08-009-E

# FIFTH AMENDATORY AGREEMENT

**THIS FIFTH AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City"), and **OCCUPATIONAL HEALTH CENTERS OF THE SOUTHWEST, P.A., P.C., d/b/a CONCENTRA MEDICAL CENTERS,** (the "Consultant") a Texas corporation, whose address is 7401 Church Ranch Boulevard, Westminster, Colorado 80021.

## RECITALS:

**WHEREAS,** The City and the Consultant, collectively the ("Parties"), previously entered into an Agreement dated January 8, 2008, as amended on June 3, 2008, January 6, 2009, December 8, 2009 and December 7, 2010 ("Agreement") for Occupational Medical Services as they relate to Workers Compensation; and

**WHEREAS,** the City desires to exercise its option to extend the Agreement for an additional one-year renewal term, and the Parties desire to amend the Agreement to extend the term through December 31, 2012; and

**WHEREAS,** the Parties now desire to increase the budget for such extended term; and

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and obligations herein set forth the parties agree as follows:

**1.** Paragraph 1, **"SCOPE OF SERVICES"** is hereby amended to read in its entirety as follows:

> "1. <u>**SCOPE OF SERVICES:**</u> The Consultant, under the general direction of, and in coordination with City's Risk Manager, or other designated supervisory personnel (the "Manager"), shall diligently perform the services described on **Exhibit A** and **A-1.** The Consultant agrees that during the term of this Agreement it shall fully coordinate its work with any person or firm under contract with the City doing work or providing services which affect the Consultant's services. The Consultant shall faithfully perform the work described in **Exhibit A** and **A-1** in accordance with the standard of care, skill, training, diligence and judgment provided by highly competent individuals and entities that perform services of a similar nature."

2. Paragraph 2, "**TERM**" is hereby amended to read in its entirety as follows:

"2. **TERM**: The term of the Agreement is from January 1, 2008 through December 31, 2012, unless terminated earlier pursuant to the provisions of this agreement."

3. Subparagraph D of Paragraph 3, "**COMPENSATION AND PAYMENT**", is hereby amended to read in its entirety as follows:

"**D. Maximum Contract Liability:**
(i) Any other provision of this Agreement notwithstanding, in no event shall the City be liable to pay for services rendered and expenses incurred by the Consultant under the terms of this Agreement for any amount in excess of **$1,039,000.00** (the "Maximum Contract Amount"). The Consultant acknowledges that the City is not obligated to execute an amendment to this Agreement for any services and that any services performed by Consultant beyond that specifically described herein are performed at Consultant's risk and without authorization under this Agreement.

(ii) The Parties agree that the City's payment obligation, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The Parties agree that (i) the City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City."

4. **Exhibit A-1** is attached to this Fifth Amendatory Agreement. This Amendment does not alter **Exhibit A.**

5. The Agreement is amended to add the following Paragraph 36 concerning electronic signatures and records.

**36. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Consultant 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.

**6.** Except as herein amended, the Agreement is affirmed and ratified.

**Contract Control Number:** FINAN-CE81011-01

**Vendor Name:** Occupational Health Centers of the Southwest, PA DBA CONCENTRA MEDICAL CENTERS

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:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By______________________________

REGISTERED AND COUNTERSIGNED:

By______________________________

By______________________________

**Contract Control Number:** FINAN-CE81011-01

**Vendor Name:** Occupational Health Centers of the Southwest, PA DBA CONCENTRA MEDICAL CENTERS

By: W. Tom Fogarty

Name: W. Tom Fogarty, M.D.
(please print)

Title: President
(please print)

**ATTEST: [if required]**

By: ______________________

Name: ______________________
(please print)

Title: ______________________
(please print)

## EXHIBIT A-1

### DOT DRUG TESTING:

1.Drug and Alcohol Testing: Pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up testing will be performed for employees as required by the U.S. Department of Transportation or Executive Order 94 and §8-42-112.5, C.R.S., as amended. The determination of whether to use the procedures, standards and requirements under state and local law (Executive Order 94 and §8-42-112.5, C.R.S.) or federal law (U.S. Department of Transportation rules and regulations) shall be made by the City and shall be elected by the City at the time the request for testing is made for the particular employee.

a. All Consultant personnel handling the City alcohol or drug-testing program under the Department of Transportation (DOT) rules and regulations, including but not limited to, sample collectors and medical review officers, shall be trained in accordance with the DOT regulations.

b. Specifically, all breath collection, urine collection personnel, and medical review officers shall complete their initial, refresher, and any required error response training as set forth in 49 C.F.R., Part 40, before working on any City employees' DOT samples. Each Consultant employee required to attend the training shall maintain documentation evidencing completion of the training and have it immediately available for inspection.

c. All breath collection, urine collection, and personnel and medical review officers shall comply with and follow all DOT rules and regulations regarding CDL alcohol or drug testing for the City. The results of alcohol or drug testing conducted in connection with an alleged work-related accident shall be provided to the City immediately without a release provided this complies with federal and state law and a sample is preserved and made available to the worker for purposes of a second test pursuant to §8-42-112.5, C.R.S.

d. Prior to verifying a positive, adulterated, substituted, or invalid test result, medical review officers, shall contact the person who provided the sample as required by the U.S. Department of Transportation and set forth in 49 C.F.R., Part 40, Subpart G, but not longer than 48 hours, after notification of the test result. Medical review officers shall make at least three attempts to contact the sample provider over the first 24-hour period and must use the designated employer representative if needed to bring about this contact. Once contact has been made or it has been determined that contact is futile, medical review officers shall verify the test results as soon as possible, but not to exceed ten days from the date of test result notification.

e. The Consultant shall pay directly, or reimburse the City, for any fines levied against the City by the U.S. Department of Transportation that are the result of the Consultants failure to meet the performance criteria established in this Section or failure to meet any DOT rules and regulations.

f. Where drug or alcohol tests are performed in workers' compensation cases, the Consultant shall collect and maintain a split sample of urine collected from the employee for purposes of the test. The split sample shall be made available to the employee or his/her representative for testing at the employee's expense pursuant to § 8-42-112.5(1), C.R.S. The Consultant shall maintain split samples as per DOT rules and regulations. In the instance of a workers' compensation claim by a City employee, the consultant shall maintain split samples up to three hundred sixty-five (365) calendar days following the date of collection.