

AGREEMENT

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

THIS AGREEMENT (“Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **COLORADO WOMEN'S EMPLOYMENT AND EDUCATION, INCORPORATED**, a Colorado nonprofit with an address of 1175 OSAGE Street, Suite 300, Denver, CO 80204 (the “Contractor”), jointly “the Parties” and individually a “Party.”

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 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 Human Services (“Agency” or “DHS”) or, the Director’s Designee.
- 2. SERVICES TO BE PERFORMED:** The City has been awarded or allocated funds to administer the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 U.S.C. 601 *et seq.*, (PRWORA-CFDA# 93.558), as supplemented by the Colorado Works Program Act of 1997, as amended, C.R.S. § 26-2-701, *et seq.*, (“CWPA”) (together, the “Program”). The Contractor warrants that all activities authorized by this Agreement will be performed in accordance with the Colorado Works Program Act (C.R.S., § 26-2-701, *et seq.*, and its applicable regulations in 9 C.C.R. 2503.6), the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, 42 U.S.C. § 601, *et seq.*, as amended), the applicable terms and conditions of the Colorado Works Program Act Memorandum of Understanding, or any subsequent Memorandum of Understanding between the City and the State of Colorado, as amended, all federal, state, or City rules and regulations promulgated pursuant to the Federal Personal Responsibility and Work Opportunity Reconciliation Act and the Colorado Works Program Act including but not limited to 45 C.F.R. 260, 45 C.F.R. 261, 9 C.C.R. 2503-6 (Volume 3); 11 C.C.R. 2508-01 (Volume 5); and 12 Code Colorado Regulations 2509-1 (Volume 7), and all other relevant laws, directives, regulations, administrative rulings, guidelines and required assurances applicable to the expenditure of TANF funds as these provisions currently exist, or may hereafter be amended, all of which are incorporated herein by reference and made a part of the terms and conditions of this Agreement. As the Director directs, the Contractor shall diligently undertake, perform, and complete all the services and produce all the deliverables set forth on **Exhibit A**, the Scope of Work, (the “Services”) 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 this Agreement and in accordance with the terms of the Agreement. The Contractor agrees to follow formal referral policies of the City's Department of Human Services ("Department"), including adherence to rules addressing services to clients who are denied, due to ineligibility, benefits under the Temporary Assistance for Needy Families program ("TANF"). Any activities that deviate from **Exhibit A** and the objectives identified in this Agreement must receive prior written approval from the Director and shall require a written amendment.

3. **TERM**: The Term of this Agreement ("Term") shall commence on September 1, 2020, and expire, unless sooner terminated, on June 30, 2021. Subject to the Director's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Director.

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**. The Contractor certifies the budget line items in **Exhibit A** contain reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E. The City shall not allow claims for services furnished by the Contractor that are not specifically authorized by this Agreement.

4.2. **Reimbursable Expenses**: There are no reimbursable expenses allowed under the Agreement. All the Contractor's expenses are contained in the budget in **Exhibit A**. The City is not obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred and paid by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

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. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought as well as other 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. Funds will be disbursed in appropriate monthly increments, upon receipt and approval of Contractor's monthly invoices and any City required budget documents or reports. The Contractor's invoices will include all appropriate supporting documentation that may be pertinent to the services performed or expenses incurred and paid under this Agreement. The Contractor's invoices must identify costs and expenses incurred and paid in accordance with the budget contained in **Exhibit A**. Funds

payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only for work performed and expenses incurred and paid during the prior month. Invoices submitted for payment must be received by the Agency as detailed in the attached **Exhibit A** or as directed. Invoices submitted for services rendered that are submitted after such deadline are untimely and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Timesheets must reflect the amount of time, in hours and quarter-hours, attributable to each activity performed under this Agreement. If the Contractor allocates allowable costs to more than one grant, project, or contract, then timesheets must further identify the allocation of allowable costs for each grant, project or contract.

4.4. Timesheets: Timesheets must reflect the amount of time, in hours and tenths of hours, attributable to each activity performed under this Agreement. The Contractor must not allocate costs billed to this Agreement to another federal award unless the City notifies the Contractor in writing that that the City has shifted costs that are allowable under two or more federal awards in accordance with existing federal statutes, regulations, or the terms and conditions of an applicable federal award. Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind the Contractor, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of an applicable Federal award or the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).”

4.5. Maximum Contract Amount

4.5.1. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Seven Hundred Seventy Thousand Dollars (\$770,000.00) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.

4.5.2. 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.

4.5.3. If, as a result of any audit or program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Contractor shall be responsible to indemnify and save harmless the City, its officers, agents and employees, from and against all disallowed costs.

4.6. Budget Modifications: Budget line items may only be modified in accordance with Budget Modification Policy No. 1703-495, as amended. Notwithstanding the preceding sentence, each modification to **Exhibit A** shall not take effect until approved in writing in accordance with Budget Modification Policy No. 1703-495. A modification to **Exhibit A** that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by both Parties in the same manner as this Agreement.

5. EXAMINATION OF RECORDS AND AUDITS: Any authorized agent of the City, including the City Auditor or his or her representative and any federal or state auditor, 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 five (5) years after the final payment under the Agreement 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.

6. REPORTS/CORRESPONDENCE

6.1. Reports and Closeout Procedures: The Contractor shall provide the Agency with the reports described in **Exhibit A** in such a format as may be designated by the City. Reports may be submitted electronically by disk or e-mail, followed by hard copy transmittal. In addition, the Contractor shall comply with all contract closeout procedures directed by the Director to be performed under this Agreement for final reimbursement, including but not limited to final review of payments, invoices, referrals, and required reporting documents, including close-out signature. To complete closeout, the Contractor shall timely provide the City with all deliverables, including documentation, and the Contractor's final reimbursement request or invoice.

6.2. Correspondence: All reports and other written correspondence concerning procedural or administrative contract matters (other than the notices required to be provided to the Director and others as described below in NOTICES) shall be delivered electronically to DHS_Contracting_Services@denvergov.org, or by U.S. Mail to:

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

Invoices shall be delivered electronically to DHS_Contractor_Invoices@denvergov.org or by U.S. Mail to:

Attn: Financial Services
Denver Department of Human Services
1200 Federal Boulevard
Denver, Colorado 80204

7. PERFORMANCE MONITORING/INSPECTION: The Contractor shall permit the Director to monitor and review the Contractor's performance under this Agreement. The Contractor shall make available to the City for inspection all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, payrolls and other data, whether in hard copy or electronic format, used in the performance of any of the services required hereunder or relating to any matter covered by this Agreement to coordinate the performance of services by the Contractor in accordance with the terms of this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with the services to be provided under this Agreement. The Contractor agrees that the reporting and record keeping requirements specified in this Agreement are a material element of performance and that if, in the opinion of the City, the Contractor's record keeping practices and/or reporting to the City are not conducted in a timely and satisfactory manner, the City may withhold part or all payments under this Agreement until such deficiencies

have been remedied. In the event of a withheld payment, the City agrees to notify the Contractor of the deficiencies that must be corrected in order to bring about the release of the withheld payment.

