

## AGREEMENT

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **THE SALVATION ARMY**, a California nonprofit, whose address is 30840 Hawthorne Blvd., Rancho Palos Verdes, CA 90275, jointly “the Parties” and individually a “Party.”

**WHEREAS**, the Mayor declared a state of local disaster emergency on March 12, 2020, pursuant to C.R.S. 24-33.5-701, *et seq.*, brought on by the spread of COVID-19, the Governor of the State of Colorado declared a Disaster Emergency (D 2020 003) dated March 11, 2020, on the same basis, and the President of the United States issued a Declaration of Emergency on March 13, 2020, due to the COVID-19 crisis;

**WHEREAS**, to respond to the COVID-19 crisis in the City and County of Denver, Colorado, and pursuant to the declarations of emergency described above, the City wishes to provide temporary twenty-four-hour shelter operations and support services to unhoused individuals within Denver City and County in response to the COVID-19 emergency public health crisis;

**WHEREAS**, the City awarded the Agreement to the Contractor as the result of an emergency sole source necessary to address the COVID-19 crisis in accordance with its rules and procedures;

**WHEREAS**, the City enters into this Agreement to address the COVID-19 emergency and wishes such necessary work to be performed on an expedited, emergency basis; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor incorporate the recitals set forth above and agree as follows:

- 1. COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services under the Agreement with the Executive Director (“Director”) of the Department of Housing Stability (“Agency” or “HOST”), or the Director’s Designee.
- 2. SERVICES TO BE PERFORMED:** As the Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in **Exhibit A, Scope of Work**, to the City’s satisfaction. The Contractor is ready, willing, and able to provide the services required by this Agreement. 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.

3. **TERM:** The Agreement will commence on April 11, 2020, and will expire, unless sooner terminated, on December 31, 2020 (the “Term”).

4. **COMPENSATION AND PAYMENT**

4.1. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred and paid under the Agreement payment not to exceed the line budget amounts set forth in **Exhibit A**.

4.2. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor’s expenses are contained in **Exhibit A**.

4.3. **Invoicing:** The Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City including all supporting documentation required by the City. The City’s Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

4.4. **Maximum Contract Amount**

4.4.1. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Seven Million Two Hundred Sixty-One Thousand Three Hundred Dollars (\$7,261,300.00) (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 the 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.

4.4.2. The City’s payment obligation, whether direct or contingent, extends only to funds 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 this 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.

5. **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.

## 6. **TERMINATION**

- 6.1. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Director.
- 6.2. Notwithstanding the preceding paragraph, 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.
- 6.3. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.
- 6.4. 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."
- 6.5. **Termination for Convenience**: In accordance with Federal Acquisition Regulation (FAR), the Contracting Officer (as defined in the FAR), by written notice, may terminate this Agreement, in whole or in part, when it is in the City's interest. If this Agreement is terminated, the City shall be liable only for payment under the payment of provisions of this Agreement for services rendered before the effective date of termination.
7. **EXAMINATION OF RECORDS AND AUDITS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers

and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after final closeout by FEMA or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

**8. 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.

**9. INSURANCE**

**9.1. 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 three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, 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, the City must be notified by the Contractor. 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.

- 9.2. 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 coverages required under this Agreement. The Contractor certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- 9.3. Additional Insureds:** For Commercial General Liability, Auto Liability Professional Liability (if required), and Excess Liability/Umbrella (if required) the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- 9.4. Waiver of Subrogation:** For all coverages required under this Agreement, with exception of Professional Liability (if required), the Contractor's insurer shall waive subrogation rights against the City.
- 9.5. 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.

**9.6. 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 the Contractor executes this Agreement.

**9.7. 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.

**9.8. 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.

**9.9. Property Insurance:** The Contractor shall provide 100% replacement cost for the Contractor's property.

**9.10. Additional Provisions**

**9.10.1.** For Commercial General Liability, the policy must provide the following:

**9.10.1.1.** That this Agreement is an Insured Contract under the policy;

**9.10.1.2.** Defense costs are outside the limits of liability;

**9.10.1.3.** A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

**9.10.1.4.** A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

**9.10.2.** For claims-made coverage:

**9.10.2.1.** 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.

**9.10.3.** 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 their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

## **10. DEFENSE AND INDEMNIFICATION**

**10.1.** The Contractor 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 the 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.

