

## **AGREEMENT**

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (the “City”), for itself and on behalf of the Department of Human Services (“DHS”), and **ROCKY MOUNTAIN HUMAN SERVICES**, a Colorado nonprofit, whose address is 9900 East Iliff Avenue, Denver, Colorado 80231 (the "Contractor" or “RMHS”), individually a “Party” and collectively “the Parties.”

## **RECITALS**

**1.** Subject to annual appropriations by the Colorado General Assembly, the Colorado Department of Health Care Policy and Financing (“CO-HCPF”), pursuant to Colo. Rev. Stat. §§ 25.5-10-201, *et seq.*, provides funds to community centered boards to provide or purchase authorized services and supports for individuals with intellectual and developmental disabilities.

**2.** The Contractor has been designated by CO-HCPF as the Community Centered Board serving the City and County of Denver (“Denver CCB”). As the Denver CCB, Contractor receives federal and state funds annually under an agreement with the State of Colorado, as amended, (the “Contractor’s State CCB Contract”) to provide or purchase authorized services and supports to individuals with intellectual and developmental disabilities.

**3.** Colo. Rev. Stat. § 25.5-10-206(6) provides that boards of county commissioners may levy up to a total of one (1) mill in property taxes to also purchase services and supports for individuals with intellectual and developmental disabilities.

**4.** In January 2017, the City, under authority of Ord. No. 20161071, Series of 2017, codified § 53-550 in the Denver Revised Municipal Code (“D.R.M.C.”) Section 53-550 authorizes a mill levy for the purchase of services for eligible individuals, designates the permitted uses of the funds, establishes a residency requirement for beneficiaries of the revenue, limits administrative and overhead costs, and requires an annual report from the Denver CCB to the Denver City Council.

**5.** In accordance with §§ 53-550, D.R.M.C., and as set forth in this Agreement, the City desires to obtain, during the Term, additional services and supports from the Contractor, acting as the Denver CCB, for children and adults with intellectual and developmental disabilities who are residents of Denver.

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

1. **DEFINITIONS:** In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to exhibits referenced and attached hereto. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the use of a specific gender includes any other gender, masculine, feminine or neuter. A word importing the neuter gender may extend to and be applied to natural persons as well as things.

1.1. “Administrative and Overhead Expenses” means indirect costs or the necessary business expenses, including costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective and purchases in accordance with the Procurement section of this Agreement, to maintain an organization’s operations such as rent and utilities, insurance, legal, and accounting costs not specific to an individual department directly related to the production of goods or services.

1.2. “City Funds” means mill levy revenues authorized under § 53-550, D.R.M.C., and available for the purchase of services and supports for individuals with intellectual and developmental disabilities in Denver.

1.3. “State Funds” means monies from the State of Colorado available for the purchase of services and supports for individuals with intellectual and developmental disabilities. State Funds includes, without limitation, funds authorized under Colo. Rev. Stat., Title 25.5, Article 10 and Title 27, Article 10.5.

2. **COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services and obligations under the Agreement with the Executive Director of the Department of Human Services (“Executive Director”) or the Executive Director’s designee. Unless directed otherwise by the City, all authorizations or approvals required herein may be delegated to the Executive Director’s designee.

3. **SERVICES TO BE PERFORMED**

3.1. In addition to all other obligations required by law, and subject to the terms and conditions of this Agreement, the Contractor shall diligently undertake, perform, provide, and supply all services, tasks, deliverables, performance measures, and activities necessary or authorized to supply additional services and supports for individuals with intellectual and developmental disabilities residing in Denver as set forth in this Agreement and its **Exhibit A**, the Contractor’s Scope of Work and Budget (collectively, the “Services”). The Contractor will provide the Services directly or purchase them from approved service providers, subcontractors, subconsultants, or other

persons or entities approved to supply Services. The Services supplied by the Contractor under this Agreement, including its selection of, agreements with, and monitoring of approved service providers, subcontractors, subconsultants, or other approved persons or entities, shall be subject to and performed in accordance with federal, state, and City laws. The Contractor shall maintain personal and organizational knowledge of current and updated federal, state, and local laws, rules, regulations, executive orders, or other regulatory requirements concerning the delivery of the Services and any other performance obligations under this Agreement.

- 3.2.** For all funds provided by the City and all Services supplied under this Agreement, the Contractor will comply with the residency requirements in § 53-550(c), D.R.M.C. The residency requirement set forth in § 53-550(c), D.R.M.C., and in the preceding sentence includes, without limitation, Services provided by the Contractor directly or supplied through approved service providers, subcontractors, subconsultants, or any other person or entity approved to supply Services.
- 3.3.** The Contractor shall faithfully perform or supply the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
- 3.4.** Construction, alteration, remodeling, or renovation of a facility, building, modular unit, or other structure used to supply the Services or for administrative purposes or other activities necessary to carry out the Services (“CCB Facilities”) are not permitted as a part of the Services except as expressly permitted and described in **Exhibit A** and in accordance with DHS’s written policies and procedures addressing the extent to which City Funds may be provided to construct, alter, remodel, or renovate CCB Facilities. Upon request, the Contractor shall provide reports identifying the place of performance or delivery including: Street Address, City, County, State, Country, Zip Code+4.
- 3.5.** The Contractor may purchase tangible personal property or reasonable construction services for the exclusive use and benefit of qualified Services recipients as part of the Contractor’s performance of the Services herein; provided that such expenditures are in accordance with DHS’ written policies and procedures applicable to contractors addressing the extent to which City Funds may be provided for these purposes.
- 3.6. The Contractor’s Responsibilities:** In addition to all obligations required by law or stated elsewhere in this Agreement or in any attachments hereto, the Contractor shall:

- 3.6.1.** Attend and participate in meetings as reasonably requested by the Executive Director or the Executive Director's designated representative;
- 3.6.2.** Permit the City to carry out reasonable activities to review, monitor, and evaluate any of the procedures used by the Contractor in providing or supplying the Services and make available for inspection all notes and other documents used in performing the work. The Contractor shall require the cooperation of its employees, officers, and board members in such monitoring and evaluation efforts and shall include this requirement for cooperation in its contracts with approved service providers, subcontractors, subconsultants, or any other person or entity approved to supply Services; and
- 3.6.3.** Establish and maintain record keeping policies in accordance with the requirements established by applicable state law or as reasonably required by the City, including the City Auditor, concerning the provision of Services and expenditure of City Funds including but not limited to establishing and maintaining financial and performance records with respect to all matters covered by this Agreement in sufficient detail and in a manner sufficient to conform to generally accepted accounting principles so as to allow audit of the expenditure of City funds received by the Contractor. The Contractor shall retain such financial and performance records for a period of six (6) years from the date of final payment to Contractor under this Agreement.

**3.7. CCB Status Changes:** The Contractor shall notify the Executive Director promptly in writing if:

- 3.7.1.** The Contractor's designation as the Denver CCB is revoked;
- 3.7.2.** The Contractor fails to submit its annual application to the state of Colorado for designation as the Denver CCB;
- 3.7.3.** The Contractor receives notice from the federal or state government that it is not in substantial compliance with federal, state or City laws, rules, regulations, or other requirements concerning services for individuals with intellectual and developmental disabilities or early intervention programs; and
- 3.7.4.** Any action or proceeding of any nature is commenced concerning the termination or suspension of the Contractor's contracts with the State of Colorado for services in the City; or the Contractor applies for or obtains another certification, designation, license, accreditation or other credential or qualification impacting the clients served under this Agreement.

**3.8. Community Advisory Committee:** The Contractor shall convene and maintain an advisory committee that will meet at least four times annually at a time and location determined by the Contractor's Board of Directors. The primary purpose of convening an advisory committee is to have a forum in which advisory committee members can provide advice to the Contractor regarding Services provided. At meetings, the Contractor shall provide briefings on the progress and direction of services that are supported by mill levy funds.

**3.8.1.** The Contractor's Board of Directors is responsible for establishing the official charge of responsibilities to the committee and determining the criteria that will be used to select advisory committee members. The Board will determine the size of the committee, its composition, and terms for each advisory committee member. Each committee member must be approved by majority vote of the Board.

**3.8.2.** Notwithstanding anything to the contrary and at its sole discretion, DHS shall have the authority to unilaterally appoint one member to the Contractor's advisory committee.