8. STATUS OF CONTRACTOR: The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. The Contractor, regardless of reference or title herein, may be a subrecipient as defined in 2 C.F.R. Part 200, *et seq.* The Contractor's actual designation as either a contractor or subrecipient is contained in the attached **Exhibit A**.

9. TERMINATION

9.1. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) 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.

9.2. 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.

9.3. 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.

9.4. 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."

9.5. If the funding agreement between the City and the applicable state or federal funding entity is terminated for any reason, the total amount of compensation to be paid to the Contractor under this Agreement shall be reduced effective as of the date of termination of the funding agreement and the Parties will modify or terminate this Agreement as appropriate.

9.6. Additionally, if the Contractor fails to comply with any terms of the applicable federal or state award, then the City may, in its discretion or at the direction of the funding entity, terminate this entire Agreement or any part of this Agreement.

10. **REMEDIES FOR NONCOMPLIANCE**: If the Contractor does not correct an identified default within the specified timeframe, then the City may impose any or all the following remedial actions, in addition to all other remedial actions authorized by law:

10.1. Withhold any or all payments to the Contractor, in whole or in part, until the necessary services or corrections in performance are satisfactorily completed during the authorized period to cure default;

10.2. Deny all requests for payment and/or demand reimbursement from the Contractor of all payments previously made to the Contractor for those services or deliverables that have not been satisfactorily performed and which, due to circumstances caused by or within the control of the Contractor, cannot be performed or if performed would be of no value to the Program. Denial of requests for payment and demands for reimbursement shall be reasonably related to the amount of work or deliverables lost to the City;

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

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

10.5. Refuse to award the Contractor, in whole or in part, all additional funds for expanded or additional services under the Program;

10.6. Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for the Contractor; and/or

10.7. Modify, suspend, remove, or terminate the Agreement, in whole or in part. If the Agreement, or any portion thereof, is modified, suspended, removed, or terminated, the Contractor shall cooperate with the City in the transfer of the Services as reasonably designated by the City.

10.8. If this Agreement is terminated as a result of a default by the Contractor, the City may procure, upon such terms and conditions as the City deems appropriate, services similar to those terminated, and the Contractor shall be liable to the City for any damages arising from obtaining similar services.

11. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or

default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.

12. INSURANCE

12.1. 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.

12.2. 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.

- 12.3. 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. 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.
- 12.7. 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.

12.8. 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.

12.9. Professional Liability (Errors & Omissions): The Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

12.10. Cyber Liability: The Contractor shall maintain Cyber Liability coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

12.11. Commercial Crime: The Contractor shall maintain \$1,000,000 in commercial crime insurance coverage. Coverage shall include theft of City's money, securities or valuable property by contractor's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

12.12. Additional Provisions

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

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

12.12.1.2. Defense costs are outside the limits of liability;

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

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

12.12.1.5. No exclusion for sexual abuse or molestation.

12.12.2. For claims-made coverage:

12.12.2.1. 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.

12.12.3. 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.

13. DEFENSE AND INDEMNIFICATION

13.1. 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.

13.2. 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.

13.3. 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.

13.4. 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.

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

14. 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.*

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. CONFLICT OF INTEREST

21.1. 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.

21.2. 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.

22. 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 Contractor at the address first above written, and if to the City at:

Executive Director, Denver Department of Human Services
1200 Federal Boulevard
Denver, Colorado 80204-3221

With a copy to:

Contracting Services Supervisor
Denver Department of Human Services
1200 Federal Boulevard
Denver, Colorado 80204-3221

With an additional copy to:

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

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

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

23.1. 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").

23.2. The Contractor certifies that:

23.2.1. 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.

23.2.2. 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.

23.3. The Contractor also agrees and represents that:

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

23.3.2. 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.

23.3.3. 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.

23.3.4. 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.

23.3.5. 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.

23.3.6. 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.

23.4. 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.

24. 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.

25. 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).

26. 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.

27. 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.

28. FEDERAL PROVISIONS

28.1. Any references to specific federal, state, or local laws or other requirements incorporated into this Agreement are not intended to constitute an exhaustive list of federal, state, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the Services and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Any revisions to such laws, provisions, or regulations shall automatically become a part of this Agreement, without the necessity of either Party executing any further instrument. The City may provide written notification to the Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions. Compliance with all statutes, regulations and other documents is the responsibility of the Contractor. The Contractor shall ensure that all subcontractors also comply with applicable laws. In particular, and not by way of limitation, the Services shall be performed in strict compliance with all laws, executive orders, ordinances, rules, regulations, policies and procedures prescribed by the City, the State of Colorado, and the United States Government, and the following additional requirements contained herein.

The Contractor acknowledges its responsibility to familiar itself with these and other applicable laws and regulations.

28.2. Federal Funds Contingency: The Contractor understands that this Agreement is funded, in whole or in part, with federal funds. The Contractor expressly understands and agrees that its rights, demands and claims to compensation arising under this Agreement are contingent upon the City's receipt of such federal funds and the continued funding by the United States government and the State of Colorado. If such funds or any part thereof are not received, appropriated or allocated by the City, the City and the Contractor may mutually amend the Agreement or the City may unilaterally terminate this Agreement. It is further acknowledged that as of the date of the execution of this Agreement, the total amount to be awarded to the City pursuant to this federal grant program ("Grant Program") may not have been fully determined, finalized, or paid. Should a reduction in City awarded funds under such Grant Program necessitate a reduction to the Contractor's award hereunder, then the City reserves the right to make a *pro rata* reduction affecting all agreements with the City under the City's Grant Program.

28.3. Recovery of Incorrect Payments: If, because of any audit or program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. In any event, the Contractor shall be responsible to indemnify and save harmless the City, its officers, agents and employees, from and against all disallowed costs. The foregoing in no way limits the Contractor's obligation to reimburse the City for any costs or expenses paid under this Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable federal laws, state laws, or the Charter, ordinances, rules, regulations, policies, and Executive Orders of the City and County of Denver. The closeout of a federal award does not affect the right of the federal agency, the State of Colorado, or the City to disallow costs and recover funds because of a later audit or other review.

28.4. Client Records: The use or disclosure by any party of any information concerning a client for any purpose not directly connected with the administration of the applicable award or this Agreement is prohibited except on written consent of the client, their attorney, or parent or guardian.

