AGREEMENT

THIS AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and **SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER AND THE STATE OF COLORADO,** a political subdivision of the State of Colorado, with an address of **1860 Lincoln Street, Denver, CO 80203** (the "Contractor"), collectively "the parties".

The parties agree as follows:

1. DEFINITIONS: The capitalized terms used in this Agreement and any and all exhibits hereto, will have the meanings given such terms in the paragraph in which such terms are parenthetically defined. The meanings given to terms defined will be equally applicable to the singular and plural forms of such terms. In addition, the following capitalized terms shall have the following meanings:

A. "City" means the City and County of Denver or a person authorized to act on its behalf.

B. "Subcontractor" means an entity, other than a Contractor, that furnished or furnishes to the City or the Contractor services or supplies (other than standard office supplies, office space or printing services) pursuant to this Agreement.

C. "Federal Government" shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the expenditure of Federal Funds which are or may hereafter become obligated under this Agreement.

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

E. "Federal Law" shall include any laws of the United States of America which govern funds which are or may after become obligated under this Agreement. Federal Law may include, but is not limited to, federal laws set forth in Article 14 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.

F. "Program" shall mean any and all authorized activities necessary to implement the Agency's responsibilities under the Workforce Innovation and Opportunity Act, ("WIOA"), Public Law 113-129 (July 22, 2014), 29 U.S.C. 3101, *et seq.,* (WIOA Adult CFDA NO. 17.258, WIOA Dislocated Worker CFDA NO. 17.260, WIOA Youth 17.259), which supersedes the Workforce Investment Act 1998, Public Law 105-220, as codified at, 29 U.S.C. §2801, et seq., ("WIA"); and the "Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996" (the "Act"), Public Law 104-193, as codified at 42 U.S.C. §601, *et seq.,* (TANF-CFDA No. 93.558), as supplemented by the Colorado Works

Program Act of 1997, as amended, C.R.S. §26-2-701, *et seq*., ("CWPA"). For purposes of implementing the Program, the Contractor is a Sub-awardee.

G. "State Government" shall include representatives of the agency, department or office of the State of Colorado which is or may hereafter be empowered to promulgate, review or enforce rules governing the Program.

H. "State Law" shall include any laws of the State of Colorado which govern funds which are or may become obligated under this Agreement. State Law includes, but is not limited to, the state laws set forth in Article 14 of this Agreement, as well as amendments thereto which may currently or hereafter be in effect.

2. TERM: The Agreement will commence on **July 1, 2016,** and will expire on **June 30, 2017** (the "Term"). Subject to the Director's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Director.

3. COORDINATION AND LIAISON: The Contractor will fully coordinate all services under the Agreement with the Director of Workforce Development, Office of Economic Development (the "Director" and the "Agency" respectively), or the Director's Designee.

4. SERVICES TO BE PROVIDED:

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

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

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

D. The Contractor shall not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term services, such as intensive employment, training, and education services.

5. COMPENSATION AND METHOD OF PAYMENT:

A. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered, performance measures achieved, and costs incurred under the Agreement in accordance with the budget contained in **Exhibit B**. The

Contractor certifies the budget line items in Exhibit A contains reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E.

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

C. Invoices.

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

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

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

D. Budget modifications: The Parties may modify an exhibit attached to this Agreement; provided, however, that no modification to an exhibit shall result in or be binding on the City if any proposed modification(s), individually or collectively, requires an upward adjustment to the Maximum Contract Amount. The Parties shall, in each instance, memorialize in writing any and all modifications to an exhibit by revising and restating that exhibit and referencing this City Contract Control number stated on the

signature page below. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney's office, and filed with the City Clerk. All such modifications shall contain the date upon which the modified exhibit or exhibits shall take effect. Any modification to an exhibit agreed to by the Parties that requires an increase 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.

E. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **Five Hundred Ninety Nine Thousand Nine Hundred Twenty Nine Dollars and Zero Cents ($599,929.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A.** Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to Federal Funds received and budgeted for the Program, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

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

G. Additional Program Conditions: If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive

order, rules and regulations, or other written policy instrument, the Contractor will comply with all such additional conditions. If the Contractor is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to the Contractor of any unearned funds. If the City withholds payment for this reason, the City shall advise the Contractor and specify the actions that must be taken as a condition precedent to the resumption of payments.

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

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

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

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

7. 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.