**3.8.3.** The Contractor's Board of Directors and DHS will generally base their decisions on each candidate's professional or personal knowledge of services for children and/or adults with developmental disabilities, or on a candidate's awareness of the needs of the Denver community and Denver residency status.

**3.8.4.** Advisory committee members will have an opportunity to provide feedback on current or proposed areas of mill levy expenditures consistent with the purposes of § 53-550 D.R.M.C., and this Agreement. Advice and feedback from advisory committee members will be given fair and reasonable consideration by the Contractor's Management and Board of Directors during its annual planning process.

**3.9. Policies and Procedures:** The Contractor shall establish and maintain written policies and procedures to ensure the efficiency, effectiveness, and continuity of the delivery of Services, the use of City Funds, and performance of other obligations under the Agreement. Policies and procedures specifically required by this Agreement, as detailed in **Exhibit A**, are subject to DHS review and approval, after which those specific policies and procedures will be made available publicly in hard copy format and published on the Contractor's website no later than fourteen (14) days after the date of DHS' approval. Subsequent modifications to the Contractor's policies and procedures, as required in **Exhibit A**, shall be submitted to DHS for review, comment, and approval.

4. **ORDER OF PRECEDENCE**: In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of this Agreement controls. This Agreement consists of all terms and conditions, which precede the signature pages, and the following exhibits which are incorporated herein and made a part hereof by reference:

**Exhibit A – Scope of Services and Budget**  
**Exhibit B – Certificate of Insurance**  
**Exhibit C – Protected Health Information**

5. **TERM**: The initial term of this Agreement will commence on January 1, 2021, and terminate on December 31, 2021 (the “Initial Term”), subject to unilateral options in the City to renew for two (2) additional one (1) year periods ending December 31, 2023 (if both renewal options are exercised). The terms “renew” and “extend” shall both mean that this Agreement, if renewed or extended, shall continue without interruption. The following schedule sets forth the term of each possible renewal term:

First Renewal Term - January 1, 2022, to December 31, 2022.

Second Renewal Term - January 1, 2023, to December 31, 2023.

DHS, prior to September 30 of the then current term, may provide the Contractor with written notice of intent to seek an extension of the Agreement (“Renewal Notice”); however, each option to renew shall only be exercised by the action of the City Council in appropriating funds for payment of services and supports for this Agreement. If an appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to extend this Agreement for that year, and this Agreement will terminate at the expiration of the then current term; provided, however, that subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the effective date of termination or expiration and that term will extend until the work is completed or earlier terminated by the Executive Director.

## 6. **COMPENSATION AND PAYMENT**

### 6.1. **Budget/Administrative and Overhead Expenses**

6.1.1. **Initial Term**: During the Initial Term, the City shall pay and the Contractor shall accept, a sum not to exceed Twenty Million Dollars (\$20,000,000.00) as the sole compensation for all Services provided, Administrative and Overhead Expenses incurred, and performance measures achieved in accordance with the budget categories contained in **Exhibit A**.

6.1.2. **Renewal Terms**: If the City exercises its option to extend the Initial Term or the First Renewal Term, it will pay the Contractor and the Contractor shall accept as the sole

compensation for all Services provided, Administrative and Overhead Expenses incurred, and performance measures achieved a sum not to exceed following amounts:

First Renewal Term - Twenty-One Million Dollars (\$21,000,000.00).

Second Renewal Term - Twenty-One Million Five Hundred Thousand Dollars (\$21,500,000.00).

**6.1.3.** As directed by the City, a final scope of work and budget shall be established prior to the expiration of the then current term. If a scope of work and budget for a renewal term has not been evidenced on or before December 31 of the then current term, the City, at its sole discretion, may indefinitely suspend the services hereunder, execute a partial renewal term scope of work and budget, or permit the existing scope of work and budget to continue to govern the services and payment under the Agreement until a new scope of work and budget has been established for the applicable renewal term.

**6.2. Reimbursable Expenses:** Except as set forth on **Exhibit A**, or a successor exhibit to **Exhibit A**, established in accordance above, there are no reimbursable expenses allowed under the Agreement.

**6.3. Reimbursement; Monthly Expenditure Reports**

**6.3.1.** Funds payable by the City hereunder shall be distributed to the Contractor only on a reimbursement basis for Services provided and reasonable Administrative and Overhead Expenses during the prior month. The Contractor will be reimbursed upon receipt and approval of the Contractor's Monthly Expenditure Reports. The Contractor shall prepare and submit to the City, monthly reports (the "Contractor's Expenditure Report(s)") setting out in detail an itemized description by expense category or fee schedule of the amount of all monies actually earned by the Contractor during the month immediately preceding the date of the Expenditure Report, including but not limited to the following categories: i) expenses for services and supports supplied; ii) Administrative and Overhead Expenses associated therewith; and iii) and purchases of Supplies, Equipment and Controlled Assets as such terms are defined herein.

**6.3.2.** The Contractor expressly represents and certifies, as a material representation and certification upon which the City is relying in entering into this Agreement, that it will supply only services and supports: i) not covered by Medicaid, the State of Colorado, or other third-party payers ("non-covered services"), or ii) to persons not eligible for Medicaid, State of

Colorado, or other third-party payment (“ineligible persons”). The City’s obligation to pay for services and supports supplied under the Agreement, will only extend to “non-covered services” or services to “ineligible persons.” The Contractor must use other sources of revenue including without limitation Medicaid, Medicare, State funds, and other benefit plans, or any other funding, to cover all or a portion of the costs under those programs. The Contractor is solely responsible for collecting funds from those other sources.

**6.3.3.** The Contractor’s Expenditure Reports will set forth the methodology used to determine costs for services and supports invoiced and will include all documentation necessary to support payment for “noncovered services” or “ineligible persons.” The Contractor will identify all persons served and the services provided to them. Charges for “non-covered services” and “ineligible persons” will be identified by the Contractor and only those amounts will be invoiced and paid. Each Expenditure Report shall be certified to be correct by an authorized representative of the Contractor and shall reference the Contract Control number of this Agreement as designated below on the City’s signature page. Each Expenditure Report shall be supported with official documentation evidencing, in detail, the nature and propriety of the charges including applicable time sheets, payrolls, receipts, and any other document which may be pertinent in light of the nature of services and supports supplied and showing that services and supports were provided within the period for which the payment is requested. Such official supporting documentation shall be maintained by the Contractor at its offices listed on page one of this Agreement. The Contractor shall provide the City with copies of all documentation supporting its Expenditure Reports upon request.

**6.3.4.** The Contractor’s Monthly Expenditure Reports shall be submitted no later than the last day of the following month for which the Contractor seeks reimbursement. Expenditure Reports that are not submitted by this deadline are considered to be untimely and must be submitted separately to be considered for payment. Payment for such late-submitted Expenditure Reports shall be made only upon a showing of good cause for the late submission.

**6.3.5.** The City will have the right to dispute, and withhold payment, or any portion thereof, for any invoice that does not contain a sufficient statement of the Contractor’s methodology used to determine costs for services and supports invoiced. All incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation shall be recovered from the Contractor: i) by a deduction from subsequent payments under this Agreement; ii) by refund



from the Contractor to the City if no subsequent payments are due to the Contractor; iii) by the City as a debt due to the City; or iv) as otherwise permitted or provided by law. The City reserves the right to reduce, suspend, or withhold funds under this Agreement whenever it determines that the Contractor's current spending is inconsistent with the categories, and purposes, listed on **Exhibit A**, or applicable laws, or if any quarterly or annual reports or information requested as part of an audit or review conducted under this Agreement are not provided by the Contractor within fourteen (14) days of the date of request.

#### **6.4. Maximum Contract Amount**

**6.4.1.** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation under the Agreement, including the First and Second Renewal Terms, if exercised, will not exceed Sixty-Two Million Five Hundred Thousand Dollars (\$62,500,000.00) (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** or a successor exhibit to **Exhibit A**. Any services performed beyond those in **Exhibit A** or a successor exhibit to **Exhibit A** are performed at the Contractor's risk and without authorization under the Agreement.

**6.4.2.** The City's payment obligation, whether direct or contingent, extends only to funds received and budgeted for services and supports for individuals with intellectual and developmental disabilities, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for 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.