- 28.5. Provisions Required in Subcontracts:** If the Contractor enters into any subcontracts or subgrant with other individuals or entities and pays those individuals or entities for such goods or services with federal or state funds, the Contractor shall include provisions in its subcontracts or subgrants regarding the federal and state laws identified or referenced in this Agreement. The Contractor retains full responsibility for complying with the terms of this Agreement whether the services are provided directly or by a subgrantee or subcontractor and for including all relevant terms in its subcontracts or subgrants.
- 28.6. Mandatory Disclosures:** The Contractor shall disclose, in a timely manner, in writing to the City and the federal or state awarding agency, all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting the applicable award. The City, the State of Colorado, or the relevant federal agency may impose any penalties for noncompliance allowed under 2 C.F.R. Part 180, 2 C.F.R. § 200.338, and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.
- 28.7. Grievance Policy:** The Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Contractor. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or Services offered by the Contractor. To satisfy this requirement, the Contractor agrees to provide a written “Grievance Policy” as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of Services. The Contractor agrees that a formal “Grievance Policy” will be adopted by its governing body and submitted to the Director for approval at the Director’s discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement.
- 28.8. Debarment:** The Contractor is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. By its signature below, the Contractor assures and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the Director if it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the Contractor shall

provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the City may pursue all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor. The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" in all covered transactions associated with this Agreement. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations. The Contractor is prohibited from hiring any subcontractor to perform work under this Agreement that is currently debarred by the City or any other regulatory authority.

28.9. Prohibited Transactions

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

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

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

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

28.9.5. Byrd Anti-Lobbying: If the Maximum Contract Amount exceeds \$100,000, the Contractor must complete and submit to the Agency a required certification form provided by the Agency certifying that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Contractor must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Additionally, the Contractor shall comply, if applicable, with the lobbying restrictions as described in 24 C.F.R. Part 87 and 2 C.F.R. § 200.450, as amended.

28.10. Nondiscrimination Provisions

28.10.1. Nondiscrimination in Employment: In carrying out its obligations under the Agreement, the Contractor and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with 29 C.F.R. Part 37, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations. The Contractor agrees not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. The Contractor will ensure that all qualified applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training (including apprenticeship), or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. The Contractor agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment. The Contractor will affirm that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of the Contractor, and the Contractor agrees to collect and maintain data necessary to show compliance with the nondiscrimination provisions of this section. The Contractor will incorporate these requirements in all its subcontracts.

28.10.2. Nondiscrimination in Program Participation: The Contractor will comply with any and all applicable federal, state, and local laws that prohibit discrimination in programs and activities funded by this Agreement on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the

Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from all claims, losses, or demands that arise under this paragraph. The Contractor acknowledges the public policy requirement of the U.S. Dept. of Health and Human Services that that no person otherwise eligible to participate in programs and services supplied under this Agreement will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. The Contractor must comply with this national policy requirement with respect to the performance of work and administration of funds provided under this Agreement and for all programs and services supported by U.S. Dept. of Health and Human Services awards as described in 45 C.F.R. Part 75.300(c).

28.10.3. Access to Services for Persons with Limited English Proficiency: The Contractor shall comply with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and its resulting federal guidance, which states that national origin discrimination includes discrimination based on limited English proficiency (“LEP”). To ensure compliance with Title VI, the Contractor must take reasonable steps to ensure that LEP persons have meaningful access to the Contractor’s programs, services and activities. If the Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance. The Contractor acknowledges the City’s Office of Human Rights and Community Partnerships, Office of Sign Language Services (OSLS) oversees access for deaf and hard of hearing people to City programs and services. The Contractor will comply with all requirements and procedures of the OSLS, as amended, concerning the provision of sign language interpreter services for all services provided by the Contractor under this Agreement.

28.10.4. 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.

28.11. Additional Record and Audit Requirements

28.11.1. The Controller General of the United States of America or his authorized representative, any duly authorized representative of the State of Colorado, if applicable, shall, until the latter of five (5) years after the final payment under this Agreement, expiration of the applicable statute of limitations, or final resolution of any pending audit, whichever is longer, have access to and the right to examine any pertinent books, documents, papers and records of the Contractor involving transactions related to this Agreement. The right of access includes timely and reasonable access to the Contractor's personnel for interview and discussion related to such documents.

28.11.2. The Contractor shall keep true and complete records and shall annually furnish an accurate statement for the preceding calendar year, of all business transactions under this Agreement, which statement shall be certified by an authorized representative of the Contractor to be correct. The Contractor agrees to establish and maintain a system of bookkeeping satisfactory to the federal government, the State of Colorado, if applicable, or the City's Auditor. The Contractor further agrees to give any authorized representatives of the federal government, the State of Colorado, if applicable, or the City access during reasonable hours to such books and records. Any representative of the federal government, the State of Colorado, if applicable, or the City's Auditor shall have the right at any time, and from time to time, to audit all the books of account, bank statements, documents, records, tax returns, papers and files of the Contractor, related to this Agreement, whether prepared manually or electronically, and the Contractor, upon request, shall make all such matters available for examination. If said records exist in electronic form, the Contractor shall maintain a means of transferring said records to hardcopy form. The Contractor's obligation to retain the above records shall expire upon the latter of five (5) years, expiration of the applicable statute of limitations, or final resolution of any pending audit by the City, whichever is longer.

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

28.11.4. The Contractor, the applicable federal agency, the Office of Counsel or Comptroller General of the United States, the State of Colorado, if applicable, or any of their duly authorized representatives shall, until three (3) years after final payment under this Agreement, have access to and the right to examine any of the City's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

28.11.5. The periods of access and examination above for records relating to (1) litigation or settlement of claims arising from the performance of this Agreement, or (2) costs, expenses, or payments under this Agreement to which the Contractor's statement for any period has been delivered to the City, State of Colorado, the applicable federal agency, the Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

28.11.6. The Contractor shall promptly submit to the City a copy of any final audit report of an audit performed on the Contractor records that relates to or affects this Agreement or the services provided, whether the audit is conducted by the Contractor or a third party. The Contractor shall allow the City to perform all monitoring required by the Uniform Guidance, based on the City's risk analysis of Contractor and this Agreement. Additionally, if the Contractor is required to perform a single audit under 2 C.F.R. 200.501, *et seq.*, then the Contractor shall submit a copy of the results of that audit to the City within the same timelines as the submission to the federal government.