8. REQUIRED BACKGROUND CHECKS: Contractor acknowledges that as the designated One Stop Operator it, and its officers and employees, are in a position of public trust in the performance of this Agreement and must operate in a manner that maintains the highest standards of honesty, integrity and public confidence.

A. Hiring and Employment Decisions; Volunteers: In order to prevent unknowingly employing someone or retaining a volunteer who may present a high risk for impropriety, misconduct, malfeasance, or criminal conduct, the Contractor, its officers, employees, and Subcontractors, will complete comprehensive criminal background checks on all people working or volunteering for the Contractor in accordance with all applicable laws, rules, regulations, grant awards, funding agreements, manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the Federal Government, State Government, or the City and provided to the Contractor. Additional types of background checks may be required and/or permitted depending on the type of position and nature of the duties performed. These additional background checks may include: Employment History Verifications, Drug Testing, Education /Degree Verification, Motor Vehicle Record (MVR), Commercial Driver's License (CDL), Professional License and Certification, Finger Printing, Child Abuse/Neglect Registry, Medicare/Medicaid Fraud Database, Polygraph Examination (DOS), Credit History, and NCIC or CCID Clearance.

B. Services for Youth: The City's Office of Economic Development's "Background Checks Concerning Placement of Youth Participants Policy" for programs or services provided to youth under age 18, attached under Exhibit I.

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

A. Enforcement Remedies. If the Contractor materially fails to comply with the terms of this Agreement, the terms of any other agreement between the City and the Contractor, or any federal statute, rule, regulation, or terms and conditions of a Federal award, and fails to cure such noncompliance within ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the noncompliance, the City may take one or more of the following enforcement actions:

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

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

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

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

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

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

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

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

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

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

B. Termination due to changes in Program. If a Colorado Works Program Memorandum of Understanding executed by the City and the State of Colorado or any subsequent such Memorandum of Understanding is terminated for any reason, the Director may terminate this Agreement effective as of the date of termination of such Memorandum of Understanding.

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

D. Termination for convenience. The City has the right to terminate the Agreement without cause upon twenty (20) days prior written notice to the Contractor. However, nothing in this Article shall be construed as giving the Contractor the right to perform services under this Agreement beyond the time when such services become unsatisfactory to the Director.

E. Termination for delinquent loans, contract obligations, and taxes. Further, the City may also suspend or terminate this Contract, in whole or in part, if Contractor becomes delinquent on any obligation to the City inclusive of any loan, contractual, and tax obligation as due, or with any rule, regulations, or provisions referred to herein; and the City may declare the Contractor ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Contractor is non-compliant with any applicable rules, laws, regulations, or Contract terms, the City may withhold up to one hundred (100) percent of

said Contract funds until such time as the Contractor is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

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

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

9. EXAMINATION OF RECORDS/AUDIT REQUIREMENTS:

A. Any authorized representative of the City, including the City Auditor or his or her representative, the State of Colorado, or the federal government will have the right to access and the right to examine any pertinent books, documents, papers and records of the Contractor, involving transactions related to the Agreement until the latter of six (6) years after the final payment under the Agreement or expiration of the applicable statute of limitations whichever is longer. This right of access also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents.

B. The Contractor will keep true and complete records of all business transactions under this Agreement, will establish and maintain a system of bookkeeping satisfactory to the City's Auditor and give the City's authorized representatives access during reasonable hours to such books and records, except those matters required to be kept confidential by law. The Contractor agrees that it will keep and preserve for at least six (6) years all evidence of business transacted under this Agreement for such period.

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

10. 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.

11. INSURANCE:

A. If the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.,* C.R.S., as amended ("Act"), the Contractor shall maintain insurance, by commercial policy or self-insurance, as is necessary to meet the Contractor's liabilities under the Act. Proof of such insurance shall be provided upon request by the City.

B. If the Contractor is not a "public entity" then, the following general conditions apply:

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

(2) Proof of Insurance: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverage required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit E**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of 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.

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

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

(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. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

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

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

(9) **Professional Liability (Errors & Omissions)**: Consultant shall maintain limits of $1,000,000 per claim and $1,000,000 policy aggregate limit. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

(10) **Additional Provisions:**

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

(i) That this Agreement is an Insured Contract under the policy;
(ii) Defense costs are outside the limits of liability;
(iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
(iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
(v) Any exclusion for sexual abuse, molestation or misconduct has been removed or deleted.