**6.5. Budget Modifications:** The Parties may modify **Exhibit A** to increase, decrease, or revise the Services and modify the Budget in accordance with the procedures in DHS' Budget Modification Policy No. 1703-495, as may be amended; provided, however, that no modification to **Exhibit A** 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 all modifications to **Exhibit A** by revising and restating it and referencing this City Contract Control number stated on the signature page below. All modifications to **Exhibit A** shall contain the date upon which the modified exhibit shall take

effect. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney's office, and uploaded into the City electronic contract system by DHS for public access through the City Clerk. A modification to **Exhibit A** that requires an increase to the Maximum Contract Amount shall be evidenced by a written Amending Agreement prepared and executed by the Parties in the same manner as this Agreement.

## **7. REPORTS/CORRESPONDENCE**

**7.1. Annual Progress Reports:** The Contractor shall submit annual progress reports in a format approved by the Executive Director including performance measures; gross income received or earned by the Contractor in excess of the funds provided under this Agreement that is directly generated to finance or support the Contractor's business activities, and funding resulting from services and supports provided as the Denver CCB should be categorized by account description, department business unit and fund source; all direct, Administrative and Overhead Expenses directly incurred or obligated to finance or support the Contractor's Denver CCB business activities categorized by account description and departments business unit; and any other information reasonably requested by the Executive Director concerning the delivery of Services and payments to the Contractor under this Agreement. Each report shall be delivered to the Executive Director within forty-five (45) days after the end of the Initial Term, the First Renewal Term, and Second Renewal Term.

**7.2. Additional Reports:** The Contractor will submit, as reasonably requested by the Executive Director or the Executive Director's designated representative, other reports to the Executive Director concerning the delivery of the Services, the Contractor's programs and operations as the Denver CCB, program costs and expenditures, and community outreach efforts including performance metrics as specified in **Exhibit A**.

**7.2.1. City Council Reports:** During the Initial Term of this Agreement and any renewal term, the Contractor shall also prepare and deliver on dates mutually agreed upon by the Parties written reports and presentations to the City Council describing its programs and operations as the Denver CCB, program costs and expenditures, and community outreach efforts annually and as requested by the President of the City Council or the Executive Director.

**7.2.2. Community Reports:** For as long as this Agreement is in effect, the Contractor shall conduct at least one public meeting per calendar year. The Contractor shall provide the

community with an overview of its progress delivering Services under this Agreement and whether it has any proposed areas for additional expenditures or services. The Contractor shall also provide an opportunity for the community to provide feedback and recommendations concerning the Services. The Contractor shall memorialize this public meeting in writing (“Community Report”). Within a reasonable amount of time, the Contractor shall tender a copy of the Community Report to DHS.

**7.2.3. Correspondence:** All reports, and other written correspondence concerning procedural or administrative contract matters 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, 4<sup>th</sup> Floor  
Denver, Colorado 80204

**7.2.4. Invoices:** Unless directed otherwise, all 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

**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 is a corporation and as such is responsible for the operational management, errors and omissions of its employees.

**9. TERMINATION OF AGREEMENT**

**9.1.** The City may immediately terminate this Agreement if the Contractor’s state certification as the Denver CCB is suspended or revoked for any reason.

**9.2.** The City may further terminate this Agreement for cause if the Services or other performance of other obligations under the Agreement are not being satisfactorily performed in accordance with this Agreement. Prior to termination of this Agreement by the City for cause, the City shall notify the Contractor in writing of its intent to terminate the Agreement for cause, identify the deficiencies in the Contractor's performance giving rise to such intent, and shall give the

Contractor ninety (90) days to cure such deficiencies before the City may terminate this Agreement for cause.

- 9.3. Notwithstanding the preceding provisions, the City may by written Notice of Default to the Contractor immediately terminate the whole or part of this Agreement in the event 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.
- 9.4. 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.
- 9.5. If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

## **10. EXAMINATION OF RECORDS AND AUDITS**

- 10.1. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after 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. This right of access also includes timely and reasonable access (not to exceed fourteen (14) days from the date of the City's request) to the Contractor's Records and the Contractor's personnel for the purpose of interview and discussion related to such documents.

**10.2.** In addition, the Contractor shall permit public inspection of records involving the services and supports provided under this Agreement or the expenditure of tax monies received from the City in accordance with the procedures set forth in §§ 24-72-203 and 24-72-205 of the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*, provided that the Contractor shall not be required to permit such public inspection of records to the extent that such public inspection is prohibited by the provisions of C.R.S. §§ 27-10.5-101 to 137, by Rules and Regulations promulgated by the Colorado Department of Human Services, by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and by requirements set forth by the Centers for Medicare and Medicaid Services.

**10.3.** The Contractor shall prepare and submit to the Executive Director financial reports including but not limited to an annual financial audit prepared in accordance with generally accepted accounting principles. The Contractor will provide a copy of its annual audit within thirty (30) days of the date of completion.

**10.4.** Each approved service provider, subcontractor, subconsultant, or other approved person or entity engaged by the Contractor to provide services and supports under this Agreement will be subject to and will comply with City standards, policies and procedures for contract performance review and audits. The Contractor shall comply with all requests from the City to obtain information from and conduct reviews or financial audits of approved service providers, subcontractors, subconsultants, and other approved persons or entities supplying Services under the Agreement. The Contractor shall provide copies of audits and performance reviews, if any, of approved service providers, subcontractors, subconsultants, and all other approved persons or entities supplying services and supports prepared by any entity, other than the City Auditor or a DHS internal auditor, to the Executive Director within thirty (30) days of the Contractor's receipt.

**10.5.** If, as a result of any audit or review relating to the fiscal performance of the Contractor including those performed by a DHS internal auditor, the City receives notice of any irregularities or deficiencies in said audits, the Contractor shall correct all identified irregularities or deficiencies within the time frames designated in the City's written notice of irregularities or deficiencies. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then the Contractor shall so notify the City in writing and shall identify a date that the Contractor expects to correct the irregularities or deficiencies; provided, however, that the irregularities or deficiencies shall be corrected no later than ninety (90) days from the date of the City's notice.

**11. PROCUREMENT:** The Contractor shall spend funds provided under this Agreement in a way that serves the public interest, honors the public trust, and is consistent with **Exhibit A**. "Supplies" means all tangible personal property other than Equipment as defined below. "Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of Five Thousand Dollars (\$5,000.00) or more per unit. "Controlled Assets" means tangible personal property having an initial acquisition cost of no less than Five Hundred Dollars (\$500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99) and tangible personal property that fall in the following categories: computers, laptops, scanners, facsimile machines, copiers, printers, and capital leases with a present value of no less than Two Thousand Five Hundred Dollars (\$2,500.00) and no more than Four Thousand Nine Hundred Ninety Nine Dollars and Ninety Nine Cents (\$4,999.99). The Contractor shall use funds provided under this Agreement solely for the purposes of effectuating the purposes of City law as this Agreement contemplates and as set forth in **Exhibit A**. If requested by the Executive Director or the Executive Director's representative, the Contractor shall establish and submit to the Executive Director an inventory list, in such format as designated by the Executive Director and within thirty days of said request, of all Equipment and Controlled Assets purchased under this Agreement. The Contractor shall update said inventory list as necessary on a timely basis. The inventory shall specify the location of all Equipment and Controlled Assets purchased to supply the Services. Upon the expiration or earlier termination of this Agreement, unless the Agreement is extended by a written amendment executed by the Parties in the same manner as this Agreement, all Equipment and Controlled Assets purchased to supply the Services shall either be returned to the City or disposed of as the City shall direct. The Contractor shall

not co-mingle City Funds with funds from other sources to purchase Equipment and Controlled Assets under this Agreement.

**12. LAWSUITS:** If the Contractor is served with a pleading or other document in connection with an official action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect the Contractor's ability to perform its obligations under this Agreement, the Contractor shall, within seven (7) days after being served, notify the City of such action and deliver copies of such pleading or document to the Executive Director. The Contractor shall not use funds provided under this Agreement to pay for any of its legal fees, costs, or expenses incurred as a result of such legal action or proceeding initiated by or brought against the Contractor (including, but not limited to, administrative actions or proceedings by a governmental entity).

**13. 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.

**14. INSURANCE**

**14.1. 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,

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.

**14.2. 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 coverage. 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.

**14.3. Additional Insureds:** For Commercial General Liability and Auto Liability, the 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.

**14.4. Waiver of Subrogation:** For all coverages, the Contractor's insurer shall waive subrogation rights against the City.