28.12. **Obligations Pursuant to The Applicant Verification Statute:** This Agreement is subject to C.R.S. § 24-76.5-101, as amended, and any rules adopted pursuant thereto (together the "Applicant Verification Statute"). As required by law, the City will verify the lawful presence in the United States, of each natural person eighteen (18) years of age or older (the "Applicant"), who applies for federal, state or local public benefits conferred pursuant to this Agreement. The Contractor represents and warrants that it shall only use TANF funds to provide Services to eligible recipients referred to and verified by the City. The Contractor's compliance is expressly made a contractual condition of this Agreement. Any expenditure by the Contractor in violation of the Applicant Verification Statute, or any related federal or state laws, rules, regulations or guidelines or this Agreement are unauthorized expenditures subject to reimbursement.

28.13. **Additional Compliance:** The Contractor is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. If the Contractor is receiving federal funds under this Agreement the following federal laws, as amended and by way of

illustration, may apply: Equal Opportunity Employer Executive Order, the Fair Housing Act, the Housing and Urban Development Act of 1965, the Uniform Relocation Act, Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Hatch Act, the Americans with Disabilities Act, the Deficit Reduction Act, the Federal Funding Accountability and Transparency Act of 2006, Rights to Inventions as stated in 37 C.F.R. Part 401, the Rehabilitation Act of 1973, the Housing and Community Development Act of 1974, the Age Discrimination Act, the Architectural Barriers Act, Title IX of the Civil Rights Act of 1964, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the Violence Against Women Reauthorization Act of 2013, the Solid Waste Disposal Act, the Copeland "Anti-Kickback" Act, the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, the Clean Air and Federal Water Pollution Control Act and other applicable Environmental Protection Agency regulations, the Byrd Anti-Lobbying Amendment, the Federal Energy Policy and Conservation Act, the Federal Office of Management and Budget's Circulars and Uniform Guidance, the Single Audit Act of 1984, and the Debarment and Suspension Executive Orders. The Contractor must establish policies and procedures for procurement that comply with 2 C.F.R. 200.318, *et seq.*

29. 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.

30. 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.

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

32. INTELLECTUAL PROPERTY RIGHTS

32.1. Ownership: Except where the City has agreed in writing to accept a license or where expressly prohibited by federal law, the City and the Contractor intend that any and all copyright, trademark, service mark, trade secret, patent, patent applications, or other intellectual property or proprietary rights, both registered and unregistered, whether existing now or in the future ("Intellectual Property") in and to the

Services, any other affiliated services supplied by the Contractor, directly or indirectly, and any creative works, inventions, discoveries, know-how, social media accounts, websites, domain names, and mobile applications, and any improvements to and derivative works of any of the foregoing, created, purchased, licensed, used, or supplied by the Contractor, a subcontractor, or a third-party contractor in connection with the Services are the sole property of the City.

32.2. Copyrightable Intellectual Property: The City and the Contractor intend that Intellectual Property includes without limitation any and all records, case files, databases, materials, information, text, logos, websites, mobile applications, domain names, templates, forms, documents, videos, podcasts, newsletters, e-mail blasts, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, multimedia or audiovisual materials, negatives, specifications, software, data, products, ideas, inventions, templates, knowhow, studies, reports, and any other work or recorded information created, purchased, licensed, used, or supplied by the Contractor, or any of its subcontractors or other third-party contractors, in connection with the Services, in preliminary or final forms, in paper or electronic format, and on any media whatsoever (collectively, "Materials"). The Contractor shall not use, willingly allow another to use, or cause any Materials to be used for any purpose other than for the performance of the Contractor's duties and obligations under this Contract without the prior, express written consent of the City. To the extent permitted by the U.S. Copyright Act, 17 U.S.C. §101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all rights, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

32.3. The Contractor shall not create, purchase, license, supply or use any logos, software programs, software as a service, websites, mobile applications, domain names, social media accounts, or third party software, social media, applications or websites in connection with the Services or any other affiliated services supplied by the Contractor unless the program, product or service, in each case, is specifically identified as an expense or the Contractor has obtained the Director's prior written permission to create, purchase, license, supply or use the program, product or service and otherwise complied with all requirements of the City concerning said matter. The Contractor shall maintain and keep current an inventory, in such format as designated by the Director, of all such approved Materials. The Contractor will submit a copy of the most current version of the Materials inventory with the Contractor's periodic

request for payment. The City will have final decision making authority to determine and/or edit the final content, design, layout, format, and “look and feel” of any such Materials. The Contractor will ensure that all Materials, or any portion or version thereof, do not, directly or indirectly, in whole or in part, infringe upon any third party’s copyright, trademark, patent, or other intellectual property rights, title or interests.

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

32.5. Third-Party Products, Materials and Processes: The Contractor represents and warrants that the Services, and any other affiliated services supplied by the Contractor in connection with this Agreement, will not infringe upon or violate the City’s Intellectual Property, any other rights held by the City to any intellectual property, or the intellectual property or proprietary rights of any third party. If the Contractor employs any third-party product, design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the third-party patentee or copyright owner. The Contractor shall defend, indemnify, and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of Services. Where the Services, or any other affiliated services provided by the Contractor, contain false, offensive, or disparaging content or portray the City, its appointed and elected officials, agents and employees, or any third party in a disparaging way, either as solely determined by the City or the third party, as appropriate, the Contractor will immediately remove the false, offensive, or disparaging content. If the Contractor fails to do so, the City will have the right, at the City’s sole election, to immediately enforce any remedies available to it under this Agreement or applicable laws. The requirements and obligations contained herein will not apply to a specific third-party patented device, material or processes that the Director has directed, in writing, the Contractor to use.

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

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

33. 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.

34. 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.

35. CONFIDENTIAL INFORMATION

35.1. 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.

35.2. Use and Protection of Proprietary Data or Confidential Information

35.2.1. 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 Director and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

35.2.2. 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 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.

35.2.3. 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.

35.3. 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.

35.4. 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.

35.5. Contractor’s Confidential Information; Open Records: If the City is furnished with proprietary data or confidential information that may be owned or controlled by the 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., C.R.S. § 24-72-201, *et seq.* 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.

36. PERSONAL INFORMATION AND DATA PROTECTION

36.1. “Data Protection Laws” means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information (as defined below); and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating

unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements. Further, and not by way of limitation, the Contractor shall provide for the security of all city data, and Personal Information if applicable, in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (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 CJ, (iv) the Colorado Consumer Protection Act. § 6-1-101 *et seq.*, C.R.S., (v) the Children’s Online Privacy Protection Act (COPPA) 15 U.S.C. § 6501, *et seq.*, (vi) the Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232(g), (vii) § 24-73-101, *et seq.*, C.R.S., and (viii) Colorado House Bill 18-1128.