(b) For claims-made coverage:

(i) 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

(c) Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

12. LIABILITY: Each party to this Agreement shall be liable for the actions and omissions of its respective officers, agents, employees, and subcontractors, to the extent provided by the Colorado Governmental Immunity Act. This obligation shall survive termination of this Agreement.

13. TAXES, LATE CHARGES, AND PERMITS: The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance

D.R.M.C. § 20-107, *et seq*. The Contractor hereby represents that it is exempt for the payment of taxes, state or federal sales, use, withholding, excise, personal property, value-added or similar taxes, assessments of any nature; however, any applicable taxes required by current local, state or federal laws, hereafter enacted or amended, the Contractor shall promptly pay when due, all such 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, utilized by the Contractor in performing services under this Agreement, including City-owned land, facilities, improvements, or equipment.

14. ASSIGNMENT AND SUBCONTRACTING: The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under the Agreement or subcontract performance obligations without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and shall be cause for termination of this Agreement by the City. The 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.

Services subcontracted under this Agreement shall be specified by written agreement and shall be subject to each applicable provision of this Agreement and any and all applicable Federal and State Laws with appropriate changes in nomenclature in referring to such subcontract. The Contractor shall submit proposed subcontract agreements to the Director for the Director's review and approval. Such consent of the City obtained as required by this paragraph shall not be construed to constitute a determination of approval of any cost under this Agreement, unless such approval specifically provides that it also constitutes a determination of approval of such cost.

15. 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.

16. 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.

17. 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.

18. 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.

19. CONFLICT OF INTEREST:

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

B. The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest which shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement or other relationship, in conflict with those of the City. During the Term, the Contractor shall disclose promptly any potential conflicts of interest that arise from its activities and relationships with training or other service providers. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict. The Contractor will have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

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

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

With a copy of any such notice to:

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

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses

where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

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

11. 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.

12. NO DISCRIMINATION IN EMPLOYMENT (City Executive Order No. 8): In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

13. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:

A. In carrying out its obligations under the Agreement, Contractor and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with 29 CFR Part 37, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations. 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. 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.

B. 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. Contractor will affirm that all qualified

applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of Contractor.

C. Contractor will incorporate the foregoing requirements of this Article in all of its subcontracts.

D. Contractor agrees to collect and maintain data necessary to show compliance with the nondiscrimination provisions of this section.

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

A. The Workforce Innovation and Opportunity Act, ("WIOA"), Public Law 113-129 (enacted July 22, 2014 and effective July 1, 2015), 29 U.S.C. 3101, *et seq.*, which supersedes the Workforce Investment Act (WIA) and amends the Adult Education and Family Literacy Act; the Wagner-Peyser Act of 1933, as amended; and the Rehabilitation Act of 1973;

B. Any and all applicable federal, state, or City rules and regulations relevant to the administration of the Program including but not limited to, 20 C.F.R. Parts 652 and 660; 29 CFR Parts 95, 96, 97, and 99; and 34 C.F.R. Part 361;

C. Final WIOA Rules. Section 503(f) of WIOA requires that the Department of Labor (USDOL) issue rules and regulations that implement the changes WIOA makes to the public workforce system. As of the date written on the City's signature page below, the USDOL and the US Department of Education have issued Notices of Proposed Rulemaking (NPRMs) and are either taking comments or reviewing and considering comments received for final WIOA rules. It is anticipated that Final WIOA rules will be issued in 2016. The WIOA NPRMs are available at: http://www.doleta.gov/WIOA/NPRM.cfm. In order to continue implementation of WIOA prior to the adoption of final rules, the Parties anticipate that the proposed NPRMs will

inform them of the framework for WIOA activities until final WIOA regulations are finalized. In the event of a dispute between the Parties as to the application of a specific proposed WIOA regulation, the DWD Director has the authority to make a final decision regarding the application of the proposed WIOA regulation;

D. United States Department of Labor (USDOL), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Chapter II, Part 2900 et al. December 19, 2014. http://www.ecfr.gov/cgi-bin/text-idx?SID=809536d27633efa05b7350a37ed3f2d5&mc=true&tpl=/ecfrbrowse/Title02/2cfr2900_main_02.tpl;

E. Colorado Revised Statutes (C.R.S.) 8-77-109, Establishment of the Employment Support Fund (ESF) for use by the Colorado Department of Labor and Employment - Division of Employment and Training and C.R.S. 8-83-101, et seq., Workforce Development Part 1 Division of Employment and Training; and C.R.S. 8-83-104 State Employment Service;

F. United States Department of Labor-Employment and Training Administration (USDOL-ETA) Training and Employment Guidance Letters (TEGLs) issued under the authority of the Workforce Innovation and Opportunity Act of 2014 (WIOA) for the Adult, Youth, Dislocated Worker, Wagner Peyser Employment Service, and other core partner programs concerning guidance on operations, services, and program requirements. http://wdr.doleta.gov/directives/.