**14.5. Subcontractors and Subconsultants:** Except for Commercial Crime coverage or as otherwise permitted in writing by DHS and the City's Risk Management Unit, 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.

- 14.6. 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 Contractor executes this Agreement.
- 14.7. 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.
- 14.8. 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.
- 14.9. Professional Liability (Errors & Omissions):** The Contractor shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.
- 14.10. 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.
- 14.11. Commercial Crime (Fidelity):** The Contractor shall maintain a Comprehensive Crime Liability with limits of \$1,000,000 for employee dishonesty, \$500,000 for theft, and \$250,000 for depositors' forgery. 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.

**14.12. Additional Provisions**

**14.12.1.** For Commercial General Liability and Excess Liability, the policies must provide the following:

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

**14.12.1.2.** Defense costs are in excess of policy limits;

**14.12.1.3.** A severability of interests or separation of insureds provision (no insured vs. insured exclusion);

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

**14.12.1.5.** No exclusion for sexual abuse, molestation or sexual misconduct.

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

**14.12.2.1.** 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.

**14.12.2.2.** 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.

**15. DEFENSE AND INDEMNIFICATION**

**15.1.** 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.

**15.2.** 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.

**15.3.** 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.

**15.4.** 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.

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

**16. GOVERNMENTAL IMMUNITY:** Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, C.R.S., 24-10-101 *et seq.*, as now or hereafter amended. It is acknowledged that any liability for claims for injuries to persons or property arising out of the negligence of the City, its departments, agencies, officials and employees, is controlled and limited by the provisions of the Colorado Governmental Immunity Act as now or hereafter amended and other applicable laws.

**17. 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 § 20-107, *et seq.*, of the Denver Revised Municipal Code (D.R.M.C.). The Contractor shall promptly pay when due, all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to take out and keep current all required licenses or permits, whether municipal, state or federal, required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The

Contractor further agrees to furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment by the Contractor of all required licenses and permits and all taxes. The Contractor further agrees to pay promptly when due all 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.

- 18. 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 Executive Director's prior written consent; however, the Contractor may subcontract the Services as specified in **Exhibit A** without the prior written approval of DHS. 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 Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.
- 19. INUREMENT:** The rights and obligations of the Parties 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.
- 20. 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.
- 21. 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.
- 22. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** This 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 amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal,

addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect nor bind the City. Amendments to this Agreement will become effective when approved by both Parties and executed in the same manner as this Agreement. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

**23. 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.

**24. CONFLICT OF INTEREST**

**24.1.** 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.

**24.2.** 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 in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**25. 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:

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

With a copy to:

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

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.

- 26. DISPUTES:** All disputes of whatsoever nature between the City and the Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director.
- 27. GOVERNING LAW, VENUE:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and promulgated pursuant thereto. Such applicable laws, together with the Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the City and County of Denver, Colorado.
- 28. COMPLIANCE WITH APPLICABLE LAWS:** All Services shall be supplied in compliance with all applicable federal, state and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein including but not limited to Colo. Rev. Stats., Title 25.5, Article 10, Title 27, Article 10.5, and § 53-550, D.R.M.C. Notwithstanding anything to the contrary set forth herein, any provision within this Agreement or its exhibits that conflict or are inconsistent with the provisions of § 53-550, D.R.M.C., as amended, shall be *void ab initio*.
- 29. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**

**29.1.** 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”).

**29.2.** The Contractor certifies that:

**29.2.1.** 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.

**29.2.2.** 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.

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

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

**29.3.2.** 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.

**29.3.3.** 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.

**29.3.4.** 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.

**29.3.5.** 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.

**29.3.6.** 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.

**29.4.** 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.

**30. 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 expression or gender identity, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

**31. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the delivery of services and supports, the Contractor, its approved service providers, subcontractors, subconsultants, or other approved persons or entities performing work under the Agreement shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

**32. 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.

**33. PERSONAL INFORMATION; DATA PROTECTION; PROTECTED HEALTH INFORMATION; PROTECTED SUBSTANCE ABUSE TREATMENT RECORDS**

**33.1.** “**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.

**33.2. “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.

**33.3. 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.

**33.4. Software Programs; Security of Personal Information and access to Software Programs:** The City may prohibit the Contractor from the use of certain software programs and computing systems 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, if any, associated with the use of software programs and computing systems 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.

**33.5. 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.

**33.6. 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.

**33.7. 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.

**33.8. 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 and as directed by the City: (i) notify the affected individual and the City as soon as practicable but no later than thirty days (30) days from the date of determination that a security breach has occurred, as required by C.R.S. § 6-1-716 and other applicable laws; (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 after reporting a confirmed breach describing the measures the Contractor will undertake to prevent a future breach. 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.

**33.9. 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. The 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 the City. This Section will survive the termination of this Agreement.

**33.10. No Other Databases:** Unless approved by the City in writing, the Contractor will not establish or maintain a separate or duplicate database containing Personal Information or City Work Product to provide the services under the Agreement. This Section will survive the termination of this Agreement.

**33.11. Data Transfer Upon Termination:** Upon termination or expiration of this Agreement and the City's request, the Contractor will ensure that all Personal Information and City Work Product is securely transferred to the City, or a party designated by the 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 the 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 the 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 the City, all such work to be coordinated and performed in advance of the formal, final transition date mutually agreed upon by the Contractor and the City. This Section will survive the termination of this Agreement.

**33.12. 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.

**33.13. Protected Health Information:** The Contractor shall comply with all applicable state and federal laws protecting the privacy or confidentiality of all protected health information and all requirements contained in **Exhibit C**. The Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request thereof, copies of the Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access.

**33.14. Protected Substance Use Disorder Records:** The Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of all protected substance use disorders and related treatment information, if any. The Contractor shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request thereof, copies of the Contractor's policies and procedures to maintain the confidentiality of protected substance abuse treatment information to which the Contractor has access.

**34. CONFIDENTIAL INFORMATION; OPEN RECORDS**

**34.1. City Proprietary and Confidential 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 information and confidential information that may be owned or controlled by the City, and that the disclosure of such information may be damaging to the City or third parties. The Contractor agrees that all proprietary information and confidential information or any other data or information provided or otherwise disclosed by the City to the Contractor will be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor will exercise the same standard of care to protect such proprietary information and confidential information as a reasonably prudent contractor would to protect its own proprietary or confidential data. For purposes of this Section, the City's proprietary information and confidential information will include, without limitation, all information that would not be subject to disclosure pursuant to the Colorado Open Records Act or Denver ordinance, and provided or made available to the Contractor by the City. Such proprietary information and confidential information may be in hardcopy, printed, digital, electronic, or other format.

**34.2. Use and Protection of Proprietary Information and Confidential Information**

**34.2.1.** Except as expressly provided by the terms of this Agreement, the Contractor agrees that it will not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any proprietary or confidential information or any part thereof to any other person, party, or entity in any form of media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing proprietary information or confidential information, the City is not granting to the Contractor any right or license to use such information 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 proprietary information or confidential information without written authorization from the City and will immediately notify the City if any proprietary information or confidential information is requested from the Contractor from a third party.

**34.2.2.** The Contractor agrees, with respect to the proprietary information and confidential information, that: i) the Contractor will not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the City; ii) the Contractor will retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and iii) the Contractor will, upon the expiration or earlier termination of this Agreement, at the City's election, either destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

**34.2.3.** The Contractor will develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of all electronically maintained or transmitted data received from, or on behalf of, the City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for the services to be provided under this Agreement, the proprietary information, or the confidential information. This includes, without limitation, industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

**34.2.4.** 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 information or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

**34.2.5.** 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 Contractor's Confidential Information. However, the Contractor understands that, to the extent not prohibited by federal law, only materials provided or produced by the Contractor under and pursuant to this Agreement may be subject to the



Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of such information, the City will advise the Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section including, without limitation, prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

**34.3. 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.

**34.4. 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., as amended, 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. The Contractor further agrees to defend, indemnify and save and hold harmless the City,

its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

**35. INTELLECTUAL PROPERTY RIGHTS:** The City and the Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, drawings, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. 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 right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

**36. LEGAL AUTHORITY:** The Contractor assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.

**37. NO CONSTRUCTION AGAINST DRAFTING PARTY:** Each of the Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions, have been prepared by a particular Party.

**38. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The Parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or

otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of insurance, for indemnity to the City, for the return of unused supplies, and for preserving confidentiality of trade secrets and other information shall 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.