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

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

36.4. Software Programs; Security of Personal Information and access to Software Programs: The Contractor will use the software programs designated by the City to collect, use, process, store, or generate all data and information, with or without Personal Information, received as a result of the Contractor’s services under this Agreement. The Contractor will fully comply with all requirements and conditions associated with the use of said software programs as provided by the City. In addition, the Contractor will establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the

security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, officers, agents, and subcontractors of the Contractor, if any, comply with all of the foregoing. The Contractor shall also provide for the security of all Personal Information in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the Children's Online Privacy Protection Act, (ii) § 24-73-101, *et seq.*, C.R.S., and (iii) Colorado House Bill 18-1128. The Contractor shall submit to the Director, within fifteen (15) days of the Director's written request, copies of the Contractor's policies and procedures to maintain the confidentiality of Personal Information to which the Contractor has access.

36.5. Confidentiality; No Ownership by the Contractor: Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated as the result of the services to be provided under this Agreement will be treated by the Contractor as highly confidential information. The Contractor will have no right, title, or interest in any Personal Information or any other data obtained or supplied by the Contractor in connection with the services to be provided under this Agreement. The City shall own all information, and other work product, with or without Personal Information, developed or obtained by the Contractor pursuant to this Agreement ("City Work Product"). The Contractor has an obligation to immediately alert the City if the Contractor's security has been breached or if the Contractor is aware of any unauthorized disclosure of Personal Information. This section will survive the termination of this Agreement.

36.6. Contractor Use of Personal Information and City Work Product: The Contractor will take all necessary precautions to safeguard the storage of Personal Information and City Work Product including without limitation: (i) keep and maintain Personal Information and City Work Product in strict confidence and in compliance with all applicable Data Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information or City Work Product solely and exclusively for the purpose of providing the services hereunder, such use and disclosure being in accordance with this Agreement, and applicable law; (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information or City Work Product for the Contractor's own purposes or for the benefit of anyone other than the City without the prior written consent of the City and the person to whom the Personal Information pertains; and (iv)

not engage in “data mining” of Personal Information or City Work Product except as specifically and expressly required by law or authorized in writing by the City. This section will survive the termination of this Agreement.

36.7. Employees and Subcontractors: The Contractor will ensure that, prior to being granted access to Personal Information or City Work Product, Contractor Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees’ duties and the sensitivity of the data they will be handling. Only those Contractor Staff who have a direct need for Personal Information, City Work Product, or Confidential Information shall have access to any information provided to the Contractor under this Agreement. Prior to allowing any Contractor Staff to access or use any Personal Information, City Work Product, or Confidential Information, the Contractor shall require any such Contractor Staff to review and agree to the usage and access terms outlined in this Agreement. The Contractor will inform its Contractor Staff 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 Personal Information, City Work Product, 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. Unless the Contractor provides its own security protection for the information it discloses to a third-party service provider, the Contractor shall require the third party service provider to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Personal Information, City Work Product, or Confidential Information disclosed and reasonably designed to protect Personal Information, City Work Product, or Confidential Information from unauthorized access, use, modification, disclosure, or destruction. This section will survive the termination of this Agreement.

36.8. Loss of Personal Information or City Work Product: In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Personal Information or City Work Product, the Contractor will, as applicable: (i) notify the affected individual and the City as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (ii) cooperate with the affected individual and the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the affected individual or the City; (iii) in the case of Personal Information and if required by applicable law,

at the affected individual's sole election: (A) notify the affected individuals in accordance with any legally required notification period; or, (B) reimburse the affected individual for any costs in notifying the affected individuals; (iv) in the case of Personal Information and if required by applicable law, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law; (v) perform or take any other actions required to comply with applicable law as a result of the occurrence; (vi) indemnify, defend, and hold harmless the City and the affected individual for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City or the affected individual in connection with the occurrence; (vii) be responsible for recovering lost data and information in the manner and on the schedule set forth by the City without charge to the affected individual, and (viii) provide to the City and the affected individual a detailed plan within ten (10) calendar days of the occurrence describing the measures the Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, will comply with applicable law, be written in plain terms in English and in any other language or languages specified by the affected individual, and contain, at a minimum: (i) name and contact information of the Contractor's representative; (ii) a description of the nature of the loss; (iii) a list of the types of data involved; (iv) the known or approximate date of the loss; (v) how such loss may affect the affected individual; (vi) what steps the Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; (vii) contact information for major credit card reporting agencies; and (viii) information regarding the credit and identity monitoring services to be provided by the Contractor. This section will survive the termination of this Agreement.

36.9. Data Retention and Destruction: Using appropriate and reliable storage media, the Contractor will regularly backup all City Work Product and Personal Information used in connection with this Agreement and retain such backup copies consistent with the Contractor's data retention policies. Upon termination of the Agreement, at the City's election, the Contractor will either securely destroy or transmit to City the City Work Product in an industry standard format. Upon the City's request, the Contractor will supply City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used. With respect to City Work Product controlled exclusively by the Contractor, the Contractor will immediately preserve the state of the Personal Information or City Work Product at the time of the request and place a "hold" on Personal Information or City Work Product destruction or disposal under its usual records retention policies of records that include Personal Information or City Work Product, in response to an oral or written request from City indicating that those records may be

relevant to litigation that City reasonably anticipates. Oral requests by City for a hold on record destruction will be reduced to writing and supplied to the Contractor for its records as soon as reasonably practicable under the circumstances. City will promptly coordinate with the Contractor regarding the preservation and disposition of these records. The Contractor shall continue to preserve the records until further notice by City. This section will survive the termination of this Agreement.

36.10. No Other Databases: The Contractor will not establish or maintain a separate database containing Personal Information or City Work Product to provide the services under the Agreement. This section will survive the termination of this Agreement.

36.11. Data Transfer Upon Termination: Upon termination or expiration of this Agreement and City's request, the Contractor will ensure that all Personal Information and City Work Product is securely transferred to City, or a party designated by City, within thirty (30) calendar days. The Contractor will ensure that the data will be provided in an industry standard format. The Contractor will provide City with no less than ninety (90) calendar days' notice of impending cessation of its business or that of any the Contractor subcontractor and any contingency plans in the event of notice of such cessation. In connection with any cessation of the Contractor's business with its customers, the Contractor shall implement its contingency and/or exit plans and take all reasonable actions to provide for an effective and efficient transition of service with minimal disruption to City. The Contractor will work closely with its successor to ensure a successful transition to the new service or equipment, with minimal downtime and effect on City, all such work to be coordinated and performed in advance of the formal, final transition date mutually agreed upon by the Contractor and City. This section will survive the termination of this Agreement.

36.12. Personal Information Protection: If the Contractor receives Personal Information under this Agreement, the Contractor shall implement and maintain reasonable written security procedures and practices that are appropriate to the nature of the Personal Information 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 Personal Information disclosed and reasonably designed to help protect Personal Information 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 Personal Information under this Agreement shall develop a written policy for the destruction of such records by shredding, erasing, or otherwise modifying Personal Information to make it unreadable or indecipherable when the records are no longer needed.

