive wage for their level of effort and expertise.

10.6 Salary and Bonus Limitations

10.6.1 "In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after June 15, 2015, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II." This new requirement includes all WIOA grant funded projects. The PY16 amount for Executive Level II is $185,100. The Service Provider and Service Provider must comply with this requirement. (http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/).

11.0 ADMINISTRATIVE RESPONSIBILITIES

11.1 Compliance, Reporting and Recordkeeping

11.1.1 **The Service Provider must comply with all Local, State and Federal reporting requirements. Specifically, the Service Provider will be required to document, record and report actual outcomes, as required by OED/WDB, on a monthly basis.** Timely, detailed and accurate information on operations and performance is crucial to effective management of Denver's workforce development system. Therefore, funded agencies must capture and track (and enter to the respective system(s) of record) such information as requested by OED/WDB, and supply reports of such data in requested formats, in a professional manner, at requested intervals.

11.1.2 All WIOA/TANF registrant data must be entered into the Connecting Colorado System (Connecting Colorado), which is the data tracking and case management system used by WIOA/TANF programs in Colorado. All services received must be well documented in the customer's case file.

11.1.3 In addition to Connecting Colorado, OED/WDB may require use of specific reporting or tracking systems, forms or other data management tools, and agencies are expected to have staff capable of executing against such requirements.

11.1.4 The Service Provider will track and maintain applicable participant data related to TANF/CW's work participation rate in Connecting Colorado.

11.2 Customer Tracking Systems

11.2.1 The Service Provider shall use Connecting Colorado for TANF referrals. The system shall be used to track all job seeker and employer clients including contact information, demographic information, services provided, referrals, outcomes, and case notes. This data system must be used in accordance with the OED/WDB's written policies, as may be amended from time to time.

11.2.2 Upon request by the Service Provider, the OED/WDB will provide a unique user name for each data system for each Agency staff person that requires access to the data systems to perform the Agency's duties under this Contract. Each staff person will be given the minimum access required to perform their specific role under the Contract. The user names and their associated passwords are confidential and must not be shared.

11.2.3 The Service Provider agrees to abide by and cause all staff users to abide by the City and County of Denver Data Confidentiality and

Security Agreement.

11.3 Language Assistance

11.3.1 The Service Provider must have sufficient Spanish-speaking staff to serve the Counties' significant Spanish-speaking populations. Other language capacity appropriate to each AJC's location and potential jobseeker customer population will also be required. Additionally, key materials must be provided in Spanish and other appropriate languages in accordance with the most recent OED/WDB WIOA Language Assistance plan.

11.4 Accessibility to People with Disabilities

11.4.1 Title III of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in "places of public accommodation" (businesses and non-profit agencies that serve the public) and "commercial facilities" (other businesses). Agencies who are not fully compliant with ADA are required to submit an "accessibility plan" outlining steps that need be taken by the leaseholder to become both programmatically and physically accessible and the planned implementation dates. This accessibility plan must meet the criteria set forth in the ADA. All WIOA/TANF program services and facilities are expected to be accessible to persons with disabilities.

For the ADA Title III Technical Assistance Manual please visit: http://www.usdoj.gov/crt/ada/taman3.html

11.5 Equal Opportunity and Non-Discrimination

11.5.1 the Service Provider assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

a. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, and national origin;
b. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
c. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
d. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs.

11.5.2 Additionally, the Service Provider agrees to be in full compliance, at all times with the Denver Workforce Services Equal Opportunity and Non-Discrimination plan.

11.6 Customer Complaint Procedures

11.6.1 OED/WDB believes that customer complaints are opportunities to improve services. The primary goal of this complaint process is to address specific participant concerns, resolve the issues at hand in the most expedient manner, learn from the complaint and implement solutions throughout the entire system.

a. The Service Provider must inform customers of the formal complaint process and work to resolve customer complaints in a timely fashion.
b. The complaint process must be visibly posted in the AJCs.
c. The Service Provider must respond to complaints from customers directly or through the OED/WDB within 72 hours.

11.7 Quality Control & Continuous Quality Improvement

11.7.1 The Service Provider is required to coordinate its Monitoring and Review process or quality control plan to ensure that 100% of referred and accepted TANF participant case files are reviewed on a monthly basis.

a. The Service Provider's quality control plan, shall include, but not be limited to the following:
   i. a monitoring system covering all the services listed in this scope of work.
   ii. the elements of work performance to be monitored, either on a scheduled or unscheduled basis
   iii. the methods to be used
   iv. frequency of monitoring
   v. the format and content of records and reports to be generated
   vi. the title(s) of the individual(s) who will perform the monitoring
   vii. the method for identifying and preventing deficiencies in the quality of services performed before the level of performance can become unsatisfactory
   viii. the administrative procedures to be followed for reporting to OED/WDB and for responding to operational problems or complaints concerning work performance, qualifications, or other complaints about Service Provider personnel details on all corrective action(s) taken.
b. This documentation shall be available to the OED/WDB at all times during the term of the contract. The Service Provider shall provide detailed monthly summaries of all quality control actions, including descriptions of events which require quality control activity, and the corrective action taken.

11.7.2 The Service Provider is required to respond to all QA requests and error reports in a timely manner and ensure that all identified errors are corrected within the designated timeframe. Overall, the Service Provider shall ensure that all TANF placements are in full compliance with

Federal, State and Local regulations and policies.

11.7.3 The OED/WDB strives to deliver high quality services throughout the system. The Service Provider shall solicit customer feedback on a regular basis through satisfaction surveys, focus groups and other venues to assess and improve service quality:

a. The Service Provider is expected to solicit customer feedback, analyze results, and identify areas for quality improvement and report results to the Service Provider. The OED/WDB will review feedback with Service Provider on a quarterly basis, minimally.

11.7.4 The Service Provider shall participate in associated trainings, evaluation processes, and activities and implement processes that improve the quality of services provided to customers.

11.8 Meetings and Trainings

11.8.1 The Service Provider shall ensure appropriate AJC staff representation at a variety of meetings and training sessions. These include, but are not limited to, bi-monthly and quarterly meetings that require director or manager participation, and trainings likely to include many, if not all, of the staff. Training schedules shall be developed in partnership between OED/WDB and the Service Provider to ensure adequate staff coverage at the AJC during all-staff training sessions.

11.9 Payroll and Wage Rate Policy

11.9.1 The Service Provider, as the **Employer of Record** for paid work experiences only, shall be solely responsible for administering payroll services for program participants; responsibilities to include the enforcement of all process and procedure in place for payroll, taxes, and worker's compensation coverage for program participants. Therefore, if the Service Provider plans to provide paid internships, work experiences, or other allowable compensated activities, these costs must be included as part of the contract budget. All participants enrolled in wage-paid activities shall not be paid less than the highest minimum wage under the Fair Labor Standard Act and Article XVIII, Section 15, of the Colorado Constitution.

11.9.2 Participation in Studies and Initiatives

11.9.3 The Service Provider shall participate in studies and initiatives as determined by DOL, CDLE or the OED/WDB. This may include participation in aspects such as strategic planning sessions and other evaluation technical assistance provided by OED/WDB or external evaluation entities.

11.10 Communications and Signage

11.10.1 The Service Provider and the AJCs are considered arms of Denver's workforce development system, much like branches or franchises of a corporation. As such, the Service Provider must adhere to all requirements and standards related to physical signage where TANF services are provided including: EEO information; logos; publications; and any other signage or communications requirements established by the OED/WDB. The Service Provider must also adhere to all requirements and standards related to physical and electronic marketing, per the guidelines of the OED/WDB Marketing Division.