**10.2.** 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. The 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.

**10.3.** The Contractor shall defend any and all Claims which may be brought or threatened against City and shall 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 will be in addition to any other legal remedies available to City and will not be the City’s exclusive remedy.

**10.4.** Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor is

responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

**11. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

**12. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance 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 under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

**13. ASSIGNMENT; 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 Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The 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.

**14. 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.

**15. 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.



**16. 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.

**17. 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.

**18. CONFLICT OF INTEREST**

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

**18.2.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**19. 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 the City at the addresses below:

Chief Housing Officer, Department of Housing Stability  
201 W. Colfax Ave.  
Denver, CO 80202

With a copy of any such notice to:

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

To the Contractor:

The Salvation Army  
ATTN: LEGAL DEPT  
30840 Hawthorne Blvd.  
Rancho Palos Verdes, CA 90275

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.

**20. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**

**20.1.** 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”).

**20.2.** The Contractor certifies that:

**20.2.1.** 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.

**20.2.2.** 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.

**20.3.** The Contractor also agrees and represents that:

**20.3.1.** It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

**20.3.2.** 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.

**20.3.3.** It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

**20.3.4.** 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 it is required 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.

**20.3.5.** 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 shall also 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.

**20.3.6.** It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

**20.4.** 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.

**21. 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 Director as defined in this Agreement.

**22. 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).

- 23. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.
- 24. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the performance of work under the Agreement, the Contractor may not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.<sup>1</sup>
- 25. FAITH BASED ORGANIZATIONS AND SECTARIAN ACTIVITIES:** The Contractor shall not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the programs or services funded under this Agreement.
- 26. COMPLIANCE WITH ALL LAWS:** The Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.
- 27. 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 the Contractor to execute the Agreement on behalf of the Contractor and to validly and legally bind the 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.

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<sup>1</sup> The Contractor represents it is a church and its officers are ministers, not employees. The Contractor takes the position that it may discriminate against its officers/ministers based on religion. The Contractor agrees it may not discriminate against its lay employees based on religion. The Contractor also agrees that it may not discriminate against its officers/ministers or lay employees based on race, color, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability.

- 28. 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.
- 29. ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
- 30. INTELLECTUAL PROPERTY RIGHTS:** The City and the Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Project. To the extent permitted by the U.S. Copyright Act, 17 USC § 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 (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City and Contractor agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of Contractor made available, directly or indirectly, by Contractor to City as part of the Scope of Services, are the exclusive property of Contractor or the third parties from whom Contractor has secured the rights to use such product. The Contractor Materials, processes, methods and services shall at all times remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use the Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City.
- 31. 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.

**32. ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor's advertising or public relations materials without first obtaining the written approval of the 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 Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**33. CONFIDENTIAL INFORMATION**

**33.1. City Information:** The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential," or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance, and provided or made available to the Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

**33.2. Use and Protection of Proprietary Data or Confidential Information**

**33.2.1.** Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall 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 data, including Proprietary Data 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. The Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Executive Director and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

**33.2.2.** The Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

**33.2.3.** The Contractor shall 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 City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

**33.3.** **Employees and Subcontractor:** The Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose Proprietary Data 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.

**33.4.** **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an “as is” basis, without any support whatsoever,

and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the Proprietary Data or confidential information. The Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

**33.5. Contractor’s Confidential Information; Open Records:** 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 the Contractor concerning the Contractor’s Confidential Information. However, the Contractor understands that all the material provided or produced by the 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 the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of it’s the 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 the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of the Contractor’s intervention to protect and assert its claim of privilege against disclosure under this Section 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.