- 37. TIME IS OF THE ESSENCE:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- 38. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed to define or limit the terms and provisions hereof.
- 39. 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.
- 40. 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.
- 41. 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.
- 42. 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.

Exhibits

Exhibit A - Scope of Work

Exhibit B - Certificate of Insurance

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Contract Control Number: SOCSV-202055351-00
Contractor Name: COLORADO WOMEN'S EMPLOYMENT AND EDUCATION,
INCORPORATED

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:

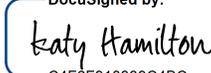
Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number: SOCSV-202055351-00
Contractor Name: COLORADO WOMEN'S EMPLOYMENT AND EDUCATION,
INCORPORATED

DocuSigned by:

C4F6F910339C4BC...
By: _____

Katy Hamilton
Name: _____
(please print)
President & CEO
Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Colorado Women’s Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Services between Denver Department of Human Services (DHS) and the Center for Work Education and Employment (CWEE), to provide intensive services to assist Colorado Works/TANF participants that require support with personal and family stabilization, case management, and skills development prior to job placement.

Further, CWEE is identified as a sub-recipient for the purposes of this agreement and is therefore subject to all terms, conditions and regulatory requirement required of federal funding sub-recipients per 2 CFR Part 200, as well as specific rules and regulations for the TANF program.

II. BACKGROUND

In 1996, Congress explicitly envisioned the Temporary Assistance for Needy Families (TANF) program as a critical support for families to gain the needed skills and knowledge to care for children in their own home and to promote job preparation and access to work. TANF is also often the only source of financial support for families and can be a portal to other critical safety net programs, including Supplemental Security Income (SSI), the Supplemental Nutrition Assistance Program (SNAP)/food stamps, child care assistance (CCAP), and Medicaid. States can use TANF creatively and provide supports and services directly responsive to the needs of needy families.

The goal of the Colorado Works/TANF (CW) Program in Denver County is to promote the long-term economic well-being of our community, through preparation for and attachment to employment for those who are able to work. DHS’ CW program is designed to engage individual participants with the services, opportunities, resources and tools needed to successfully move toward stability and self-sufficiency. Denver’s Department of Human Services (DHS) facilitates robust community gains by partnering with local businesses, educational institutions, and other service providers in the area, and advocating for participants as a vital part of the DHS support network. For those who are not readily able to work, Denver’s CW program offers supports and services intended to increase employability and promote family safety and stability.

Science tells us that it is never too late to help adults build up their core capabilities, and that we can have a life-long impact if adults support the development of these skills in childhood. When adults have opportunities to build the core skills that are needed to be productive participants in the workforce and to provide stable, responsive environments for the children in their care, our economy will be stronger, and the next generation of citizens, workers, and parents will thrive. We also know that programs that provide support and “bridging” by crossing barriers of race, gender and class and “bonding” by tying participants and staff into a supportive community has positive long-term impact. DHS realizes the importance of these services and supports and is seeking them for those most in need in our community, including the link to social capital and its effectiveness in supporting low-income persons through the transition to employment.

DHS’ Family and Adult Assistance Division (FAAD) is responsible to administer eligibility for Colorado Works pursuant to Colorado Revised Statutes (CRS) at section 24-4-103 (11) CRS, and Colorado Code of Regulations (CCR), 9-CCR-2503-6. DHS and contracted vendors may share

Colorado Women’s Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

responsibility for workforce case management, depending on participant job readiness, which includes workforce data entry into the Colorado Benefits Management System (CBMS).

In response to this need and the flexibility afforded under the legislation, DHS is seeking to improve adult and child outcomes for the most vulnerable families entrusted in our care. With that vision in mind, connection to these services and supports is done by conducting a thorough assessment of the family’s needs and especially those needs that are directly connected to the adults in the household related to their employability.

TANF participants will require in-depth and ongoing assessment of barriers and job readiness levels. From the assessments, Individualized Plans will be developed with the participant that offer intensive supports and services that shall lead to improved economic well-being.

Households are determined at application to be either eligible or ineligible for TANF assistance. Adults who are considered work-eligible are provided with individualized services and supports to promote their family's economic well-being. All TANF eligibility for applicants is determined by DHS. DHS assesses initial work-eligibility to determine which work activities, services and supports available in the program are the best fit for the participant, as well as what agency/contractor might serve the participant best based on their scope of services. DHS will make available key determinants and assessment results for all participants referred to CWEE.

Adult members of the assistance unit are limited to 60 months of TANF assistance during their lifetime. Services provided will need to be achievable within this 60-month limit with the understanding that many TANF participants have already used a portion of their lifetime limit, or extensions may be provided on a case-by-case basis.

III. Services and Programming

A. Services

To support and engage TANF eligible participants to develop strategies that address individual and family needs, DHS will work jointly with CWEE to provide the following:

1. In depth assessment, family counseling, and work support programs associated with the implementation and operation of the TANF Program for households classified as needing Tier II services. Tier II participants have at least some marketable vocation skills, demonstrated commitment to gain and maintain employment and work experience.
2. Tier II services include but are not limited to: intensive case management, life and work skills classes, career exploration, Adult Basic Education (ABE), GED/HSE attainment, computer literacy courses leading to industry recognized credentials, and ongoing post-job placement services.
 - i. Tier II households may not initially meet full participation within TANF due to short term barriers that are being resolved
 - ii. It is anticipated that long term family income will be through employment earnings

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- iii. The tier system will be used as a guideline to help determine the most appropriate initial placement with an agency/contractor that can best meet the participant's needs. DHS' goal is to establish a continuum of services and understands a participant's circumstances will evolve over time. This may result in a participant changing tier levels and service providers based on milestones achieved and circumstance changes.

Menu of services to be provided by CWEE

- a) Case Management Services
 - i. Orientation
 - 1. TANF participants will attend an initial one-on-one initial orientation to meet with their case manager
 - ii. Intermittent assessments may include:
 - 1. Literacy and numeracy
 - 2. Motivation
 - 3. Health and mental health
 - 4. Housing, transportation, childcare barriers and other barriers to getting and maintaining employment
 - 5. Employment skills, interests, and experience
 - 6. Career readiness
 - 7. Others as needed.
 - iii. Individual Plan development and goal-setting, and goal-review for ongoing support and engagement in the Colorado Works/TANF program
 - iv. Barrier reduction/removal planning and implementation based on assessed needs and participant goals/plans. Services and supports in this area may include:
 - 1. Overcoming trauma through counseling
 - 2. Increasing confidence and self-esteem
 - 3. Building executive functioning
 - 4. Building community and social capital
 - 5. Supportive services issuance to provide short-term financial assistance
 - 6. Referrals for family needs and to stabilize the household
 - v. Ongoing, monthly data entry and TANF compliance monitoring
 - vi. Individual or group clinical therapy
- b) Employment Skills Training and Employment Services
 - i. Personal skills, workplace skills, and computer and technical literacy training
 - 1. This curriculum may include up to 50-60 classroom hours, plus homework
 - ii. Resume development
 - iii. Job search preparation, job search assistance, job development