11.10.2 Specifically, all print or electronic collateral that promotes any programs/services provided under this contract must adhere to the following:

a. Include the Denver Workforce Services logo as the primary and most prominent entity responsible for the program/service;
b. Include the wording, [Service Provider] is a Service Provider for the City and County of Denver," regardless of whether the Service Provider's name appears in the collateral; and
c. Include the American Job Center logo;
d. Include the required EEO language: {Insert Program/Service Name here} *is an* Equal Opportunity *employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.*

11.10.3 Further details regarding these three requirements, as well as important guidelines regarding branding and messaging, will be provided by Denver Workforce Services, both in writing and electronically.

11.10.4 All collateral and external communications which shall be used with the public or any community partners must be submitted to Denver Workforce Services in advance for approval prior to display or distribution.

11.10.5 Social media postings may be exempt from the above logo requirements, but must be approved in advance by Denver Workforce Services.

11.11 Technology Requirements

11.11.1 The Service Provider is responsible for maintaining and servicing all technology to the satisfaction of the City and its sole discretion.

11.11.2 The Service Provider is responsible to choose an Internet Service Provider (ISP) to run network access to licensed premises as identified by OED;

a. Richard T. Castro located at 1200 Federal Blvd; and

b. Arie P. Taylor located at 4685 Peoria Street.

11.11.3 The Service Provider is responsible for providing all technology (software, hardware, and telephony) that is current and is supported for security purposes by the vendor. This technology includes but is not limited to software, PCs, monitors, printers, copiers, fax machines, scanners, servers, switches, telephones, etc.

11.11.4 All equipment must be approved through the City and County of Denver's Technology Services Agency and Workforce Development Director prior to order and installation.

11.11.5 The designated IT person/team must pass a background check and receive badge access. The background check must be conducted through the City and County of Denver's Department of Safety or other designated agency.

11.11.6 The Service Provider is responsible for maintaining the approved list of staff with IT access.

11.11.7 The Service Provider must implement the following security specifications:
a. automatic operating system upgrades;
b. firewall protection;
c. automatic virus upgrades; and
d. anti-spyware software.

11.11.8 The Service Provider may host technology infrastructure for the out-of-school youth partnering entity Denver Public Schools. In such a case, the Service Provider will ensure a Memorandum of Understanding (MOU) and/or Service Level Agreement (SLA) is developed between the two entities and a signed copy provided to OED.

11.12 Privacy and Confidentiality

11.12.1 The One-Stop Service Provider must develop policies and procedures that the Service Provider follows to ensure the proper use of data and demonstrate that controls are sufficient to prevent identity theft, fraud and abuse as well as maintain a sophisticated and secure technology structure. Policies must cover, at a minimum, the following:
a. Participant eligibility documentation;
b. Program participant records, including all services provided, and costs expended per participant;
c. Customers' records, including participant data forms, verification/documentation items, assessments tests and results, and documentation of outcomes;
d. Protection of personal and confidential customer information, including protected health information (HIPAA);

e. Memoranda of Understanding (MOUs) between partner programs to share program, participant, and financial data that adhere to federal, state, and local privacy standards.

11.12.2 In addition, the Service Provider will require all program participants to sign a release of information that includes an explanation of the level and type of access, as well as restrictions on the use of the participant's data.

11.12.3 The Service Provider must provide OED with one of the following security control certifications on an annual basis: SSAE16, SOC2, or other certification as agreed upon.

11.12.4 The Service Provider must provide OED with a copy of data breach process and incident response policy at time of execution of contract and as modifications are made throughout the contract period.

a. The Service Provider must notify OED of any data breaches or security incidents within 24 hours of identifying any breach or incident and mediate within 30 days.

11.12.5 The Service Provider must agree that OED and the City and County of Denver has the right to audit security and data handling measures at any time during the contract.

11.13 Documentation Management and Retention

11.13.1 OED/WDB is moving toward a paperless documentation system. Until that time, the Service Provider will maintain hard copies of customer files in compliance with applicable regulations.

11.13.2 The Service Provider will be responsible for working with OED/WDB to fully implement paperless record keeping for all TANF/CW participants.

a. The Service Provider must ensure documents are legibly imaged to a prescribed file management and document imaging system.

11.13.3 The Service Provider must maintain program, participant, and financial records for seven years from completion of services in accordance with OED/WDB's file retention policy.

11.13.4 The One-Stop Service Provider/Service Provider(s) shall develop policies and procedures that ensure the proper use of data and demonstrate that controls are sufficient to prevent identity theft, fraud and abuse as well as maintain a sophisticated and secure technology structure.

DENVER

Program Budget and Cost Allocation Plan Summary

Contractor Name: Arbor LLC, dba ResCare Workforce Services
Project : TANF
Contract Dates: 7/1/2018 to 6/30/2019
Program Year: 2018
Victoria Lindsay

Budget Category TANF BUDGET PY 18	Agency Total (All Funding Sources)	TANF Project Costs		Total Project Costs		Other City & County of Denver Funding (Add applicable funding as necessary)		Other Federal Funding		Other Non-Federal Funding		Agency Total	
	Amount	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Personnel	425,000	425,000	100.00%	425,000	100.00%		0.00%		0.00%		0.00%	425,000	100.00%
Fringe	93,419	93,419	100.00%	93,419	100.00%		0.00%		0.00%		0.00%	93,419	100.00%
Travel	5,182	5,182	100.00%	5,182	100.00%		0.00%		0.00%		0.00%	5,182	100.01%
Supplies	3,875	3,875	100.00%	3,875	100.00%		0.00%		0.00%		0.00%	3,875	99.99%
Contractual: Equiptment lease	10,544	10,544	100.00%	10,544	100.00%		0.00%		0.00%		0.00%	10,544	100.00%
Participant Direct - Training Costs	-	-	0.00%	-	0.00%		0.00%		0.00%		0.00%		0.00%
Other Direct Costs – Professional Services	45,118	45,118	100.00%	45,118	100.00%		0.00%		0.00%		0.00%	45,118	100.00%
Indirect Costs	62,862	62,862	100.00%	62,862	100.00%		0.00%		0.00%		0.00%	62,862	100.00%
Pay for Performance	54,000	54,000	100.00%	54,000	100.00%		0.00%		0.00%		0.00%	54,000	100.00%
Grand Total	**700,000**	**700,000**	**100.00%**	**700,000**	**100.00%**		**0.00%**		**0.00%**		**0.00%**	**700,000**	**100.00%**

bh

Budget Narrative TANF PY18

A. **PERSONNEL** - includes the following but not limited to:

- **Project Director**: (.33 FTE) annual salary of $94,293.00
- **2 Center Managers**: (.57 FTE) combined annual salary of 128,000.00
- **Project Accountant**: (.33 FTE) annual salary of $73,000.00
- **Human Resources**: (.33 FTE) annual salary of $50,000.00
- **2 Quality Assurance:** (.57 FTE) combined annual salary of $119,000.00
- **Business Services**: (.24 FTE) annual salary of $60,000.00
- **Sales and Recruitment Manager**: (.24 FTE) annual salary of $53,000.00
- **Talent Deployment Facilitator**: (.24 FTE) annual salary of $48,000.00
- **2 Talent Engagement Specialist**: (.48FTE) combined annual salary of $86,000.00
- **9 Job Seeker Consultant**: (4.48 FTE) combined annual salary of $279,782.00

Total Personnel costs: $425,000

B. **FRINGE BENEFITS** - includes the following but not limited to:

- Effective fringe rate is 21.98%
- **FICA** estimated as 7.51% of wages
- **FUTA** estimated as 0.13% of wages
- **SUI** estimated as 0.25% of wages
- **Medical** estimated as 9.58% of wages
- **Pension Benefits** estimated at 0.80% of wages
- **Worker's Compensation** estimated as 3.71% of wages

Total Fringe Benefits: $93,419

C. **TRAVEL** - includes the following but not limited to:

- **Travel includes:**
  - Lodging, Meals and Airfare - travel to annual conference for additional workforce training and is estimated at 3 people at $325.00 for the year.
  - Parking for staff for business related travel is estimated about $7.89 a month
  - Mileage for staff for business related travel at the mileage reimbursement rate of $0.32 per mile estimated at 223 miles per month
  - Other Travel – includes possible relocation expense for new Project Director estimated at $3,261.00 for the year.