#### **34. DATA PROTECTION**

**34.1.** The Contractor shall ensure that all City data, information, and records, regardless of form, in the Contractor’s possession are protected and handled in accordance with the requirements of this Agreement and any exhibits or attachments, City policies, and applicable laws. If the Contractor or any of its subcontractors receives the following types of data, the Contractor or its subcontractors shall provide for the security of such data according to the following: (i) the most



recently promulgated IRS Publication 1075 for all tax information and in accordance with the Safeguarding Requirements for Federal Tax Information, attached to this Agreement as an exhibit if applicable; (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all criminal justice information (CJI); (iv) the Colorado Consumer Protection Act, (v) the Children’s Online Privacy Protection Act (COPPA); (vi) the Family Educational Rights and Privacy Act (FERPA); (vii) C.R.S. § 24-73-101, *et seq.*; (viii) the Telecommunications Industry Association (TIA) Telecommunications Infrastructure Standard for Data Centers (TIA-942); (ix) the Fair Credit Reporting Act (FCRA); and (x) the federal Health Insurance Portability and Accountability Act for all protected health information (PHI) and in accordance with the HIPAA Business Associate Terms attached to this Agreement, if applicable. The Contractor shall immediately forward any request or demand for City information or records to the notice addresses contained herein.

**34.2.** By providing the agreed upon services herein, the Contractor may have access to certain protected health information (“PHI”) as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended. The Contractor agrees to comply with the confidentiality requirements in applicable state and federal law and shall hereby execute and comply with the HIPAA Business Associate Terms attached in **Exhibit A**, which is hereby incorporated by reference. In addition to PHI, the Contractor may also receive substance use records protected under 42 CFR § 2, *et seq.* The Contractor shall comply with confidentiality requirements including, but not limited to, the requirements of 42 CFR §2, *et seq.*, as amended. The Contractor specifically agrees to take such action as is necessary to implement the requirements of HIPAA and 42 CFR § 2, *et seq.*, and other applicable laws relating to the security and confidentiality of PHI and protected substance use records

**34.3.** If the Contractor receives personal identifying information (“PII”) under this Agreement, the Contractor shall implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the PII and the nature and size of the Contractor’s business and its operations. The Contractor shall be a “Third-Party Service Provider” as defined in C.R.S § 24-73-103(1)(i) and shall maintain security procedures and practices consistent with C.R.S §§ 24-73-101 *et seq.* Unless the Contractor agrees to provide its own security protections for the

information it discloses, the Contractor shall require all its subcontractors, employees, agents, and assigns to implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the PII disclosed and reasonably designed to help protect the PII subject to this Agreement from unauthorized access, use, modification, disclosure, or destruction. The Contractor and its subcontractors, employees, agents, and assigns that maintain electronic or paper documents that contain PII under this Agreement shall develop a written policy for the destruction of such records by shredding, erasing, or otherwise modifying the PII to make it unreadable or indecipherable when the records are no longer needed.

- 35. 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.
- 36. 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.
- 37. 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.
- 38. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** The Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, 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.

**39. FEMA GRANT AND COOPERATIVE AGREEMENT SPECIFIC PROVISIONS:** During the performance of this Agreement, the Contractor agrees as follows:

**39.1. Federal Equal Opportunity Clause**

**39.1.1.** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

**39.1.4.** The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to

be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- 39.1.5.** The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 39.1.6.** The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 39.1.7.** In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 39.1.8.** The Contractor will include the portion of the sentence immediately preceding paragraph (39.1) and the provisions of paragraphs (39.1.1) through (39.1.8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**39.2. Compliance with the Contract Work Hours and Safety Standards Act**

- 39.2.1. Overtime requirements:** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 39.2.2. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the clause set forth in paragraph (39.2.1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (39.2.1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (39.2.1) of this section.
- 39.2.3. Withholding for unpaid wages and liquidated damages:** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (39.2.2) of this section.
- 39.2.4. Subcontracts:** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (39.2.1) through (39.2.4) of this section and also

a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (39.2.1) through (39.2.4) of this section.