G. The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 U.S.C. §601, *et seq.*, as may be amended from time to time;

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

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

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

K. All policies, procedures, information memoranda, Program guidance, instructions or other written documentation issued by the federal government, State of Colorado, or the City and provided to the Contractor concerning the Program or the expenditure of Federal Funds.

L. The terms and conditions contained in **Exhibit C and D** unless the City notifies the contractor in writing that a specific requirement does not apply to the performance of services under this Agreement;

M. Any and all Grant Awards, Contracts, or other Agreements governing this Agreement;

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

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

P. The Deficit Reduction Act of 2005, 109 P.L. 171;

Q. Pass-Through Of City Obligations Pursuant To The Applicant Verification Statute:

(1) This Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as hereafter amended (together the "Applicant Verification Statute"). Compliance by the Contractor is expressly made a contractual condition of this Agreement.

(2) The Contractor shall 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 ("Benefits") conferred pursuant to this Agreement, as such Benefits are defined in the Applicant Verification Statute. The Contractor shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached hereto as **Exhibit F** and incorporated herein by this reference. The Contractor shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request;

R. Grievance Policy. The parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Contractor. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or services offered by the Contractor. In order to satisfy this requirement, the Contractor agrees to provide a written "Grievance Policy" as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of services. The Contractor agrees that a formal "Grievance Policy" will be adopted by its governing body and submitted to the 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;

S. 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 is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this paragraph, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this Paragraph, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor.

The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" in all covered transactions associated with this Agreement. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and their implementing regulations;

T. No Discrimination 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 will be responsible for any and all claims, losses, or demands that arise under this paragraph. Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). Contractor hereby warrants and assures that LEP persons with will have meaningful access to all services provided under this Agreement. To the extent Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance;

U. Prohibited Transactions.

(i) 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.

(ii) 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.

(iii) 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 Article shall be null and void. This Article 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.

(iv) No 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;

V. Byrd Anti-Lobbying. If required 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. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award;

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

X. The Federal Funding Accountability and Transparency Act of 2006, FFATA, and implementing rules and regulations;

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

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

15. LEGAL AUTHORITY: 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 Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

16. 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 the Agreement or any provisions thereof were prepared by a particular party.

17. INTELLECTUAL PROPERTY RIGHTS: Unless otherwise expressly prohibited by Federal Law, the City and the Contractor intend that any and all copyright, trademark, servicemark, 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 to be performed and any and all 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, or any of its third party contractors, in connection with the services provided under the Agreement are the sole property of the City.

A. Copyrightable Intellectual Property. The City and 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, know-how, studies, reports, and any other work or recorded information created, purchased, licensed, used, or supplied by the Contractor, or any of its third party contractors, in connection with the services provided under this Agreement, 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.

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 provided under this Agreement unless the program, product or service, in each case, is specifically identified as an expense on Exhibit B or 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. Contractor will submit a copy of the most current version of the Materials inventory with Contractor's periodic request for payment. The City will have final decision making authority to determine and/or edit the final content, design, layout, format, and "look and feel" of any such Materials. The Contractor will ensure that all Materials, or any portion or version thereof, do not, directly or indirectly, in whole or in part, infringe upon any third party's copyright, trademark, patent, or other intellectual property rights, title or interests.

B. Patentable Intellectual Property. The City and 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.

C. Third Party Products, Materials and Processes. 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 will be responsible to defend 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 reimburse 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. None of the above in this subparagraph applies if the Contractor uses patented devices, materials or processes specified by the City.

D. Federal License. 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.

E. Other City intellectual property. The Contractor will not use, reproduce, transmit, copy, distribute, alter, modify, register, or incorporate any registered or unregistered trademark or servicemark, 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 Director of Marketing, ("Director") or, if and as directed, with a designated employee of the Agency.

18. 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 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.