Total Travel: $5,182

D. **SUPPLIES** - includes the following but not limited to:

- **Supplies** includes general office supplies, computer and printing supplies that are consumable and include but are not limited to paper, toner, pens, files, etc and are estimated at $481.00 per 8.05 FTE

Total Supplies: $3,875

E. **CONTRACTUAL** - includes the following but not limited to:

- **Machine Equipment Rental** includes the lease cost of 5 Toshiba copiers at an estimated cost of about $1,310.00 for 8.05 FTE

Total Contractual: $10,544

F. **PARTICIPANT COSTS** - includes the following but not limited to:

Total Participant Costs: $0.00

G. **Other Direct Costs** - includes the following but not limited to:

Other direct costs include the below:

- **Insurance** - General and Professional Liability estimated as $3.00 per $1,000.00 of total contract amount for an amount of about $2,100
- **Communications** – Fax, Wireless Cell Phones & Connectivity estimated as $75.00 per cell phone, plus $55.00 per month for connectivity for WIFI hotspots. Telephone estimated at $1,908.00 per 8.05 FTE.
- **Network Communications** estimated at $2115.00 per 8.05 FTE
- **Auditing** estimated as 0.20% of total contract amount for estimated $1,400.00
- **Payroll Services** estimated as $76.00 per 8.05 FTE
- **Application Hosting** – Quickbase/ResCare WORCs estimated as $554.00 per 8.05 FTE
- **Background Check** estimated as $55.00 per check estimated at 9 total checks for the year.
- **Dues and Subscriptions** includes the costs to verify employment for participants using Worknumber (TALX) and estimated at a cost of $204.00 per month at an estimated cost of 5.26 per check.
- **Staff Education and Seminars** estimated at 8.05 FTE at 221.00 per FTE.
- **Postage and Courier** estimated as $23.00 per month for 8.05 FTE

Total Other Direct Costs: $45,118

H. Indirect Cost

- **Indirect Costs** - represents the common costs associated with the efforts of RWS' operations and is estimated using the Modified Total Direct Method. Expense includes items such as salaries, fringe benefits, travel, administration, professional services that support local operations. WIOA Indirect is estimated as 10.62% of total direct expense.

Total Indirect Costs: $62,862

I. Pay for Performance

- **Pay for Performance** - OED/WDB agrees to the following incentive plan:
    a. Pay $300 per unique customer who meets the following criteria:
        i. Placed into unsubsidized employment for 30+ hours each week
    b. It is anticipated that 300 referrals will be accepted by the Service Provider. Incentives will be paid for up to 60% of successful employment placements. Maximum incentive to be paid:
        300 referrals x 60% placed = 180 successful placements
        $300 per unique customer x 180 placements = $54,000 maximum incentive

Total Indirect Costs: $54,000

Total Amount Requested from OED: $700,000

EXHIBIT C

FISCAL SYSTEM DESIGN:

This section is designed to provide the financial and administrative requirements applicable to federally funded programs function as required partners in the One-Stop system. It contains the common requirements for grants and financial management found in OMB Uniform Guidance §2 CFR Part 200 and DOL Exceptions §2CFR Part 2900.

1.1 Cost Principles, Allowable Costs and Unallowable Costs

1.1.1 Costs must be necessary and reasonable. Any cost charge to a gran must be necessary and reasonable for the proper and efficient performance and administration of the grant. A grantee or subawardee is required to exercise sound business practices and to comply with its procedures for charging costs.

1.1.2 *Costs must be allocable:* A grantee may charge costs to the grant if those costs are clearly identifiable as benefiting the grant program. Costs charged to the grant should benefit only the grant program, not other programs or activities. In order to be allocable, a cost must be treated consistently with like costs and incurred specifically for the program being charged. Shared costs must benefit both the ETA grant and other work and be distributed in reasonable proportion to the benefits received.

1.1.3 *Costs must be authorized or not prohibited under Federal, State, or local laws or regulations*: Costs incurred must not be prohibited by any Federal, State, or local law.

1.1.4 *Costs must receive consistent treatment by a grantee*: A grantee must treat a cost uniformly across program elements and from year to year. Costs that are indirect for some programs cannot be considered direct ETA grant costs.

1.1.5 *Costs must not be used to meet matching or cost-sharing requirements:* A grantee may not use federally funded costs, whether direct or indirect, as match or to meet matching fund requirements unless specifically authorized by law.

1.1.6 *Costs must be adequately documented:* A grantee must document all costs in a manner consistent with GAAP. Examples include retaining evidence of competitive bidding for services or supplies, adequate time records for employees who charge time against the grant, invoices, receipts, purchase orders, etc.

1.1.7 *Costs must conform to ETA grant exclusions and limitations*: A grantee or sub-grantee may not charge a cost to the grant that is unallowable per the grant regulations or the cost limitations specified in the regulations.

2.1 Cash Management

Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.

2.1.1 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses to OED on or before the last day of each month for the previous month's activity.

2.1.2 Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with OED policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.

2.1.3 The Contractor shall submit the final voucher for reimbursement no later than thirty (30) days after the end of the contract period.

2.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget within the Scope of Work.

2.1.5 The standardized OED "Expense Certification Form" should be included with each reimbursement or draw-down request.

3.1 Expense Guidelines

3.1.1 Payroll

3.1.1.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.

3.1.1.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

3.1.1.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

3.1.2 Fringe Benefits

3.1.2.2 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe

benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

3.1.3 Food Purchases – will not be reimbursed.

3.1.4 Administration and Overhead Cost - Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by OED.

4.1 Per Diem and Travel Expense Limitation

4.1.1 Service providers are required to develop and maintain policies regarding compensation for staff and participant travel costs. Meals, lodging, rental cars, airfare, mileage for employee-owned cars, and other travel expenses may be paid for staff and participants who travel as part of their job, training activity or grant purpose.

4.1.2 Documentation of the purpose and cost of travel must be maintained. The documentation should include the time of travel in order to compute and verify allowed per diem amounts. No employee may be reimbursed for expenses incurred in going to and from work. Lunches and/or dinners in your home office city outside the scope of an agenda are prohibited.

5.1 Procurement, Inventory and Disposal

5.1.1 Service providers are delegated authority to make purchases of equipment, supplies and services as described below. Service providers are responsible for ensuring the vendors selected are not debarred or suspended by checking the information on the following federal government website: http://epls.arnet.gov.

5.1.1.1 *Micro Purchases* – under $3,000. All service providers may purchase items with a value of less than $3,000 using any open and fair procurement method that best meets the agency's needs. The method should assist the service provider in obtaining a high quality product for a fair price. Documentation should be maintained of the need for the item and its benefit to the program.

5.1.1.2 *Limited Solicitation for Services* - Purchases between $3,001 to $25,000. Service providers must maintain a fair and open procurement process meeting the criteria for small purchases. This requires a documented

solicitation from a minimum of three viable sources, if available, either orally or in writing. In addition, the service provider must obtain and document prior approval from the Bureau for the purchase, and maintain documentation of the following: bid and rating criteria; advertising and public notice of the bid opportunity; responses received; and reason for the decision.