**39.3. For Agreements in Excess of \$150,000 the Clean Air Act and Federal Water Pollution Control Act Provisions Apply**

**39.3.1. Clean Air Act:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The Contractor agrees to report each violation to the Colorado Department of Public Health and Environment (“CDPHE”) and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

**39.3.2. Federal Water Pollution Control Act:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.* The Contractor agrees to report each violation to the CDPHE and understands and agrees that the CDPHE will, in turn, report each violation as required to assure notification to the City, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA and HHS.

**39.4. Suspension and Debarment**

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

**39.4.2.** The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt.

3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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

**39.4.4.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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

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

**39.6. Appendix A, 44 C.F.R. Part 18—Certification Regarding Lobbying:**

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000). The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

**39.6.1.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- 39.6.2.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 39.6.3.** The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- 39.6.4.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 39.6.5.** The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



**39.7. PROCUREMENT OF RECOVERED MATERIALS:** In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:

**39.7.1.** Competitively within a timeframe providing for compliance with the Agreement performance schedule;

**39.7.2.** Meeting Agreement performance requirements; or

**39.7.3.** At a reasonable price.

**39.7.4.** Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA designated items is available at <http://www.epa.gov/cpg/products.htm>.

**39.8. ADDITIONAL PROVISIONS**

**39.8.1.** The Contractor agrees to provide any agency or department of the State of Colorado, the City, the FEMA Administrator, the Comptroller General of the United States, HHS or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

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

**39.8.3.** The Contractor agrees to provide the FEMA Administrator, HHS or authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

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

**39.8.5.** This is an acknowledgement that FEMA or HHS financial assistance will be used to fund the Agreement only. The Contractor will comply will all applicable federal law, regulations, executive orders, FEMA or HHS policies, procedures, and directives.

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

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

**Exhibits**

**Exhibit A - Scope of Work**

**Exhibit B - Certificate of Insurance**

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**Contract Control Number:** HOST-202054457  
**Contractor Name:** THE SALVATION ARMY

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

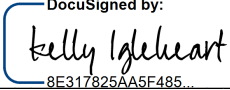
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

HOST-202054457  
THE SALVATION ARMY

By:  \_\_\_\_\_  
8E317825AA5F485...

Name:           kelly igleheart            
          (please print)

Title:           chief secretary            
          (please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
          (please print)

Title: \_\_\_\_\_  
          (please print)



**THE SALVATION ARMY  
SCOPE OF WORK  
HOST 202054457**

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between the City and County of Denver and The Salvation Army to provide 24-Hour Shelter Operations and Services Support for Congregate Shelter at 48<sup>th</sup> Avenue Shelter (“48<sup>th</sup> Avenue Shelter”) and Non- Congregate Activated Respite and Protective Action hotel and motel rooms (“Hotel/Motel Sites”) for people experiencing homelessness within Denver City and County in response to the COVID-19 emergency.

**II. Services**

**A. Shelter at 48<sup>th</sup> Avenue**

1. This funding will assist male guests and provide support services at the temporary 24-hour shelter located at 4338 E 48<sup>th</sup> Avenue, Denver CO, 80216.
2. The staff shall provide services to shelter guests and operations for the general functions of the facility throughout the duration of this contract. General functions and services are further spelled out in this Scope of Work between City and County of Denver and The Salvation Army for the 48<sup>th</sup> Avenue Shelter located at 4338 E 48<sup>th</sup> Avenue, Denver CO 80216.
3. Service Delivery will include providing shelter to individuals depending on space availability and social distancing practices. Space availability shall be determined through bed count and shall not exceed determined and declared safe occupancy, minus the number of staff and other facility occupants, by Community Planning and Development, and/or Denver Fire. Nor shall space availability exceed a bed count approved and declared by City of Denver’s Zoning Administrator.
4. The contractor shall provide Homeless Management Information System (HMIS) intake services for all guests not enrolled in the system. The contractor will provide nightly HMIS entry of services for all guests with scan cards. The contractor will keep a log detailing the following for guests without scan cards or who are unwilling to use HMIS.
  - a. Full name of the guest receiving the mat or bed
  - b. Date that the mat or bed was provided
5. The 48<sup>th</sup> Avenue Shelter will take additional guests during severe weather, as agreed upon by City and County of Denver and The Salvation Army. This is contingent upon available space and using social distancing practices.
6. Three meals a day are provided by the Contractor and must meet all Public Health requirements for food safety.