19. ADVERTISING AND PUBLIC DISCLOSURE:

A. 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.

B. Acknowledgment of Funding: In accordance with applicable federal or state requirements, the Contractor shall prominently insert the following acknowledgement (or substantially similar acknowledgement) in all allowable advertising, public relations items,, or informational materials, including without limitation, signs, media releases, promotional items, giveaways, and public announcements: "The activities, services, programs, and materials are made possible by support from the Office of Economic Development, Workforce Development of the City of and County of Denver through funding from the Workforce Innovation and Opportunity Act."

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

21. 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 or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the parties. 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. The Agreement is, and any amendments thereto will, be binding upon the parties and their successors and assigns. Amendments to this Agreement will become effective when approved by both parties and executed in the same manner as this Agreement.

22. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 94 and Attachment A thereto 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 the City barring the Contractor from City facilities or participating in City operations.

23. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. Confidential Information: The Contractor acknowledges and accepts that, in the performance of all work under the terms of this Agreement, the Contractor will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City ("City Proprietary Data"); (2) confidential information pertaining to persons receiving services from the Agency ("Client Data"), or (3) confidential proprietary information owned by third parties ("Third Party Proprietary Data"). For purposes of this Agreement, City Proprietary Data, Client Data, and Third Party Proprietary Data shall be referred to collectively as "Confidential Information". The Contractor agrees that all Confidential Information provided or otherwise disclosed by the City to the Contractor or as otherwise acquired by the Contractor during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall limit access to any and all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. The Contractor shall exercise the same standard of care to protect any and all Confidential Information as a reasonably prudent contractor would to protect its own proprietary or confidential data. Contractor acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time Contractor's access to electronic Confidential Information to "read-only" access or "limited" access as such terms are designated by the Director.

If protected health information is disclosed by the City to the Contractor, the Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all Client Data, including protected health information, and to comply with all requirements contained in the attached Exhibit G. The Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all Client Data, including protected health information. The Contractor shall establish and submit to the City, within fifteen (15) days of the City's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access. In the event that the Contractor obtains protected health information from a third party provider or is required

to provide Client Data, including protected health information to the City for purposes of monitoring and evaluating the Contractor's performance under this Agreement, then the Contractor agrees to fully coordinate with OED-DWD personnel and the client in order to obtain any necessary consent forms, authorization forms, or release forms.

(1) Use of Confidential Information: 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 Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing access to 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 reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Director.

(2) City Methods: The Contractor agrees that any and all ideas, concepts, know-how, business method, templates, data processing techniques and other innovations and discoveries provided by the City to the Contractor in connection with this Agreement shall be deemed to be the sole intellectual property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to such City Methods, that: (a) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Director; (b) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (c) 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.

(3) Employees and Subcontractors: The requirements of this provision shall be binding on the Contractor's employees, agents, officers and assigns. The Contractor warrants that all of its employees, agents, and officers who designated to provide services under this Agreement will be advised of this provision. All requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement.

(4) Disclaimer: Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Contractor acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost

of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

B. Open Records: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S. (2015), and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same.

24. 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.

25. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE: This Agreement consists of Articles 1 through 26, which precede the signature page and the following attachments which are incorporated herein and made a part hereof by reference:

A. Financial Administration Terms and Conditions – Exhibit C;
B. General Program Terms and Conditions – Exhibit D;
C. Work Statement – Exhibit A
D. Budget – Exhibit B
E. Proof of Insurance – Exhibit E
F. Verification Affidavit – Exhibit F
G. Business Associate Terms (HIPAA/HITECH)- Exhibit G
H. Exhibit H - Omitted
I. DWD Background Check Policy – Exhibit I

In the event of an irreconcilable conflict between a provision contained in Articles 1 through 26, and any of the listed attachments or between provisions of any attachments, such that it is impossible to give effect to both, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Articles 1 through 26 (Agreement)
- Exhibit C (unless the City specifically notifies the Contractor in writing that a provision of Exhibit C prevails over this Agreement)
- Exhibit D (unless the City specifically notifies the Contractor in writing that a provision of Exhibit D prevails over this Agreement
- Exhibit A – Work Statement
- Exhibit B – Budget
- Exhibit E – Proof of Insurance
- Exhibit F - Verification Affidavit
- Exhibit G - Business Associate Terms (HIPAA/HITECH)
- Exhibit I - DWD Background Check Policy

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

END
SIGNATURE PAGES AND EXHIBITS FOLLOW THIS PAGE