5.1.1.3 *Formal Competition* - Large Purchases over $25,000 for services and $50,000 for supplies. Large purchases are typically included in the provider agreement as part of the major purpose of the provider agreement, although this is not a requirement. Large purchases are subject to all the requirements of medium purchases, and in addition must use a formal, closed-bid procurement process. Service providers must obtain and document prior approval from OED.

5.1.1.4 *Inventory*- Service providers must maintain physical control of the asset to ensure adequate safeguards are in place to prevent loss, damage or theft of property. Adequate maintenance procedures must be in place to keep the property in good condition.

5.1.1.5 *Disposition Service* - Providers may dispose of equipment and supplies according to agency policy when the fair market value of the equipment unit, or the aggregate fair market value of the supplies, is less than $5,000.

6.1 Program Income

6.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.

6.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.

6.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS APPROVED IN WRITING BY OED, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by OED.

7.1 General Reimbursement Requirements

7.1.1 *Invoices:* All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.

8.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

8.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.

8.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.

8.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

8.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.

8.1.5 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.

8.1.6 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this

includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

8.1.7 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

8.1.8 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

9.1 <u>Audit Requirements</u>

9.1.1 The Service Provider is responsible for independent annual audits of its Provider Agreement and costs associated therewith. If a Service Provider qualifies under the Single Audit Act amendments of 1996, the Service Provider shall have an audit conducted in accordance with Office of Management and Budget (OMB) Uniform Guidance §2 CFR Part 200 Subpart F and the applicable audit standards set forth in the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States.

9.1.2 Any audit findings in connection with this Provider Agreement shall be resolved with the Grantor within 180 days of the publication of the final audit report. The Grantor may, in its sole discretion, also require additional audits. The Service Provider will pay these additional costs.

9.1.3 Responsibility for audit costs and for maintaining complete financial records remains with the service provider.

9.1.4 Service providers having a single audit conducted are to inform the auditing firm that audits are to be made in accordance with the:

- *Generally Accepted Governmental Auditing Standards (GAGAS)*
- *OMB Uniform Guidance §2 CFR Part 200 Subpart F*
- *AICPA Generally Accepted Auditing Standards*

10.1 <u>Budget Modification Requests</u>

10.1.1. Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

10.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

11.1 Bonding

11.1.1 OED may require adequate fidelity bond coverage, in accordance with §24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

12.1 Records Retention

12.1.1 The Contractor must retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

12.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

12.1.3 The Contractor must retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

12.1.4 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

13.1 Contract Close-Out

13.1.1 All Contractors are responsible for completing required OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within thirty (30) days after the Agreement end date, or sooner if required by OED in writing.

13.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.

13.1.3 OED will close out the award when it determines that all applicable administrative and all required work of the contract have been completed. **If Contractor fails to perform in accordance with this Agreement,** OED reserves the right to

unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

14.1 <u>Collection of Amounts Due</u>

14.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, OED may 1) Make an administrative offset against other requests for reimbursements, 2) other action permitted by law.

EXHIBIT D - GENERAL CONDITIONS
ARTICLE 1
PROGRAM ADMINISTRATION

SEC. 101. Records Maintenance, Performance Monitoring and Audits.

A. The Contractor shall maintain a complete file of all records, notes, reports, communications, documents and other materials ("Program Records") that pertain to the operation of the program/project or the delivery of services under this Agreement. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. Program Records shall be maintained according to generally accepted account principles and shall be easily separable from other Contractor records. These records shall also be maintained in accordance with requirements prescribed by the Federal or State Government or the City with respect to all matters covered by the Contract.

B. Except for disclosures to the City as required in this Agreement and to the extent such disclosures are permitted by applicable law, the Contractor shall maintain the confidentiality of any and all confidential information acquired or maintained by the Contractor under this Agreement. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its employees and agents, if any, that they are subject to these confidentiality requirements or as may be required by applicable law.

C. The Contractor shall obtain on behalf of the City, the State Government or the Federal Government, any all necessary consent forms from participants receiving services under this Agreement authorizing the release of any and all Program Records to said entities for contract and performance monitoring purposes only. The City shall protect the confidentiality of Program Records received from the Contractor.

D. The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time to assure compliance with the state or federal government's laws, regulations, rules, requirements and conditions governing this Agreement and to monitor and/or evaluate all activities of the Contractor under this Agreement. Monitoring and/or evaluation may consist of internal evaluation procedures, reexamination of program data, special analysis, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant by the City. All such monitoring shall be performed in a manner that will not unduly interfere with the Contractor's work under this Agreement. Any amounts improperly paid to the Contractor shall be immediately return to the City or may be recovered in accordance with other remedies.

SEC. 102. Reports and Information. At such times and in such forms as the Federal, or the State Government or the City may require, the Contractor shall furnish to the Federal, or the State Government or the City, such statements, records, reports, data and information, as the Federal or the State Government or the City may request pertaining to matters covered by the Agreement, or related to implementation of the Agreement.

SEC. 103. Federal Governments Requirements. Unearned payments under the Contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by the Federal Government at any time; or if any entitlement to the City under Federal Law is suspended or terminated.

SEC. 104. Accounting.

A. Records shall provide accurate, separate, and complete disclosure of fund status. Supportive documentation shall be provided for all disbursements. The Contractor will maintain auditable records - i.e., records must be current and traceable to the source documentation of unit transactions.

B. All accounting functions for the contract must be performed in the Metropolitan Denver Area as defined by the boundaries of the Standard Metropolitan Statistical Area, unless waived by the Office of Economic Development's Director of Workforce Development, (the Director).

C. Disbursements shall be processed through the City and County of Denver Controller's Office by the OED Financial Management Unit.

D. The Contractors shall maintain separate accountability for OED funds.

E. Proper reporting to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld shall be adhered to. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

F. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

G. All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the Agreement shall be clearly identified and readily accessible.

SEC. 105. Vouchering Requirements.

A. In order to meet the Federal Government and/or State of Colorado requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.

1. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.

2. The second exception will be that costs cannot be reimbursed until they total a minimum of $15 unless it is a final payment voucher or the final voucher for the fiscal year (ending December 1)

B. No more than four (4) vouchers may be submitted per contract per month.

C. Agreements that start in one fiscal year and end in the subsequent fiscal year, are required to have all vouchers for the fiscal year be submitted correctly, within forty five (45) days of the Agreement end date, in order to be paid.

D. City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

SEC. 106. Bonding. Every agency or employee who receives or deposits Federal Government and/or State of Colorado funds into program accounts or issues financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss. The amount of coverage shall be the highest advance received through check or drawdown during the contract period.

SEC. 107. Personnel.

A. The Contractor shall submit to OED their written agency personnel (including complaint and grievance procedures) and Equal Employment Opportunity (EEO) policies as required in OED's Policy Series and have such policies approved within thirty (30) days of the Agreement start date or the Agreement may be terminated.

B. The Contractor shall submit to the OED Contract Specialist a copy of the agency written personnel policies and procedures within thirty (30) days of the Agreement start date. The Contractor is responsible for providing OED with any written revisions to the personnel policy during the term of this Agreement.

SEC. 108. Contract Monitoring & Compliance With Applicable Audit Requirements.

A. The Contractor's performance may be reviewed monthly, or more often, by the appropriate operational unit at OED which has program management responsibility.

B. All reports submitted by the Contractor shall be utilized as part of the determination of Agreement success.

C. All reviews shall be conducted in accordance with internal OED procedures. Procedures will be available to the Contractor prior to any review.