**B. Hotel/Motel Sites**

1. This funding will assist guests through the provision of milieu, logistical, and operational services at up to 800 rooms at Hotel/Motel Sites located in Denver, Colorado.



**THE SALVATION ARMY  
SCOPE OF WORK  
HOST 202054457**

2. Service delivery will include:
  - a. Monitoring and oversight all operations at the hotels; provide problem solving, trouble shooting, program organization and leadership; be the go to organization on site for internal and external partners.
  - b. Reinforce expectations, provide conflict resolution and accountability for guests using a trauma-informed approach.
  - c. Daily wellness checks and response per protocol to any reported or observed emergency needs.
  - d. Ensure onsite coordination and delivery of meals/snacks to individuals in the recovery center according to schedule.
3. Coordinate and communicate with The Salvation Army, City and County of Denver, Denver Public Health and Environment, Colorado Coalition for the Homeless, and other partners to ensure smooth operations.
4. Initiate and respond to ongoing communication with City of Denver point of contact, hotel staff and Colorado Coalition for the Homeless and related agencies to coordinate services, program entry and exits, and serve as a liaison to referral services not offered by on-site partners.
5. The contractor shall provide Homeless Management Information System (HMIS) program intake and enrollment services for all guests. The contractor will record all meals provided in HMIS. The contractor will keep a log detailing the following for guests who are unwilling to use HMIS.
  - a. Full name of the guest receiving an Activated Respite or Protective Action Unit
  - b. Date that that the unit was provided
  - c. Record of all meals provided to guest
6. Three meals a day are provided by the Contractor and must meet all Public Health requirements for food safety.

**C. Responsibilities of the Contractor:**

1. Carry out the Scope of Services outlined in this contract for the 48<sup>th</sup> Avenue Shelter and Hotel/Motel Sites.
2. Ensure that the number of guests sleeping overnight at the 48<sup>th</sup> Avenue Shelter does not exceed the limits set by the City and County and is consistent with social distancing practices.
3. Ensure all actions and interventions are carried out in a trauma informed and person-centered way.
4. Ensure the rules of the shelter or hotel are followed by communicating the shelter rules to individuals by providing signage that displays the shelter/hotel rules. Signage must be displayed inside the shelter/hotel in locations that are easily seen by shelter guests.
5. Ensure that all Americans with Disabilities Act accessibility guidelines are followed that are defined in the contract agreement.



**THE SALVATION ARMY  
SCOPE OF WORK  
HOST 202054457**

6. Strategically intervene with any person from the shelter/hotel that does not follow the shelter/hotel rules. This may include discharge from the shelter/hotel for any behavior which is considered by the Contractor staff to be disruptive. Reasons for discharge from the shelter might be but are not limited to verbal abuse, theft and/or physical violence.
7. Provide four full-time staff per day/swing shift and three full-time staff per graveyard shift at the shelter location for shelter operations. The contractor will provide appropriate staffing levels 24 hours a day at 4338 E 48<sup>th</sup> Avenue, Denver CO 80216. This shall include a building perimeter walk through no less than four times a day.
8. The contractor will provide all program supplies at the 48<sup>th</sup> shelter including but not limited to linens, sanitation and hygiene products and supplies.
9. Provide physical storage space to be used by the overnight guests that are part of the overnight shelter system.
10. At the 48<sup>th</sup> location, provide a process for outreach teams, members of the Denver Police Department (DPD) and resource providers including agencies and hospitals in the community to contact the contractor on occasions when a man is found outdoors and has need for shelter for the night.
11. Report critical incidents to the outreach coordinator specified by City and County of Denver. Examples of critical incidents include: violence/assaults, permanent restrictions of services, death on site, vandalism of provider or neighborhood property, significant facility issue that impedes provision of service, etc.
12. The contractor, in partnership with City and County of Denver, will establish and execute severe weather protocols to inform identified city agencies and partners of temporary program alterations at the 48<sup>th</sup> shelter invoked by weather patterns or other emergent conditions.