39. **INUREMENT**: The rights and obligations of the Parties shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
40. **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.
41. **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 of the Agreement.
42. **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.
43. **CITY EXECUTION OF AGREEMENT**: This Agreement is expressly subject to, and shall not be or become effective or binding on the City until it has been approved by the Denver City Council and fully executed by the City and County of Denver.
44. **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 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.

**EXHIBITS**

**EXHIBIT A - SCOPE OF WORK/BUDGET**

**EXHIBIT B - CERTIFICATE OF INSURANCE**

**EXHIBIT C - PROTECTED HEALTH INFORMATION**

**Contract Control Number:** SOCSV-202056668-00  
**Contractor Name:** ROCKY MOUNTAIN HUMAN SERVICES

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

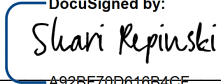
\_\_\_\_\_

By:

\_\_\_\_\_

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

SOCSV-202056668-00  
ROCKY MOUNTAIN HUMAN SERVICES

By:  \_\_\_\_\_  
A92BF70D616B4CF...

Name: Shari Repinski  
(please print)

Title: Chief Executive Officer  
(please print)

ATTEST: [if required]

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

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

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

Rocky Mountain Human Services  
Scope of Work and Budget  
Exhibit A  
SOCSV-2020-56668

**Exhibit A - Initiatives and Budget Projections**

Program	Funding Basis	Invoice Backup	Metrics*	Details	Description	2021 Budget planning
<i>Intake</i>	Per amount of time spent on intake activities for Denver residents each month.	Actual referrals of Denver residents received by intake with length of time spent per intake each month. Excluding non-Denver referrals and referrals for which intake time spent in the month was less than 30 minutes.	- Referrals processed for 0-3 and outcomes each month - Referrals processed for 3+ and outcomes each month -Number of referrals initiated in the previous month. -Number of intakes taking 30-60 min in the previous month (whether completed or not) -Number of intakes taking more than 60 min in the previous month (whether completed or not)	For each individual ages 0-3 referred, when intake time was 30-60 min total during the month: \$95/individual  For each individual ages 0-3 referred, when intake time was more than 60 min total during the month: \$200/individual  For each individual ages 3+ referred, when intake time was 30-60 min total during the month: \$100/individual  For each individual ages 3+ referred, when intake time was more than 60 min total during the month: \$255/individual	Coordinate with external agencies to promote identification of eligible clients. Receive all incoming calls and inquiries to RMHS for services and resources and provide information to callers about I/DD programs and services. Determine whether callers are seeking I/DD services or need other community resources. Complete intakes and referrals by gathering information from callers to proceed with applying for and being determined eligible for I/DD services, including demographic information and insurance/funding verification. Schedule initial appointments for entry to I/DD programs.	\$815,479
<i>EI Colorado Service Coordination</i>	Per Denver client per month rate	Actual clients X monthly rate. Estimate average of 1457 clients per month.	-Number of mill levy service plans completed - Number of active Denver clients each month - Number of individual requests processed and dollar amount granted each month -Number of children exiting EI and reason - Metric to describe impact (e.g. percentage of children that meet treatment goals/milestones)	Point in time actual clients on the last day of the month at \$43.75 (direct costs) per month	Support unmet needs and client assistance programs including annual Mill Levy needs assessment and plan, six month reviews, plan amendments, and connect Denver clients receiving State of Colorado Early Intervention services with Mill Levy funded services and supports. Provide case management service levels beyond Medicaid & State funding for Denver clients receiving Early Intervention services.	\$765,133
<i>EI Colorado Children's Clinical</i>	Per Denver resident enrolled in EI receiving intervention services per month rate + Per Denver resident enrolled in EI receiving assessment services per month rate	Listing of actual EI receiving intervention and assessment services (regardless of funding source) X monthly rates	- EI Clients seen for assessment services each month - EI Clients seen for ongoing treatment services each month - Length of time from date of consent for services to date first service starts by discipline: SLP, PT, OT, ESCE, and other.	Rate \$75 per EI child receiving intervention services during the month + Rate \$95 per EI child receiving assessment services during the month	Provide high quality therapeutic services (primarily OT, PT, SLP, psych, behavioral, developmental) to infants, toddlers, and children (ages 0-18) with developmental delays and disabilities according to the State's Emergency Rule 33% delay criteria. This including the best practice transdisciplinary team model approach to service delivery and comprehensive diagnostic evaluations for families. Supports services to this population not covered (or not fully covered) by Medicaid or private insurance, including services needed beyond limits set by other payers, home-based services, and care coordination intended to increase quality of care and support best practices.	\$1,219,062
<i>EI Denver Service Coordination</i>	Per Denver resident enrolled in EI Denver that meet the 25% - 32% delay criteria	Actual clients X monthly rate. Estimate average of 395 clients per month.	-Number of mill levy service plans completed - Number of active Denver clients each month - Number of individual requests processed and dollar amount granted each month -Number of children exiting EI and reason - Metric to describe impact (e.g. percentage of children that meet treatment goals/milestones)	Point in time actual clients on the last day of the month at \$193.00 (direct costs) per month	Support unmet needs and client assistance programs including annual Mill Levy needs assessment and plan, six month reviews, plan amendments, and connect Denver clients receiving EI Denver services with Mill Levy funded services and supports. Provide case management service levels for Denver clients ages 0-3 experiencing delays not eligible for Colorado Early Intervention services.	\$914,982
<i>EI Denver Children's Clinical</i>	Rates based on CDHS Early Intervention (EI) negotiated rates for the equivalent EI Denver service	Service delivered X negotiated rate	-EI Denver individuals seen for assessment -EI Denver individuals seen for ongoing treatment -Length of time from date of consent for services to date first service starts by discipline: SLP, PT, OT, ESCE, and other. -Outcomes metric TBD	Per client per service cost based on rates accepted by CDHS Early Intervention. RMHS will provide rate schedule to DHS, and will submit any updates to DHS for approval prior to billing under a new rate.	Provide high quality therapeutic services (primarily OT, PT, SLP, psych, behavioral, developmental) to infants, toddlers, and children (ages 0-18) with developmental delays and disabilities falling in the 25% to 32% delay criteria. including best practice transdisciplinary team model approach to service delivery and comprehensive diagnostic evaluations for families. Supports services to this population not covered (or not fully covered) by Medicaid or private insurance, including services needed beyond limits set by other payers, home-based services, and care coordination intended to increase quality of care and support best practices.	\$2,000,000
<i>Family Services &amp; Supports Program</i>	Per Denver client per month rate	Actual clients X monthly rate. (Estimated at 1312 average active clients.)	-Number of individual requests processed & dollar amount granted (by category) each mont Number of active clients each month -Number of new referrals each month by referral source: enrolled from EI Colorado or EI Denver, found delayed age 3-5, found I/DD age 5+, other	Point in time actual clients on the last day of the month at \$63.93 (direct costs) per month	Support unmet needs and client assistance programs, including monthly Mill Levy needs allocation, and connect Denver clients with Mill Levy funded services and supports so there is no waitlist for this program. Provide service levels beyond State funding.	\$1,006,437
<i>Service Coordination</i>	Per Denver client per month rate	Actual clients X monthly rate (Estimated at 1131 active clients)	- Number of mill levy service plans completed - Number of active Denver clients each month - Number of individual requests processed and dollar amount granted each month -Number of quarterly reviews completed each month	Point in time actual clients on the last day of the month at \$69.50 (direct costs) per month	Support unmet needs and client assistance programs including annual Mill Levy needs assessment and plan, quarterly reviews, plan amendments, and connect Denver clients receiving Medicaid Home and Community-Based Services (HCBS) waiver services with Mill Levy funded services and supports, many of whom are receiving services in one waiver while on the waitlist for another waiver. Provide case management service levels beyond Medicaid & State funding for Denver clients receiving HCBS waiver services.	\$879,102