D. The Contractor is subject to final program audit. The City Auditor reserves the right to select the audit firm. The Contractors shall provide all appropriate records to the auditing personnel. The Audit Guide will be the basis of the performance of the audit. The Contractor agrees to abide by the administrative procedures of OED regarding the resolution of audit exceptions.

E. The contractor is responsible for independent annual audits of its Agreement and costs associated therewith. If the Contractor qualifies under the Single Audit Act amendments of 1996, the Contractor shall have an audit conducted in accordance with Office of Management and Budget (OMB) Uniform Guidance 2 CFR Part 200 Subpart F and the applicable audit standards set forth in the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States. Any audit findings in connection with this Provider Agreement shall be resolved with the Grantor within 180 days of the publication of the final audit report. The Grantor may, in its sole discretion, also require additional audits. The Service Provider will pay these additional costs.

SEC. 109. OED Equipment.

A. Contractors will be held accountable for all City property in their possession until relieved of that responsibility in accordance with terms established by OED's Financial Management Unit. Contractors shall be held responsible for reasonable care and control of all property in its possession, which shall include:

1. Marking with departmental decals or stencils all government property obtained through any government Employment and Training Administration grant, which includes all funds provided by OED;
2. Maintaining appropriate maintenance contracts for equipment;
3. Maintaining reasonable safeguards against theft; and
4. Contractors shall reimburse OED for the value of missing property in accordance with the OED Policy Series.

B. OED will conduct an annual property inventory which will involve a comparison and reconciliation of the latest OED inventory records with the actual physical property that exists (or is missing) at each contractor site.

SEC. 110. Advertisement and Public Notices. Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other methods to attract Participants or employers into an OED funded activity shall first notify the appropriate OED staff prior to release or publication of this information. In any event, all announcements, etc., must include the following statement: "The funding source for this activity is the City and County of Denver, Office of Economic Development" in addition to including the required funding stream denotation as required.

SEC. 111. Assurances. The Contractor, in operating programs funded under the Grant, further assures that it will administer its program under the Act in full compliance with safeguards against fraud and abuse as set forth in the Federal regulations; that no portion of its program will in any way discriminate against, deny benefits to, deny employment to or exclude from participation any persons on the grounds of race, color, national origin, religion, age, sex, handicap, or political affiliation or belief; that it will provide employment and training services to those most in need of them, including but not limited to low-income

persons, handicapped individuals, persons facing barriers to employment commonly experienced by, for example, older workers, and persons of limited-English speaking ability, the eligible disabled and veterans.

SEC. 112. Charging of Fees.

A. Contractors may not charge participants a fee for the placement of that Participant into an OED training or employment program.

B. Contractors may not charge participants a fee for job referral or placement.

SEC. 113. Theft or embezzlement from employment and training funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions.

A. Under the law, a contracting agency and any member of its staff is criminally libel if s/he:

1. Knowingly hires an ineligible individual;

2. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

3. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;

4. Willfully obstructs or impedes an investigation or inquiry under Colorado Works Program Act (CWPA);

5. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by CWPA funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;

6. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE 2
DISBURSEMENTS AND ACCOUNTING

SEC. 201. Charges Against Project Account.

A. Payments under Reimbursement Contracts shall be made on actual costs incurred and supported by all necessary and appropriate documentation. Fee-for-Service contracts shall be reimbursed for documented services performed based on the negotiated rate.

B. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget; PROVIDED, HOWEVER, that said budget may be revised for more efficient and effective use of monies available under the Contract upon written request by the Contractor to the City and written approval thereof by the City.

C. At any time or times prior to final payment under this Contract, the City may have the invoices and statements of cost audited. Each payment theretofore shall be subject to reduction for amounts included in the related invoice or voucher which are found by the City on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for over-payment, or increased for under-payments, on preceding invoices or vouchers.

D. After the City has accepted the services actually performed under the Contract, it may require the Contractor to prepare a summary of services and the value thereof, together with such other records, reports and data as the City may require. All prior approvals and payments shall be subject to correction in the final summary and payment; but in the absence of effort or manifest mistake, it shall be understood that all payments, when approved, shall be evidence of the services performed; PROVIDED, HOWEVER, that all payments made by the City to the Contractor shall be made subject to correction in accordance with the audit findings of the City or the Federal Government of the Contractor's books and records relating to its costs and contributed services for the preparation or completion of the services and

work under the Contract, and the Contractor shall promptly repay the City the amount that such payments exceed the total amount payable to the Contractor in accordance with the provisions of the Contract and as determined on the basis of such audit and inspection. From the total amount of the final payment, there shall be deducted first all previous payments made to the Contractor under the Contract; and second, all damages, ineligible costs under the Contract, and other charges properly chargeable to the Contractor and the balance, if any, shall be paid to the Contractor; PROVIDED, HOWEVER, that prior to the payment to the Contractor of the final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of the services have been properly paid and settled.

E. Prior to final payment under this Contract, the Contractor and each assignee under the Contract whose assignment is in effect at the time of the final payment under the Contract shall, within such time as the City may designate not to exceed sixty (60) days from the termination of the Contract for any reason whatsoever, execute and deliver as required by the City:

1. An assignment to the City in form and substance satisfactory to the City of refunds, rebates, credits and other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the City under the Contract; and

2. A release in such form as the City may prescribe, discharging the City, its officers, agents and employees from all liabilities, obligations and claims arising out of or under this Contract.

F. Contract funds remaining unspent by the Contractor at the termination of the Contract for any cause whatsoever shall be returned to the City within such time following the termination as the City may set. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

SEC. 202. Method of Payment and Disbursements.

A. On a regular basis in the due course of conducting its business during the term of this Contract, based upon certain reports and records required by the City of the Contract, the City will approve the dollar value of services under the Contract completed by the Contractor during the preceding performance period. After approval by the City, these reports and records will serve as a basis for a partial payment by the City to the Contractor. The City may withhold the final ten percent (10%) of the money made available under the Contract pending the making of final settlement and final payment as set forth herein.

B. The Contractor shall request payment of the monies available under the Contract on such basis and in such amounts and at such times and under or subject to such conditions as the City may specify. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner.

SEC. 203. Accounting Controls.

A. The Contractor shall assist the City, as necessary, in making an evaluation of the Contractor's internal control system, fidelity bonding coverage, accounting and report systems prior to any payment being made under this Contract. The Contractor shall assist the City as necessary in documenting the adequacy or inadequacy of said systems and in continual monitoring for accuracy of such systems, allowing the City and the Federal Government free and ready access to the plants or offices of the Contractor at reasonable times for on-site inspection and audit.

B. Accounting System. The Contractor will establish and maintain on a current basis for accounting of funds available under the Contract an accounting system in accordance with generally accepted accounting principles and standards.

C. Designation of Depository. The Contractor shall designate to the City a commercial bank which is a member of the Federal Deposit Insurance Corporation, acceptable to the City, to be the depository for the receipt of funds under the terms of the Contract. After the City has satisfied itself as to the propriety of the account, it may deposit funds made available hereunder into said account. The

commercial bank selected must fully insure and secure against loss continuously all funds on deposit in excess of the amount insured by a Federal or State Agency.

ARTICLE 3
MISCELLANEOUS

SEC. 301. Personnel.

A. The Contractor represents that it has, or will secure with funds available for same under this Agreement, all personnel required in performing its services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

B. All of the services required hereunder of the Contractor will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

SEC. 302. **Sales and Use Taxes**. Nothing herein shall be deemed to exempt the Contractor or any subcontractor from payment of the Sales Tax or the Use Tax of the City. In accordance with applicable State and Local law, the Contractor will pay, and require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired in pursuance of the Contract. Any and all refunds claimed and received by the city shall not affect any bid price or contract price under the Contract.