**D. Responsibilities of City and County of Denver at 48<sup>th</sup> Street Shelter**

1. Arrange transportation to the shelter for initial stand-up and transportation out of the shelter upon closure.
2. Provide the name of an outreach coordinator from the city who will serve as a liaison for concerns or questions that the contractor may have.
3. The liaison will serve as the connection between the City and County of Denver, resource providers and the contractor.

**E. Responsibilities of City and County of Denver at Activated Respite and Protective Action Hotels**

1. Contracting room cleaning upon guest exit from facility and sanitation of facility if required by hotel.
2. Contracting bio-hazard services at each hotel location.
3. Managing hotel leases and contracts or partnering with other city contractors that may hold lease agreements for specific facilities.
4. Coverage of any property or damage incurred by hotel guests.



**THE SALVATION ARMY  
SCOPE OF WORK  
HOST 202054457**

5. Contracting adequate security at each hotel location.
6. Provide the name of an outreach coordinator from the city who will serve as a liaison for concerns or questions that the contractor may have.
7. The liaison will serve as the connection between the City and County of Denver, resource providers and the contractor. Coordinate with city agencies or outside partners providing transport services for food to Hotel/Motel Sites.
8. Inform the contractor, outreach teams, the DPD and partners and providers about when shelters will be operational.
9. As appropriate, provide laundry facilities (machines where blankets and towels will be laundered).

**III. Process and Outcomes Measures**

**A. Shelter utilization & length of stay**

1. Nightly occupancy (benchmark equals program capacity)
  - a. Data source: HMIS
  - b. Measure: number of households in each shelter program nightly compared to total shelter capacity (in households).
2. Unique households served
  - a. Data source: HMIS
  - b. Measure: number of unique households served in each shelter program over the reporting period
3. Average length of stay (benchmark is 60 days or less for rapid entry programs and programs serving under 60 people per night)
  - a. Data source: HMIS
  - b. Measure: average and median number of nights of shelter used per household over the reporting period

**B. Housing Attainment**

1. For single adults:
  - a. Data source: HMIS
  - b. Measure: Number and percent of exiting households by destination at exit. Destinations at exit will be grouped into permanent housing, other stable housing outcomes, and outcomes to other locations (e.g., nightly shelter, street, jail, or unknown destinations).

**C. Household Characteristics**

1. Households served:
  - a. Data source: HMIS
  - b. Measures:
    - i. Number of households served each reporting period and duplicated count of households served to date
    - ii. Number of households that exited the program within the reporting





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period and year to date

2. Household characteristics:
  - a. Data source: HMIS
  - b. Measures:
    - i. Number and percent of heads of household by race, ethnicity, and income level at entry (if reported in HMIS for program type)

**D. Data quality**

- a. Collect an HMIS Data Quality Report on the program for each reporting period.
  - i. Data source: HMIS

**E. Program narrative reports**

- a. For each reporting period, the contractor will provide a narrative update on program successes and challenges.

**IV. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area and other designated City staff throughout the term of the agreement. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. HOST will provide performance monitoring and reporting reviews. City staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of the HOST Financial Services Team. HOST will review the quality of the submitted invoice monthly.

**V. Reporting**

The following reports shall be developed and delivered to the City and County of Denver as stated in this section.