**Exhibit A - Initiatives and Budget Projections**

Program	Funding Basis	Invoice Backup	Metrics*	Details	Description	2021 Budget planning
<i>Client/Family Directed Funds</i>	Actual cost of initiatives	Invoice backup will be provided in accordance with the specifications outlined in "Documentation for Mill Levy Funding Requests" document included in Exhibit A.	<ul style="list-style-type: none"> <li>- Issuances (by category) each month</li> <li>- Unique recipients each month</li> <li>- Total Amount Issued (by category) each month</li> <li>- Tracking housing stabilization assistance-specific metrics</li> </ul> <p><b>Client Satisfaction Measures</b></p> <ul style="list-style-type: none"> <li>- Partial Funding vs. Total Request</li> <li>- Approvals vs. Denials</li> <li>- Timely Processing</li> </ul>	See description	<p>Enable individuals to make requests for individualized needs for which there is no other resource. Also allows for additional ongoing services beyond those covered by Medicaid and State funds to be included in annual/semi-annual plans. Includes programs and services already underway as well as new programs and services that intend to meet the unique needs of individuals with I/DD for which there are not existing adequate resources to meet those needs. Available to all individuals with I/DD in Denver, whether currently accepting services, waiting for services, or declining other services.</p> <p>In cases where RMHS provides the service, RMHS will be reimbursed at the Medicaid or other third party rate currently in place for similar services.</p> <p><b>**Note:</b> Funding for this program, including funding for this program co-mingled with other sources, may be used for capital improvements related to the health and safety or accessibility needs of an individual with I/DD to support wellbeing and independence, or when necessary to maintain stable housing/avoid displacement for an individual with I/DD.</p>	\$4,800,000
<i>External Agency Initiatives</i>	Actual cost of initiatives	Invoice backup will be provided in accordance with the specifications outlined in "Documentation for Mill Levy Funding Requests" document included in Exhibit A.	<ul style="list-style-type: none"> <li>- Number of initiatives</li> <li>- Number of individuals served per initiative</li> </ul>	See description	<p>Enable organizations to request Mill Levy funds to provide services to benefit individuals with I/DD in Denver while supporting new programs and services to be implemented through a variety of community agencies. Services provided are intended to benefit individuals with I/DD in Denver, whether currently accepting services, waiting for services, or declining other services.</p>	\$3,237,525
<i>RMHS Initiatives</i>	Staffing and other direct costs (actual costs)	Payroll reports, mileage reports, and other receipts/ documentation.	<ul style="list-style-type: none"> <li>- Number of initiatives</li> <li>- Number of individuals served per initiative, as appropriate</li> <li>- Number of events per initiative, as appropriate</li> </ul>	<p>Support individuals not receiving case management with RMHS. Assist families/children transitioning into, out of, and between programs. Identify and support individuals who have been referred for services and need assistance with the eligibility and enrollment processes. Support growth in I/DD programs. Support Provider capacity for EI mental health services.</p>	<p>Approximately 8 fully funded positions and occasional partially funded positions to conduct the following:</p> <ul style="list-style-type: none"> <li>- Allow RMHS to enhance existing services, facilitate access to services, and add more services that can be delivered through current processes to benefit individuals with I/DD in Denver whether or not those individuals are connected to RMHS.</li> <li>- Allow RMHS to fund trainings for providers to increase capacity and address needs of individuals with I/DD in Denver.</li> <li>- Allow RMHS to support efforts in integrated health services for individuals with I/DD in Denver.</li> </ul>	\$649,493
<i>Communications &amp; Outreach</i>	Staffing and other direct costs (actual costs)	Payroll reports, mileage reports, and other receipts/ documentation.	<ul style="list-style-type: none"> <li>- Number of outreach &amp; education events (i.e., community forums, provider meetings) and attendance</li> <li>- Number of digital outreach efforts with number of recipients and online engagement</li> <li>- Marketing print pieces produced and intended distribution/use</li> <li>- DPS Liaison-specific outreach efforts &amp; education events</li> </ul>	<p>Increase awareness of mill levy-funded services and facilitate client/family access to mill levy-funded services. Engage effectively with City (eg, DHS, city council, DHS advisory council) to increase effectiveness of mill levy programming.</p>	<p>Approximately 3 positions partially funded by mill levy all in C &amp; O to do the following: Conduct outreach to and communicate available services for individuals with I/DD, including those waiting for services, their families, providers, support systems, and the general public. Gather feedback on needs and provide informational meetings in the community.</p>	\$117,153
<i>Mill Levy Program Management</i>	Staffing and other direct costs (actual costs)	Payroll reports, mileage reports, and other receipts/ documentation.	<ul style="list-style-type: none"> <li>- Same metrics as for Client/Family Directed Funds, External Agency Initiatives, and RMHS Initiatives</li> <li>- Complaints (i.e. grievances)</li> <li>- Additional client satisfaction metrics may be requested for monthly reporting. Various methods for collecting quantitative and qualitative data regarding client satisfaction will be included in the annual report at minimum.</li> </ul>	<p>Oversee management of mill levy-related activities across all I/DD program areas. Assist with community outreach. Coordinate and provide staffing support to Community Advisory Council and outreach activities. Engage effectively with City (eg, DHS, City Council, DHS advisory council) to increase effectiveness of mill levy programming. Facilitate individuals' and families access of mill levy funded services and supports. Produce mill levy invoices, including associated documentation. Prepare and process all subcontracts.</p>	<p>Approximately 8 positions partially funded by mill levy as well as 4 positions fully funded by mill levy to do the following: Develop and manage the Mill Levy Initiatives to ensure an accountable and responsive program model for RMHS and Denver residents with I/DD and stakeholders. Maintain operational responsibility for Mill Levy initiatives and coordinates with internal departments as well as community agencies to ensure the program's success.</p>	\$595,634

Total Direct Costs:		\$17,000,000
Administration (15%):	15% indirect overhead, IT and occupancy expenses	\$3,000,000
Total Period Budget:		\$20,000,000

\*Metrics outlined in this Exhibit A are subject to change throughout the year as agreed upon by DHS and RMHS, as programs are developed.

## Intake

Billable to DHS

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Direct Expenses (Rate)	\$ 815,479
Total Direct Expenses	\$ 815,479

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Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Early Intervention referrals are billed at \$95/individual for 30-60 minutes total during the month, and \$200/individual for more than 60 minutes during the month, per Denver client, based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Referrals for individuals 3 years of age and up are billed at \$100/individual for 30-60 minutes total during the month, and \$255/individual for more than 60 minutes during the month, per Denver client, based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.



## El Colorado Service Coordination

Billable to DHS

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Direct Expenses (Rate)	\$ 765,133
Total Direct Expenses	\$ 765,133

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: El Colorado Service Coordination is billed at a **\$43.75** per Denver client, per month rate based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

# El Colorado Children's Clinical

Billable to DHS

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Direct Expenses	\$1,219,062
Total Direct Expenses	\$1,219,062

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Children's Clinical is billed based on the rates below for Denver residents, up to the budget maximum:

- \$75 per El Colorado child receiving intervention services during the month
- \$95 per El Colorado child receiving assessment services during the month

An administrative and overhead rate is applied up to the budget maximum to these rates. Administrative and overhead rates are tracked as a percentage of the total amount billed for services, as opposed to each line item.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

## El Denver Service Coordination

Billable to DHS

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Direct Expenses (Rate)	\$ 914,982
Total Direct Expenses	\$ 914,982

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Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: El Denver Service Coordination is billed at a **\$193.00** per Denver client, per month rate based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

# El Denver Children's Clinical

Billable to DHS

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Direct Expenses	\$2,000,000
Total Direct Expenses	\$2,000,000

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: El Denver Children's Clinical is billed based on fee-for-services rates according to the equivalent El Colorado rates for the same service for Denver residents, up to the budget maximum. Rates must be accepted by DHS prior to billing.

An administrative and overhead rate is applied up to the budget maximum to these rates. Administrative and overhead rates are tracked as a percentage of the total amount billed for services, as opposed to each line item.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

## Family Services & Supports Billable to DHS

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Direct Expenses (Rate)	\$ 1,006,437
Total Direct Expenses	\$ 1,006,437

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Family Support is billed at a **\$63.93** per Denver client, per month rate based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

## Service Coordination

Billable to DHS

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Direct Expenses (Rate)	\$ 879,102
Total Direct Expenses	\$ 879,102

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Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Service Coordination is billed at a **\$69.50** per Denver client, per month rate based on direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

## Client/Family Directed Funds

Billable to DHS

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Direct Expenses (Rate)	\$4,800,000
Total Direct Expenses	\$4,800,000

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Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Client Assistance is billed based on RMHS' actual direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

## External Agency Initiatives

Billable to DHS

Employee Salaries	\$ 0
Temp/Contract Salaries	\$ 0
Fringe (24.5%)	\$ 0
Additional Worker's Comp (3%)	\$ 0
Travel	\$ 0
Professional Services	\$ 3,237,525
Other Direct Expenses	\$ 0
<b>Total Direct Expenses</b>	<b>\$3,237,525</b>

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: External Agency Initiatives are billed based on RMHS' actual direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.