SEC. 303. Extension of Time. The Contractor shall be considered as having taken into account all hindrances and delays incidental to such services, and will not be granted an extension of time on account thereof.

SEC. 304. Singular and Plural. Wherever in the Agreement or any Exhibit thereto the singular or plural form of a noun is used, the meaning may be taken to be either plural or singular, unless the intent taken in the context of the sentence would be changed.

ARTICLE 4
PREVAILING WAGE REQUIREMENTS

SEC. 401. Labor Standards and Wage Rates.

A. The City, the Contractor and any subcontractor in the performance of work on any construction contract (project), twenty-five percent (25%) or more of the costs of which are paid from contract entitlement funds: (1) will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a--276a-7); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 C.F.R., Parts 1, 3, 5, and 7.

B. In situations in which the Davis-Bacon Act (40 U.S. C. 276a to 276a-7 as supplemented by Department of Labor regulations 29 CFR Part 5) standards are applicable, (generally construction contacts in excess of $2,000), the Contractor or any subcontractor shall comply with all requirements and must file with the regional office of the United States Department of Labor a Standard Form 308 requesting a wage determination for each intended project at least thirty (30) days before the invitation for bids, and must ascertain that the wage determination issued and the contract clauses required by 29 C.F.R. 5.5 are incorporated in any subcontract specifications. The City, the Contractor and any Subcontractor must also satisfy itself that the successful bidder is made aware of its labor standards responsibilities under the Davis-Bacon Act.

C. In the event that the Davis-Bacon Act is deemed not to apply to this Agreement, but yet the Services to be provided hereunder nonetheless require construction or constructions services, then Section 20-76 of the Denver Revised Municipal Code pertaining to Payment of Prevailing Wages shall apply.

D. If any subcontract involving subcontractors other than State agencies shall involve the construction or maintenance of a public work as set forth in Section 20-76 of the Revised Municipal Code of the City, the following provisions shall apply:

1. Any person or company other than a State agency entering into a subcontract with the State for the construction of any public building or the prosecution or completion of any public work or for repairs upon any public building or public work, shall be required before commencing work, to execute, in addition to all bonds that may now or hereafter be required of them, a penal bond, with good and sufficient surety or sureties, to be approved by the Manager of Public Works of the City, conditioned that such contractors shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing him or it, or his or its subcontractors with labor or materials, or with labor and materials used or performed in the prosecution of the work provided for in such contract, and will indemnify the City to the extent of any and all payments in connection with the carrying out of any such contracts with said City may be required to make under the law.

2. Every worker, mechanic or other laborer employed by any Contractor or subcontractor in the work of drainage or of construction, alteration, improvement, repair, maintenance or demolition of any public building or public work by or in behalf of the City, or for any department of the City, or financed in whole or in part by the City or any department of the City, 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 public building or the prosecution of any such public work by or in behalf of the City, or for any department of the City, or financed in whole or in part by the City, or any department of the City, shall be paid not less than the wages prevailing for the same class and kind of work in the City as determined by the Career Service Board of the City under Section D hereof.

3. For every subcontract in excess of $2,000.00 which requires the performance of work involving drainage or involving construction, alteration, improvements, repairs, maintenance or demolition of any public building or public work, or which requires the performance of the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar custodial or janitorial work in connection with the operation of any such public building, or the prosecution of any such public work, the minimum wages to be paid for every class of labor, mechanics or work shall be not less than the scale of wages from time to time determined by said Career Service Board to be the prevailing wages under Section (D) hereof; no increase or increases in such minimum wages shall result in any increased liability on the part of the City, and the possibility and risk of any such increase or increases is assumed by the Contractor.

4. It shall be duty of said Career Service Board to determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of the Subcontract, which determination shall be made periodically at least every six months, and as frequently as may be considered necessary by said Career Service Board in order that the determination which is currently in effect shall accurately represent the current prevailing rates of wages. Prior to making such determination, said Career Service Board shall give reasonable public notice of the time and place of the hearing concerning such proposal determination and shall afford to all interested parties the right to appear before it and to present evidence. "Prevailing Wages" shall mean, for each class of work, (a) the rate of pay currently and most commonly paid to laborers, mechanics and workers performing such classes of work in the City, and (b) the overtime and other benefits currently and most commonly granted to such workers, mechanics, and laborers in the City; except that where the work involved is that of construction, alteration, improvement, repair, maintenance or demolition of any public building or public work, "Prevailing Wages" shall mean, for each class of work, the rate of pay currently and most commonly paid and the overtime and other benefits currently and most commonly granted to such workers, mechanics and laborers in the construction industry of the City.

5. The Contractor and every Subcontractor under the Contract shall pay every worker, mechanic and laborer employed under the Contract, not less than the scale of wages as determined by said Career Service Board under Section D hereof to be the prevailing rate. The Contractor and its subcontractors shall pay all workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications. Further, the Contractor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the Contractor and all Subcontractors working under it. In the event the Contractor or any Subcontractor shall fail to pay such wages as are required by the Contract, the Auditor of the City shall not approve any warrant or demand for payment to the Contractor until the Contractor furnishes the Auditor of the City evidence satisfactory to him that such wages so required by the Contract have been paid. Further, the Contractor shall furnish to the Auditor of the City each week during which work is in progress under the Contract, a true and correct copy of the payroll records of all workers, laborers and mechanics employed under the Contract, either by the Contractor or Subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the Contract, the hourly pay of each such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll. Said copy of the payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all mechanics, laborers and other workers working under the Contract either for the Contractor or Subcontractors, that payments were made to the workers, laborers, and mechanics as set forth in said payroll records, that no deductions were made other than those set forth in said records, and that all workers, mechanics and other laborers employed on work under the Contract, either by the Contractor or Subcontractor, have been paid the prevailing wages. In the event that any laborer, worker or mechanic employed by the Contractor or Subcontractor under the Contract has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid as aforesaid, the City may, by notice to the Contractor or Subcontractor, suspend or terminate its right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and in the event of termination, may prosecute the work to completion by contract or otherwise, and the Contractor and its sureties shall be liable to the State or City for any excess costs occasioned the City thereby.

6. No warrant or demand for payment to the Contractor or Subcontractor shall be drawn or allowed by the Auditor of the City unless the Contractor or Subcontractor shall have filed with said Auditor the reports and statements required by Section E hereof nor while any such Contractor or Subcontractor under it shall be in default in the payment of such wages as are required by the Contract.

7. The Provisions of Sections B through G hereof, inclusive, shall constitute a part of every contract of employment between the Contractor and any subcontractor not a State agency and his or its employee performing work covered by the provisions of said sections.

SEC. 402. <u>Use of Property</u>. Whenever Contract funds available for use in whole or in part for the purchase or construction (including rehabilitation) of property (other than office equipment, supplies, materials and other personal property used for the administration of the program), a title to said property shall not be transferred for a period of five (5) years from the date of purchase or completion of construction without the approval of the City. Should it be desirable to sell the property or otherwise transfer the ownership before expiration of the five-year period, a request must be submitted to the City for prior approval.

ARTICLE 5
PERSONAL PROPERTY

SEC. 501. Purchases and City Property.

A. The Contractor agrees to use its best efforts to obtain all supplies and equipment for use in the performance of this Contract at the lowest practicable cost, in a way not inconsistent with Section 20-61 through 20-67 of the Revised Municipal Code. Any public Contractor may procure its supplies from State or local government sources without regard to any other provision of the Contract to the extent required by State or local law. The City will assist the Contractor and its subcontractors in the following procedures for procurement of supplies and equipment.