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<b>Report Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Report sent to:</b>
Nightly report	Report shall consist of nightly shelter guests being reported into the HMIS system. Within 24 hours, the number of guests must be reported each day.	Nightly	HMIS
Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section III above. Reports must include utilization of beds/mats available each night and the number of recorded incidents of physical harm, if any, involving a guest.	Quarterly	Program Manager
Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement.	Contract End, within 30 days after Term End	Program Manager

**VI. Budget**

Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month following the month services were rendered 100% of the time. Contractor shall use HOST's preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

Invoices shall be submitted to HOST at [hostap@denvergov.org](mailto:hostap@denvergov.org) or by US Mail to:

Attn: Department of Housing Stability  
Financial Services Team  
201 W. Colfax Ave.  
Denver CO 80202



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<b>Contractor:</b>	<b>The Salvation Army</b>	
<b>Term:</b>	<b>4/11/2020-12/31/2020</b>	
<b>Contractor Number:</b>	<b>HOST 202054457</b>	
<b>DIRECT COSTS</b>	<b>Amount</b>	<b>Budget Narrative</b>
<b>Management Across Sites</b>		
Manager & Denver Metro Social Services Director	\$42,443.00	Manager & Denver Metro Social Services Director will work a portion of their time on this program and will be reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
Fringe Benefits	\$15,810.00	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans.
Total Salaries and Fringe	\$58,253.00	
Indirect Costs	\$13,456.00	Indirect Cost Rate 23.1% of Direct Costs of Management
Total Management Across Sites	\$71,709.00	
<b>48th Avenue Direct Costs</b>		
Salaries	\$299,286.00	Multiple direct staff positions will be reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
Fringe Benefits	\$84,757.00	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans.
Meals	\$403,125.00	B(\$3.50), L(\$5.00), D(\$7.75) for 250 per day – these fees are based on actual guests and staff receiving meals for 4/11/2020 through 7/31/2020



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Program Supplies and equipment	\$110,618.00	Program-related materials and equipment including linens (towels, blankets, sheets), one cell phone per site, staff shirts, HMIS scanners, toiletries/hygiene items, cleaning supplies, sterilization/cleaning products and cleaning service. Other direct service items necessary for running 24-hour shelter. All items are billed based on actual costs.
Total Direct Costs at 48th Ave	\$897,786.00	
Indirect Costs	\$207,388.00	Indirect Cost Rate 23.1% of Direct Costs at 48th Avenue
Total Budget at 48th Avenue	\$1,105,174.00	
<b>Hotel Sites</b>		
Salaries	\$1,382,400.00	Contingency for staffing for appx. 690 rooms (8 teams) to be activated with approval from Executive Director of HOST. Multiple direct staff positions will be reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
Fringe Benefits	\$660,000.00	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans.
Contingency for Additional Staff	\$900,000.00	Contingency for staffing for sites with approval from Executive Director. Multiple direct staff positions will be reimbursed at cost. Bonuses, severances or payouts of leave when an employee separates from their job will not be reimbursed.
MEALS	\$2,018,250.00	Meals for guest up to \$16.25 per day, up to 690 rooms for period 7/1/2020-12/31/2020.
Program Supplies	\$96,000.00	Program-related materials including personal protective equipment, toiletries/hygiene items, cleaning supplies, sterilization/cleaning products, program related training. All items are billed based on actual costs.
Total Hotel Sites	\$5,056,650.00	
Indirect Costs	\$1,027,767.00	Indirect Cost Rate 20.325% of Direct Costs at Hotel Sites
Total Budget at Hotel Sites	\$6,084,417.00	
Total All Sites		
Total Budget	\$7,261,300.00	



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**VII. Homeless Management Information System (HMIS) and Reporting:**

The Contractor agrees to fully comply with the rules and regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the HMIS<sup>1</sup>.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC). These are outlined in the COHMIS Policies and Procedures<sup>2</sup>, and the COHMIS Security, Privacy and Data Quality Plan<sup>3</sup>.

Metro Denver Homeless Initiative (MDHI) is the implementing organization for the (HMIS). The HMIS software is called Clarity.

Contractor's aggregate HMIS performance data for projects may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI and/or City and County of Denver will monitor contractor compliance and performance on an annual basis through a site visit.

Technical assistance and training resources for HMIS are available to the Contractor via the COHMIS Helpdesk.<sup>4</sup> HMIS data will be used to monitor performance under this contract in addition to quarterly program narratives.