## RMHS Initiatives

Billable to DHS

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Employee Salaries	\$ 485,055
Temp/Contract Salaries	\$ 0
Fringe (24.5%)	\$ 118,838
Additional Worker's Comp (3%)	\$ 0
Travel	\$ 5,000
Professional Services	\$ 0
Other Direct Expenses	\$ 40,600
<b>Total Direct Expenses</b>	<b>\$ 649,493</b>
Administrative and Overhead Expenses as Percent of Total	15.0%

Note: RMHS Initiatives are billed based on RMHS' actual direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Adjustments to line items within this category are considered de minimis, as those modifications would not result in a change to the overall budget allocated for RMHS Initiatives or service delivery to clients. Modifications within these lines will be treated as a narrative adjustment upon written notification of the DHS IDDEAS program manager at least 10 business days ahead of a submitted invoice in which the changes would take effect. Modifications which change the total budget allotted to this category or that would impact service delivery to clients must follow the budget modification practices outlined in this agreement.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

\*Positions in this program may include but are not limited to the following: Waitlist Coordinator, Children's Coordinator, Family Navigator, DPS Liaison, Crisis Case Manager, Early Intervention Denver Program Manager, Infant Mental Health Specialist, administrative and clerical staff

## Communications and Outreach

Billable to DHS

Employee Salaries	\$ 47,850
Temp/Contract Salaries	\$ 0
Fringe (24.5%)	\$ 11,723
Additional Worker's Comp (3%)	\$ 0
Travel	\$ 900
Professional Services	\$ 10,500
Other Direct Expenses	\$ 46,180
<b>Total Direct Expenses</b>	<b>\$ 117,153</b>

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Communication and Outreach is billed based on RMHS' actual direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Adjustments to line items within this category are considered de minimis, as those modifications would not result in a change to the overall budget allocated for Communication and Outreach or service delivery to clients. Modifications within these lines will be treated as a narrative adjustment upon written notification of the DHS IDDEAS program manager at least 10 business days ahead of a submitted invoice in which the changes would take effect. Modifications which change the total budget allotted to this category or that would impact service delivery to clients must follow the budget modification practices outlined in this agreement.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

\*Positions in this program may include but are not limited to the following: Communications and Outreach Director, Manager, Specialist.

## Mill Levy Program Management

Billable to DHS

Employee Salaries	\$ 468,284
Temp/Contract Salaries	\$ 0
Fringe (24.5%)	\$ 114,730
Additional Worker's Comp (3%)	\$ 0
Travel	\$ 3800
Professional Services	\$ 0
Other Direct Expenses	\$ 8,820
<b>Total Direct Expenses</b>	<b>\$ 595,634</b>

Administrative and Overhead Expenses as  
Percent of Total 15.0%

Note: Mill Levy Program Management is billed based on RMHS' actual direct costs to which an administrative and overhead rate is applied up to the budget maximum.

Adjustments to line items within this category are considered de minimis, as those modifications would not result in a change to the overall budget allocated for Mill Levy Program Management or service delivery to clients. Modifications within these lines will be treated as a narrative adjustment upon written notification of the DHS IDDEAS program manager at least 10 business days ahead of a submitted invoice in which the changes would take effect. Modifications which change the total budget allotted to this category or that would impact service delivery to clients must follow the budget modification practices outlined in this agreement.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code.

\*Positions in this program may include but are not limited to the following: Mill Levy Program Director, Mill Levy Program Development Specialist, Mill Levy Program Coordinators, Client Assistance Purchasing Support

## Administrative & Overhead Billable to DHS

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Administrative and Overhead Expenses as  
Percent of Total 15.0%

Contract Total	\$20,000,000
Administrative and Overhead Expenses	\$3,000,000

An administrative and overhead rate is applied up to the budget maximum for services delivered through this agreement. Administrative and overhead rates are tracked as a percentage of the total amount billed for services, as opposed to each line item.

Administrative and overhead expenses under this contract are capped by Sec. 53-550(d) of Denver City Code. According to City Code, **“any contract for supports or services as permitted by this section shall include a provision limiting the amount of the service provider’s administrative and overhead expenses that may be paid by the city to the service provider to no more than fifteen percent of the total amount dedicated mill levy funds disbursed to the service provider per annum.”**

## Line-Item Definitions

Budget Line-Item	Definition	Acceptable Backup Documentation
Employee Salaries:	Salary costs for employees	Payroll register documenting employees' wages and timesheets as appropriate, including timekeeping methodologies that are based on real time reporting or an agreed upon statistical basis for estimated time reporting
Temp/Contract Salaries:	Temporary staffing costs	Payroll register or invoice and proof of payment to contract employees
Fringe:	Benefits costs for employees at 24.5% fringe rate	Payroll register documenting employees' fringe benefits and timesheets as appropriate. RMHS must be able to provide invoices as appropriate along with proof of payment upon DHS request
Additional Worker's Comp:	Extra 3% worker's comp premium costs for home healthcare employees	Payroll register documenting employees' fringe benefits and invoice and proof of payment upon DHS request
Travel:	Mileage, conference registration, lodging, airfare, travel insurance for flights, etc.	Mileage: DHS approved mileage documentation, including start and end physical addresses along with zip codes  *Conferences: Supporting documentation (with employee name and proof of attendance) and proof of payment for all charges (invoices, receipts, ACH forms, bank statements, or credit card bill) and/or GSA per diem rates. Meals provided with a training, conference, or experience will not be included in per diem calculations
Professional Services:	Contracts costs to provide specialized services	Supporting documentation and proof of payment for all charges (invoices, receipts, ACH forms, bank statements, or credit card bill)
Other Direct Expenses:	Including but not limited to office supplies, informational materials, billing management, specific information technology, professional services (if not its own line-item), etc. costs	Supporting documentation and proof of payment for all charges (invoices, receipts, ACH forms, bank statements, or credit card bill)  See documentation of Mill Levy Funding Requests for additional information on documentation requirements.
Administrative and Overhead Expenses:	Indirect costs as defined in ordinance, to include Executive management, human services, accounting, finance, occupancy, internal communications, and shared information technology costs not to exceed 15.0% of total contract amount	Supporting documentation and proof of payment for all charges (invoices, receipts, ACH forms, bank statements, or credit card bill)  Upon request, RMHS must be able provide the details of the indirect cost calculations including the source documents listed above, how they relate to the indirect cost pools, and basis for distribution across programs.

## Documentation for Mill Levy Funding Requests

### Client Assistance

### Unmet Needs

### Family Support

### External Agency Initiatives

Due to the flow of funds to families, receipts/invoices are not always available to confirm the funds were spent as intended. Alternative documentation is noted below for those circumstances in which normal receipts or invoices are not available. Throughout the year, RMHS and DHS may identify opportunities for alternate or improved forms of documentation to support invoices. DHS approval of alternate forms of documentation will be captured in writing. Note: On a quarterly basis, RMHS will provide a reconciliation list to DHS that details voided amounts including the check number and amount, date voided, date the check was originally issued, original date the check appeared on an invoice to DHS for reimbursement, and credit information detailing how DHS will be credited for the void(s).

### Client Assistance Requests

All client assistance requests:

- Back-up documentation will include the following:
  - Company/vendor name
  - Service type or item description
  - Client/family name (may be handwritten)
  - Cost of item/service
  - Record of recipient's signatures for receipt of items delivered to or by RMHS
  - Amazon or other provider delivery record for items delivered directly to the recipient
- Explanations will show how the requested amount was calculated.
- Explanations will state why the service/resource is being requested and, if not obvious, how the service/ resource will benefit the client. If the service/resource is recommended by a therapist, the explanation in the request will state so; in cases where the therapist has provided a letter recommending the service/resource, that letter will be maintained in RMHS files.
- When receipts are required, a minimum of three documented contacts will be made to obtain invoices. Clients failing to reasonably comply will be suspended from further advances.