B. Title to all non-expendable personal property furnished by the City, if any, shall remain in the City. Title to all such property acquired by the Contractor including acquisition through lease-purchase agreement, for the cost of which the Contractor is to be reimbursed in whole or in part as direct item of cost under the Contract, shall immediately vest in the City upon delivery of such property by the vendor. Title to other such property, the cost of which is to be reimbursed to the Contractor under this Contract, shall immediately vest in the City upon (i) issuance for use of such property in the performance of the Contract; or (ii) commencement of processing or use of such property in the performance of the Contract; or (iii) reimbursement of the cost thereof by the City, whichever first occurs. Title to the City property shall not be affected by the incorporation or attachment thereof if any part thereof be or become a fixture or lose its identity as personality by reason of affixation to any realty. All City-furnished property, and all property acquired by the Contractor, title to which vests in the City under this paragraph, are subject to the provisions of this clause and are herein collectively referred to as "City Property".

C. The Contractor agrees to accept as correct the records of the City relating to the identification and marking, segregation and co-mingling and taking of inventories of City property. The Contractor shall maintain and administer in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of City property so as to assure its full availability and usefulness for the performance of the Contract. The Contractor shall take reasonable steps to comply with all appropriate directions or instructions which the City may prescribe as reasonably necessary for the protection of the City property including the removal and shipping of City property, where the City deems that the interest of the City requires the removal of such property.

D. The City property shall be used only for the performance of this Contract and its use by the Contractor is understood and agreed to be part of the consideration for which services are provided.

E. The Contractor shall not be liable for any loss of or damage to the City property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any loss or damage (including expenses incidental thereto):

1. Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of its managers, superintendents or other equivalent representatives;

2. Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of its directors, officers or other representatives mentioned in (1) above to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of City property as required by Paragraph (D) hereof, or to take all reasonable steps to comply with any appropriate written directions of the City under Paragraph (D) hereof;

3. For which the Contractor is otherwise responsible under the express terms of the Contract;

4. Which results from a risk required to be insured under the Contract; or

5. Which results from a risk which is, in fact, covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the City property, except to the extent that the City may have required the Contractor to carry such insurance under any provisions of the Contract.

F. If the Contractor transfers City property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth in Paragraph (F) hereof. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontractor, with the prior approval of the City, provides for the relief of the Contractor from such liability. In the absence of such approval, the subcontractor shall maintain appropriate provisions requiring the return of all City property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the Contract.

G. In the event the Contractor is indemnified, reimbursed or otherwise compensated for any loss or destruction of or damage to the City property, it shall use the proceeds to repair, renovate or replace the City property involved, or shall credit such proceeds against the cost of the work covered by the Contract or shall otherwise reimburse the City, as directed by the City. The Contractor shall do nothing to prejudice the City's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the City, shall, at the City's expense, furnish to the City all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the City) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to City property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the City property for the benefit of the City.

H. Upon the completion of the Contract, or at such earlier date as may be fixed by the City, the Contractor shall submit to the City in a form acceptable to it, inventory schedules covering either all items of City property, or all items of City property not theretofore delivered to the City, and shall deliver or make such other disposal of such City property as may be directed or authorized by the City. The net proceeds of any such disposal shall be credited to the cost of the work covered by the Contract or shall be paid in such manner as the City may direct.

I. Unless otherwise provided herein, the City:

1. May abandon any City property in place, and thereupon all obligations of the City regarding such abandoned property shall cease; and

2. Shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or offices or any portion thereof which is affected by the abandonment or removal of any City property.

J. All communications issued pursuant to this Section shall be in writing.

ARTICLE 6
FIDELITY BOND

SEC. 601. **Fidelity Bonding Assurance**. Prior to the initial disbursement of funds to the Contractor, the City may request that fidelity bonding be obtained from the surety of the Contractor evidencing that all persons handling funds received or disbursed under the program are covered by fidelity insurance in an amount and manner consistent with the coverage of comparable City employees and consistent with sound fiscal practice. If the bond of any employee of the Contractor is cancelled or coverage is substantially reduced, the Contractor shall notify the City and shall not disburse any funds thereafter until the City receives and acknowledges assurance from the Contractor that adequate insurance coverage has been obtained.

ARTICLE 7
REQUIRED CONTRACT CLAUSES FOR ETA GRANTS

SEC. 701. **Executive Order 11246**. The Contractor must be in compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 DFR chapter 60).

SEC. 702. **Copeland "Anti-Kickback" Act** If this agreement involves construction or repair work, it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 847) as supplemented in Department of Labor regulations (29 CFR Part 3).

SEC. 703. **Contract Work Hours and Safety Standards Act** The Contractor shall comply with all Federal, State, and Municipal Act, laws, ordinances, rules and regulations relating to minimum wages and maximum hours of work, including Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

SEC. 704. **Clean Air Act** Notwithstanding any other provision, the Contractor agrees to comply with the Clean Air Act, as amended, (42 U.S.C. 1857 et seq.), the Clean Water Act, as amended (33 U.S.C. 466 et seq.), and the standards issued pursuant thereto, in facilities which are involved in the activities receiving assistance. All subcontracts will include provisions required by regulations issued by the Department of Labor with respect to the Clean Air Act of 1970 and the Federal Water Pollution Control Act.

SEC. 705. **Energy Policy and Conservation Act** The Contractor shall comply with all applicable standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, Public law 94-163, 89 Stat. 871.

SEC.706. **Lobbying Certification**

A. None of the funds provided under this Agreement shall be used to influence or attempt to influence any elected or public official to support or defeat any legislation or rules and regulations pending before the Council of the City or the General Assembly of the State of Colorado.

B. Contractor assures and certifies compliance with applicable federal law 45 C.F.R. Part 93 for TANF; 29 C.F.R. Part 93 for WIA; and 45 C.F.R. Part 93 for the Refugee Act.

SEC. 707. **Federal Debarment** This Agreement is subject to the prohibitions on contracting with a debarred organization set out in U.S. Executive Order 12549, Debarment and Suspension implemented at 45 C.F.R. Part 76. By its signature below, the Contractor assures and certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor shall provide immediate written notice to the Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this Article 34, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this Article 34, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor.

SEC. 708. Nepotism

A. No sub awardee or employing agency may hire a person in an administrative capacity, staff position, public-service employment position or on-the-job training position funded under the Act, if a member of that person's immediate family is engaged in an administrative capacity for the recipient or program agent from which the sub awardee or employing agency obtains its funds. To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such state or local requirement shall be followed.

B. For purposes of this section:

1. The term "immediate family" means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, son-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

2. The term "person in an administrative capacity" includes those persons who have overall administrative responsibility for a program, for the obtaining of and/or approval of any grant funded under the Act, as well as other officials who have influence or control over the administration of the program, such as the project director, deputy director and unit chiefs, and persons who have selection, hiring, placement or supervisory responsibilities for public service employment or OJT participants.

3. The term "staff position" includes all CWPA staff positions funded under the Act, such as instructors, counselors and other staff involved in administrative training or service activities.

SEC. 709. Prohibited Political Activity and Political Patronage None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.

A. No program under the Act may involve political activities.

B. No participant may engage in partisan or non-partisan political activities during work hours.

C. No participant may be employed or out-stationed in the office of a member of Congress or a state or local legislator or on any staff of a legislative committee.

D. No participant may be employed or out-stationed in the immediate office of any chief elected executive official (such as the Mayor).

E. No participant may be employed or out-stationed in positions involving political activities in the offices of other elected executive officials (such as a City Council Officer).