In order to ensure that reporting on shelter utilization patterns is accurate, the Contractor will ensure that HMIS cards are swiped for all shelter guests nightly. This includes completing intake assessments necessary to create cards for new shelter guests and activities required to replace cards. Intakes for new shelter guests should be completed during nightly check-in whenever possible. If it is not possible to complete intakes during nightly check-in, the Contractor will support new guests in securing a card within 24-hours. Contractor is required to maintain a nightly count of any guests sheltered without recording a shelter service in HMIS and submit this information to City and County of Denver upon request.

<sup>1</sup> <https://www.hudexchange.info/programs/hmis/hmis-data-and-technical-standards/>

<sup>2</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>3</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>4</sup> <https://cohmis.zendesk.com>



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**VIII. HIPAA/HITECH (Business Associate Terms)**

**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 the 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 these additional



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terms 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:

1. 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.
2. 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.
3. 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.



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- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §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 §160.103 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





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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 of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other



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arrangement.

- 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 information in a time and manner to be determined by CITY 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 in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 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



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requirements of the HIPAA Security Rule pertaining 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 described in
- 5. BREACH DISCOVERY AND NOTIFICATION** 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 been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY HOST 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:
  - 5.03.1 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:



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- 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 CFR §164.404, if 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 CFR §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 CFR 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



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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



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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.





STADMED-01

JCOOPER1

**CERTIFICATE OF LIABILITY INSURANCE Exhibit B**

DATE (MM/DD/YYYY)  
11/4/2019

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).

<b>PRODUCER License # 0757776</b> <b>HUB International Insurance Services (COL)</b> 2000 S. Colorado Blvd., Tower 2, Suite 150 Denver, CO 80222	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): <b>(303) 893-0300</b>		FAX (A/C, No): <b>(866) 243-0727</b>
	<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURED</b>  <b>Stadium Medical, Inc.</b>	<b>INSURER A : Admiral Insurance Company</b>		<b>24856</b>
	<b>INSURER B : Old Republic Insurance Company</b>		<b>24147</b>
	<b>INSURER C : Allied World Surplus Lines Insurance Company</b>		<b>24319</b>
	<b>INSURER D :</b>		
	<b>INSURER E :</b>		
	<b>INSURER F :</b>		

**COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
<b>A</b>	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			<b>CO000004795-01</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	EACH OCCURRENCE	\$ 1,000,000
		DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000					
		MED EXP (Any one person)	\$ 5,000					
		PERSONAL & ADV INJURY	\$ 1,000,000					
		GENERAL AGGREGATE	\$ 3,000,000					
		PRODUCTS - COMP/OP AGG	\$ 1,000,000					
		<b>EBL AGGREGATE</b>	\$ 1,000,000					
<b>B</b>	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			<b>MWTB 315128 19</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		BODILY INJURY (Per person)	\$					
		BODILY INJURY (Per accident)	\$					
		PROPERTY DAMAGE (Per accident)	\$					
			\$					
<b>C</b>	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			<b>03098518</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	EACH OCCURRENCE	\$ 5,000,000
		AGGREGATE	\$					
			\$ 5,000,000					
<b>B</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below			<b>MWC 315127 19</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	PER STATUTE OTH-ER	
		E.L. EACH ACCIDENT	\$ 1,000,000					
		E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000					
		E.L. DISEASE - POLICY LIMIT	\$ 1,000,000					
<b>A</b>	<b>Professional Liabili</b>			<b>CO000004795-01</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	<b>Each Claim</b>	<b>1,000,000</b>
<b>A</b>	<b>Professional Liabili</b>			<b>CO000004795-01</b>	<b>11/1/2019</b>	<b>6/1/2020</b>	<b>Aggregate</b>	<b>3,000,000</b>

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

<b>CERTIFICATE HOLDER</b>  Stadium Medical, Inc. 695 Canosa Ct. Unit B Denver, CO 80204	<b>CANCELLATION</b>  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 