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- iv. Job retention support and monitoring for participants actively receiving TANF
 1. Participants who are no longer TANF eligible may receive ongoing supports and services from CWEE without reimbursement from DHS
- c) High School Equivalency (HSE) programming
 - i. Participation in HSE preparation classes in-person
 - ii. Participation in HSE preparation classes online with CWEE support/monitoring
 - iii. Support arranging and taking HSE tests
- B. Programming
 - a) It is anticipated that most TANF participants will receive services from CWEE for six to nine months to complete their programming
 - d) Goals of CWEE's programming include:
 - i. Completion of the High School Equivalency exam and diploma attainment for those who choose that pathway
 - ii. Gaining and maintaining quality employment
 1. Quality employment is defined as positions that provide at least four of these benefits:
 - predictable scheduling,
 - 30 or more hours per week,
 - offer career-advancement opportunities,
 - pay above Denver County's minimum wage,
 - are located within one mile of public transit, and
 - offer benefits
- C. DHS and CWEE will work collaboratively to ensure services are available to participants in a variety of fashions. Programming offered via CWEE's service menu have the ability to be offered virtually, not just in person. In the event CWEE's curriculum requires in person components, CWEE will work with DHS and other partners to ensure these in person services are appropriate, safe, and compliant. The content of all virtual programming can be cross-walked to the in-person services with minimal disruption to participants and the targeted outcomes to be achieved.
- D. CWEE will be assigned as the case manager of record. As the case manager of record CWEE Case Managers will provide ongoing case management supports including ongoing assessment, development of Individualized Plans (IP) with participant, and engagement into workforce development activities that lead to employment. All case management activities and program engagement will be documented in CBMS to demonstrate program compliance as well as participant progress.
- E. Should any TANF participant object to the religious character of any TANF service provider, the participant shall be entitled to receive services from an alternative provider to which the individual has no religious objection.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

F. This contract allows for any TANF contractor to provide an alternative means for benefits, assistance, or services if an individual objects to being served by the religious provider chosen as a contractor by the county. Contract agencies can directly refer TANF clients to an alternative provider with reasonable accessibility to services and the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State or county. Alternately, the contractor shall refer the TANF applicant or recipient back to the county department for appropriate rereferral.

G. Contractor Responsibilities

1. Hire and manage qualified and trained staff to provide quality TANF case management to referred populations that present with barriers and other needs that are typically beyond the scope of staff at DHS.
2. Provide intensive case management services and supports to TANF participants who need additional and more intensive specialized assistance to prepare them to find and keep employment.
3. Provide budget oversight of TANF funding to ensure incurred costs are compliant with State and federal statutes and regulations.
4. Provide administration of TANF program and ensure State and federal statutes and regulations are implemented and followed.
5. Work closely with DHS on collaboration efforts related to TANF goals, outcomes, policies, and procedures.
 - a. Provide regular reporting (financial, programmatic or outcomes)
 - b. Participate in training and policy development activities.
6. CWEE will utilize the designated data systems, including but not limited to, the Colorado Benefits Management System (CBMS) for TANF customers. CBMS shall be used to track all TANF participant information. CBMS must be used in accordance with the DHS and CDHS written policies and procedures. Each staff person will be given the minimum access required to perform their specific role under the Contract. CWEE agrees to abide by and require all staff users to abide by the City and County of Denver data confidentiality and security agreements.
 - a. DHS and the State will coordinate CBMS security access setup and controls.
 - b. All requests should be routed through the DHS CBMS Help Desk to ensure that State and internal processes are followed.
7. Protect DHS client data, by complying with the Health Insurance Portability and Accountability Act (HIPAA).
Protect data by complying with all provisions of 42 C.F.R. Part 2, relating to substance abuse treatment and records.

H. **Audits.** CWEE and DHS will work collaboratively to collect and retain all Colorado Works/TANF program information necessary to ensure compliance with the requirements of any applicable state or federal law and program regulations. This

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

includes all case management records (paper and automated), which includes, but is not limited to, all assessments, Individual Plans (IPs), workforce development activities, participation tracking sheets, contracted services, and workforce counseling administered by CWEE. CWEE and DHS will cooperate with each other in responding to inquiries that either agency may receive from local, state or federal authorities regarding any programs that CWEE is responsible for administering pursuant to this agreement. DHS will notify CWEE in advance of every TANF related audit and CWEE will have a representative present at such audit. CWEE will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

I. Secondary Stage Supervisory Case File Reviews

In accordance with the regulations at 45 CFR 261.63 – Colorado's Work Verification Plan requirements, CWEE will be required to review a random sample of cases each month with an approved review tool. The number of cases vary and are based upon Denver's share of the monthly statewide sample of work-eligible individuals. The Secondary Stage Supervisory Review will be conducted by the CWEE case management supervisor or their designee. All case reviews will be completed via County technology (WMS) or other designated tool and adhere to all applicable timeframes for completion. At minimum, the following shall be subject to verifications through this process:

1. Proper work activity utilization based on federal regulatory definitions and per Colorado's approved Work Verification Plan and data entry into CBMS
2. Monthly timesheet or other allowable work hour documentation included in the case record
3. Excused absences and holidays are being applied consistently per state and county policy
4. The Fair Labor Standards Act is properly applied to community service and community work experience

J. Management Site Visits and other Audits

Denver County and/or the State of Colorado may conduct regular on-site reviews of Colorado Works contracts and related services. These on-site reviews are meant to provide service providers with direct feedback on the implementation of their program and include a summary of the findings from the ongoing case file reviews. Denver County and/or state staff will analyze and review contractor policies, plans, procedures, contracts/sub-contracts, and other relevant documents and administrative data that describe and inform program implementation, strengths and opportunities for improvement. The focus of the site visit is primarily one of information sharing, technical assistance, and training with county and/or state staff representing various areas of program operations (finance, budget, policy, program, training and technical assistance).

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

For other formal federal, state, and county audits, CWEE will provide accurate and complete case files within the DHS timeline requirements. CWEE will be responsible for repayment to DHS of any disallowed costs resulting from a final audit action imposed by CDHS or other regulatory authority pertinent to the work at CWEE. CWEE will be responsible for following up on auditor findings, providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor CWEE's response to audit related matters to ensure ongoing compliance. DHS and CWEE will work with local, State and Federal auditors as requested. CWEE will provide a designee as a point of contact for monthly quality meetings and for audits.