F. Contractor staff and participants must comply with the provisions of the Hatch Act.

G. A Contractor may not select or promote a participant based on that individual's political affiliation or belief.

H. A Contractor may not select or advance an employee as a reward for political services or as a form of political patronage whether or not the political services or patronage is partisan in nature.

CERTIFICATE OF LIABILITY INSURANCE

7/1/2019

DATE (MM/DD/YYYY) 6/25/2018

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

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

PRODUCER LOCKTON COMPANIES 2100 ROSS AVENUE, SUITE 1400 DALLAS TX 75201 214-969-6700	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED 1366591 Arbor E&T, LLC dba Res-Care Workforce Services 9901 Linn Station Road Louisville KY 40223	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: ACE American Insurance Company — 22667 INSURER B: Endurance American Insurance Company — 10641 INSURER C: See Attached INSURER D: Indian Harbor Insurance Company — 36940 INSURER E: Great American Insurance Company — 16691 INSURER F:

COVERAGES RESCA01 **CERTIFICATE NUMBER:** 14032217 **REVISION NUMBER:** XXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY	Y	Y	XSLG7109683A	7/1/2018	7/1/2019	EACH OCCURRENCE	$ 4,000,000
A	[ ] CLAIMS-MADE [X] OCCUR			(OCCURRENCE FORM)			DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
	X Prof. Liability						MED EXP (Any one person)	$ XXXXXXX
	X SexAbuse/Molestation						PERSONAL & ADV INJURY	$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 6,000,000
	X POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 4,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY	Y	Y	ISAH25158702	7/1/2018	7/1/2019	COMBINED SINGLE LIMIT (Ea accident)	$ 2,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$ XXXXXXX
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$ XXXXXXX
	X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
B	[ ] UMBRELLA LIAB X OCCUR	N	N	XSC30000119102	7/1/2018	7/1/2019	EACH OCCURRENCE	$ 3,000,000
B	[ ] EXCESS LIAB [ ] CLAIMS-MADE			(AUTO & EL ONLY)			AGGREGATE	$ XXXXXXX
	[ ] DED [ ] RETENTION $							$ XXXXXXX
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N		Y	SEE ATTACHED			X PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? N / N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$ 2,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 2,000,000
							E.L. DISEASE - POLICY LIMIT	$ 2,000,000
D	Misc.Prof.Lia.	N	N	MPP 0033978 08	7/1/2018	7/1/2019	$5M claim/$5M agg;Ded $150K/claim	
E	Crime			SAA 052 11 97 05	7/1/2018	7/1/2019	Emp Theft-$5M per Occ	

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

Sexual Abuse / Molestation coverage is not excluded; Contract #AA-26769-15-55-A-8; Certificate holder is amended to include: the City and County of Denver, its elected and appointed officials and employees.

CERTIFICATE HOLDER

14032217
City & County of Denver,
Office of Economic Development/
Division of Workforce Development
201 W. Colfax Ave #907
Denver CO 80202

CANCELLATION See Attachments

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

AUTHORIZED REPRESENTATIVE

Frank Laudani

RES-CARE, INC. AND ALL OF ITS SUBSIDIARIES
CERTIFICATE CONTINUATION

WORKERS' COMPENSATION POLICIES
WLR C64790365 (All Other States) - Indemnity Insurance Co. of North America, NAIC #43575; Eff. 7/1/2018 - 7/1/2019
WLR C64790377 (AZ, CA) - ACE American Insurance Co., NAIC #22667; Eff. 7/1/2018 - 7/1/2019
WLR C64790389 (TN) - Agri General Insurance Co., NAIC #42757; Eff. 7/1/2018 - 7/1/2019
SCF C64790390 (WI) - ACE Fire Underwriters, NAIC #20702; Eff. 7/1/2018 - 7/1/2019

OHIO EXCESS WORKERS' COMPENSATION
SP 4057813 - Safety National Casualty Corporation, NAIC #15105; Eff 12/1/2017 - 12/1/2018
Cov. A - Statutory
Cov. B - $1,000,000 Each Accident / $1,000,000 Each Employee (Disease) / $1,000,000 Agg. (Disease)

WASHINGTON EXCESS WORKERS' COMPENSATION
WCUC64790407 - ACE American Insurance Co., NAIC #22667; Eff. 7/1/2018 - 7/1/2019
Maximum Liability of Excess Insurer: $2,000,000 / Retention: $1,100,000

TEXAS NON-SUBSCRIBER (EMPLOYER'S EXCESS INDEMNITY)
EPG000007607 - North American Specialty Ins. Co., NAIC #29874; Eff. 6/27/2018 - 6/27/2019
$25,000,000 per Occurrence / $25,000,000 Aggregate

CERTIFICATE OF LIABILITY INSURANCE

9/1/2018

DATE (MM/DD/YYYY) 7/5/2018

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

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

PRODUCER LOCKTON COMPANIES 2100 ROSS AVENUE, SUITE 1400 DALLAS TX 75201 214-969-6700	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED 1368543 Arbor E&T, LLC dba Res-Care Workforce Services 9901 Linn Station Road Louisville KY 40223	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : National Union Fire Ins Co Pitts. PA — 19445 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES RESCA01 **CERTIFICATE NUMBER:** 15479090 **REVISION NUMBER:** XXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY			NOT APPLICABLE			EACH OCCURRENCE	$ XXXXXXX
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ XXXXXXX
							MED EXP (Any one person)	$ XXXXXXX
							PERSONAL & ADV INJURY	$ XXXXXXX
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ XXXXXXX
	X POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$ XXXXXXX
	OTHER:							$
	AUTOMOBILE LIABILITY			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident)	$ XXXXXXX
	☐ ANY AUTO						BODILY INJURY (Per person)	$ XXXXXXX
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$ XXXXXXX
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$ XXXXXXX
								$ XXXXXXX
	☐ UMBRELLA LIAB ☐ OCCUR			NOT APPLICABLE			EACH OCCURRENCE	$ XXXXXXX
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$ XXXXXXX
	☐ DED ☐ RETENTION $							$ XXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N			NOT APPLICABLE			☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$ XXXXXXX
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ XXXXXXX
							E.L. DISEASE - POLICY LIMIT	$ XXXXXXX
A	Cyber	N	N	01-841-51-51	9/1/2017	9/1/2018	$10M Limit	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Sexual Abuse / Molestation coverage is not excluded; Contract #AA-26769-15-55-A-8; Certificate holder is amended to include: the City and County of Denver, its elected and appointed officials and employees.

CERTIFICATE HOLDER

15479090
City & County of Denver,
Office of Economic Development/
Division of Workforce Development
201 W. Colfax Ave #907
Denver CO 80202

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Frank Landini

Exhibit E

Business Associate Terms -HIPAA/HITECH

1. GENERAL PROVISIONS AND RECITALS

1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.

1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.

1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.

1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

2.01 "Administrative Safeguards" are administrative actions, and policies and

procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

2.02 "Agreement" means the attached Agreement and its exhibits to which this these terms additional are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

a. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.

b. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.

c. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;

b. The unauthorized person who used the PHI or to whom the disclosure was made;

c. Whether the PHI was actually acquired or viewed; and

d. The extent to which the risk to the PHI has been mitigated.

2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CPR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CPR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.l03 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that info1mation collected in accordance with the Agreement, in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to

CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards m accordance with 45 CFR §164.308, §164.310, §164.312, and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pe1iaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.

5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.l The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CPR §164.404, it: at the sole discretion of the CITY, it is reasonable to do so under the circumstances.

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CPR §164.402 to demonstrate that a Breach did not occur.

5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CPR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.

5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.

5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.

6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.

6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the

confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of

subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 The obligations of this Agreement shall survive the termination of the Agreement.