- K. **Records.** CWEE will comply with written State and DHS policies and processes provided to CWEE by DHS related to case file maintenance, case retention and storage. At a minimum, CWEE will maintain all client documentation in client case files according to stated case order policy provided by DHS. No client case information will be maintained outside of the client's electronic case files. Client documentation will be dropped off during normal business hours at one of the three Denver Human Services locations (Richard T. Castro, East Office, or Arie P. Taylor buildings) for scanning no more than five (5) days after the document was created). CWEE will have remote access to active client case files within its work area required to perform case management functions. Client documentation includes but is not limited to, all individual plans, verification of engagement and participation, and any other documents used as part of the Colorado Works/TANF program. DHS will provide CWEE with a copy of all currently existing written case file storage policies within 30 days after the execution of this contract. Upon termination of this contract, all relevant case files will be provided electronically to DHS in the same format outlined above.

IV. Process and Outcome Measures

A. Process Measures

1. CWEE may continuously serve and support up to 207 participants each month. This caseload shall be made up of existing TANF CWEE referrals as well as new TANF CWEE referrals for services sent over monthly.
2. CWEE will track and report out monthly on:
 - # of TANF participants referred
 - # of referrals rejected
 - # of TANF participants served
 - # of TANF participants receiving:
 1. Case management services

Colorado Women’s Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

2. Employment services
3. High School Equivalency services
 - # of TANF participants who gain employment
 - # of TANF participants who retain employment for 90 days
 - # of TANF participants who complete their High School Equivalency
 - # of TANF participants assigned to a new provider for services based on progression of skills and needs
 - # of CWEE case closures and the reason for the status change
3. Each quarter, CWEE will submit a report of the individuals who have successfully completed their High School Equivalency certification or gained employment. To support this report, a copy of the high school equivalency certificate and/or an employment verification form for each individual participant shall be provided.
 - i. The report and documentation will verify program measures and reinforce data provided monthly via Civicore reports used for reimbursement.
 - ii. At a minimum, the report will include individual participant’s name, CBMS case ID, and month in which the outcome was achieved and reimbursed
 - iii. Submitting the quarterly report and back-up documentation are not a substitute for ongoing eligibility reporting and compliance with the Colorado Works/TANF program

B. Outcome Measure:

1. 55% of TANF participants who enter the Employment Pathway by April 1, 2021, will gain quality employment
2. 55% of participants who gain employment by April 1, 2021, will maintain employment for 90 days.
3. The average wage for those who gain employment will be above Denver County minimum wage
4. 35% of TANF participants who enter the Education Pathway will successfully complete their high school equivalency within one year of beginning it

V. Performance Management and Reporting

A. Performance Management

Monitoring will be performed as necessary by the program area and other designated DHS staff throughout the term of the agreement. As a subrecipient, monitoring is required per 2 CFR Part 200 Subpart D 200.331 and DHS policy 1809-506. Subrecipient monitoring includes but is not limited to the following:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the programs’ daily operations.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services staff, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract are met, as well as Federal, State and City legal requirements, standards and policies to include sub recipient requirements.
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 Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

B. Reporting

The following reports shall be completed and delivered to the DHS as stated in this section.

Report # and Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	Program generated report on performance measures as described in Section IV.A.2	Due Monthly by the 15 th of the month following service provision	Colorado Works/TANF Program Administrator
2. Monthly Civicore Reports	Monthly Civicore reports detailing services provided and outcomes achieved as outlined in the budget and scope of work	To be submitted monthly along with the invoice	DHS_Contractor_Invoices@denvergov.org
3. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will	Contract End, within 45 days after Term End.	Colorado Works/TANF Program Administrator

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

	include total budget per line item, amount spent, and an explanation as to unspent funds, etc.		
4. Intermittent program reviews	May include individual plans, supportive services issued, case notes, participation hours entry, activity updates, participant work, timesheets, and other notations in Civicore or CBMS.	To be submitted upon request	Colorado Works/TANF Program Administrator
5. Quarterly achievement report	Quarterly report listing individuals who have successfully completed their high school equivalency certificate and/or gained employment and verification of their status as referenced in Section IV.A.3.iii	Due by the 15 th of the month following the end of the end of the quarter	Colorado Works/TANF Program Administrator

VI. DHS Funding Information:

Per Uniform Guidance CFR 200.331, the following information is being provided to CWEE as a subrecipient:

- A. Program Name: Temporary Assistance for Needy Families
- B. Subrecipient DUNS#: 167205780
- C. Name of Federal Awarding Agency: State of Colorado
- D. Federal Award Date: TBD
- E. Federal Funding Amount:
- F. Period of Performance: 7/1/20 – 6/30/21
- G. Assistance Listing# (a.k.a. CFDA#): 93.558
- H. Federal Award Identification Number (FAIN): TBD
- I. Additional sub awards by subrecipient: Yes No
Names of subcontractors or sub awardees:

VII. Budget

- A. Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use DHS'

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.

Invoices shall be submitted to: [DHS Contractor Invoices@denvergov.org](mailto:DHS_Contractor_Invoices@denvergov.org) or by US Mail to:

Attn: Financial Services
 Denver Human Services
 1200 Federal Boulevard
 Denver, Colorado 80204

B. Budget Table- September 1, 2020- June 30, 2021

Fee for Service	Monthly Charge per Participant	Budget Narrative
Case Management	\$275	Report from Civicore will be submitted monthly to demonstrate services provided for reimbursement. Monthly costs are based upon actual services provided to clients as rendered.
Employment Skills Training & Employment Services	\$300	Report from Civicore & Career Essentials Learning Management System (LMS) will be submitted monthly to demonstrate

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

		services provided for reimbursement. Monthly costs are based upon actual services provided to clients as rendered.
High School Equivalency Coursework	\$125	Report from Civicore will be submitted monthly to demonstrate services provided for reimbursement. Monthly costs are based upon actual services provided to clients as rendered.
Performance Based Achievements	One-time fee amount per participant	Narrative
High School Equivalency Completion	\$500	Report from Civicore will be submitted monthly to demonstrate services provided for reimbursement.
Employment	\$500	Report from Civicore will be submitted monthly to demonstrate services provided for reimbursement
Total Contract Amount	\$770,000	The contractor will not exceed \$770,000 during the contract period

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.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 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 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,

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

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.

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.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 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 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

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit 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 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.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 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 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.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 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 DHS Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 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:
- 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

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 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 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.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
- 6.03.1 The Disclosure is required by law; or
 - 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

- 7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
- 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
 - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

Colorado Women's Employment and Education, Incorporated
SCOPE OF WORK
SUBRECIPIENT IDENTIFIED
SOCSV-202055351
Exhibit A

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.

9 SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.