<b>Type:</b>	<b>Membership, one-time event or one-time item purchase</b>
<b>Examples:</b>	YMCA or other membership Training seminar Purchase of an item or items.
<b>Sample Explanation:</b>	This is a request for a 2019 annual membership at the YMCA at a cost of \$125; the client currently has a membership that expires at the end of 2018. A membership at the YMCA will improve the client's health through increased access to fitness activities.
<b>Acceptable Documentation:</b>	Invoice/receipt from provider/vendor or copies of issued checks in conjunction with either of the following: <ul style="list-style-type: none"><li>• Flier or other print material (copies are acceptable)</li></ul>

- Screenshot of webpage indicating cost, what is being purchased, business name, and URL

**Type:** **On-going activity**

**Example:** Swim lessons  
Music therapy

**Sample Explanation:** This is a request for 8 swim classes at \$12 per class, for a total cost of \$96, for the period of 1/3/19 – 3/3/19. A fitness activity has been recommended by the client’s behavioral therapist.

**Acceptable Documentation:** Invoice/receipt from provider/vendor or copies of issued checks in conjunction with either of the following:

- Flier or other print material (copies are acceptable)
- Screenshot of webpage indicating cost, what is being purchased, business name, and URL. Proof of attendance is not required when the nature of the activity requires payment to hold the slot for the client for the period of time or number of sessions specified by the registration or invoice.
- Reimbursement will be based on the payment date of the registration or invoice, rather than the dates of the activity. In the event the activity is cancelled, or a refund becomes due, RMHS will make good faith efforts to receive refunds and provide DHS information detailing how DHS will be credited for the refund(s).

**Type:** **Home and vehicle modifications**

**Sample Explanation:** This is a request for a bathroom modification to facilitate use by the client. The total estimated cost is \$15,000. Other funding will pay for \$7,000. Mill levy funding is requested for the estimated balance of \$8,000.

**Acceptable Documentation:** DHS requires proof of completion of the project and payment before expenditures will be reimbursed.

**Type:** **Gift card**

**Example:** Gift card for purpose of winter clothing

**Acceptable Documentation:** Proof of purchase and delivery to be captured in the following ways:

- All proof of purchases should include the gift card number or a photocopy of the gift card with the number.
- RMHS must provide either receipt(s) for item(s) purchased with the gift card or proof of delivery of the gift card.
- Proof of in person delivery should include recipient signature and delivery date on documentation with the card number or photocopy of the card. For gift cards distributed electronically, a copy of the email recording e-delivery to the recipient serves as proof of delivery.

<b>Type:</b>	<b>Travel (non-RMHS staff)</b>
Example:	Parent attends a conference specific to their child’s diagnosis. Child attends a unique camp in another state which requires travel. Family drives to a specialty hospital for child’s care (multi-day journey).
Sample Explanation:	This is a request for registration and travel accommodations for a conference in San Diego specific to my child’s diagnosis.
Acceptable Documentation:	Travel is not reimbursed until after the event or reservation has been completed. DHS requires proof of completion such as a hotel check out document or a certified statement from the attendee. See “Travel” Line-Item Definition for more notes on acceptable backup documentation, such as itineraries and booking receipts. Per diems are per person. Meals provided with a training, conference, or experience will not be included in per diem calculations.

## Unmet Needs

**Background:** Unmet Needs are services provided in an individual’s Medicaid waiver service plan but funded at a level insufficient to meet the individual’s needs. Providers of Unmet Needs are agencies contracted with RMHS for these specific services. These services include, but are not limited to, behavioral health, a fifth day of day habilitation, respite, supported employment and mentorship.

<b>Type:</b>	<b>All Unmet Needs</b>
Sample Explanation:	Client is currently funded by Medicaid for four days of day habilitation each week. Mill levy dollars will be used to pay for a fifth day.
Documentation Held by RMHS:	RMHS will maintain in the client’s electronic record documentation consistent with that required by Medicaid for this service.
Other Requirements:	All of the following requirements are applicable: <ul style="list-style-type: none"><li>• Services must be included in the individual’s service plan and reviewed at the time of each annual plan.</li><li>• Providers must ensure that Medicaid funding for the applicable time period and the applicable service(s) are accessed before mill levy funding may be used. For example, if Medicaid pays for two hours of behavioral health services per month and Mill levy funds a third hour, the two hours that are Medicaid-funded must be accessed before the third hour supported by mill levy funding.</li><li>• Record of recipient’s signatures for receipt of items delivered to or by RMHS.</li><li>• Amazon or other provider delivery record for items delivered directly to the recipient.</li><li>• For audit requests RMHS can provide access or copies of digital documentation.</li></ul>



## Family Support Requests

**Background:** The State of Colorado provides RMHS with \$720,000 of funding annually to be used to support the needs of families with individuals with developmental disabilities or delays. State funding for this program, known as the Family Support Services Program (FSSP) is inadequate to meet all needs. Mill levy dollars are used to extend FSSP. Procedures used for mill levy-funded Family Support requests are consistent with those in place for FSSP in order to simplify the process for families.

### All Family Support Requests:

- RMHS maintains documentation in accordance with State of Colorado FSSP requirements and is available upon request by DHS for audit purposes.
- RMHS submits to DHS the following information:
  - Client name
  - Date of request
  - Service/resource description
  - Amount granted
- In accordance with the FSSP program, families may, and generally do, submit requests in advance of payment for services/resources.

**Type:**

Sample Explanation:  
Documentation Held  
by RMHS:

**Respite**

This is a request for \$500 of respite care.

The parent/guardian maintains a respite log indicating dates of service, number of hours, and the amount paid. The log is signed by the parent/guardian and respite provider.

Other Requirements:

All of the following requirements are applicable.

- State-funded (through FSSP) respite care must be exhausted before mill levy funding may be used.
- Maximum funding levels exist based on client/family needs.
- A completed respite log must be submitted prior to the release of any additional respite dollars.

**Type:**

Sample Explanation:  
Documentation Held  
by RMHS:

**All requests other than respite**

This is a request for swimming lessons.

The parent/guardian must submit a receipt for the services/resource prior to the funding of any additional services/resource in the same category, if funds for that category are not yet fully utilized.

## External Agency Initiatives

The following documentation guidelines capture various review levels for External Agency Initiatives.

1. All invoices from External Agency Initiatives should specify the following:
  - Date span covered by the invoice

- Itemization of expenses consistent with the project budget
  - Number of individuals served per applicable line item on the budget/invoice
2. RMHS should request support documentation from External Agency Initiatives that satisfy their review of External Agency Initiatives invoices for payment in accordance with RMHS policies and monitoring practices, as well as this contract. Documentation may include any of the backup documentation described below, or other documentation designated by RMHS. RMHS will consult with DHS as needed to ensure sufficient monitoring practices.
  3. External agencies will maintain the following backup documentation as applicable to support their invoices:
    - Receipts for items/services purchased/invoiced
    - Timecards for staff/contractor costs incurred/invoiced
    - Rosters including names of individuals served, date(s) served, service(s) provided
    - Established processes detailing how eligibility requirements (I/DD, delayed under 5, or seeking eligibility; and Denver residency) are met for individuals served

Upon sampling this program line, DHS expects to receive the following: complete External Agency Initiative invoice as described above, approved payment request from RMHS team, proof of payment. DHS may request or audit additional backup documentation in accordance with this agreement. For External Agency Initiatives that include direct costs for travel in the subcontract budget, RMHS must hold any reimbursement requests until the travel or experience has occurred.

## **Policies & Procedures**

DHS requires that RMHS develop and maintain policies and procedures which address the following:

- Subcontracting opportunities under the agreement, to include public announcement with funding timelines; the merit review, selection, and approval of, and notification to, service providers, subcontractors, subconsultants, or other persons or entities seeking to provide services and supports under this agreement and any exceptions for subcontractors already providing services as a Program Approved Service Agency through Medicaid;
- External Agency Initiatives monitoring in accordance with RMHS's relationships and agreements with subcontractors, including monitoring subcontractor performance;
- Administrative practices, case management duties, and services delivered in the Early Intervention Denver, based in part from existing practices for Early Intervention Colorado services (to be developed throughout 2021 and approved before January 1, 2022);
- Development and implementation of RMHS Initiatives; and
- Grievance process and reporting practices for services funded by this agreement.

Each policy should describe standards, criteria, and procedures. Policies shall be submitted to the DHS Program Manager for review and approval upon creation. Proposed updates to a policy must be re-submitted to DHS for approval.

RMHS may identify and implement additional internal policies and procedures that support services to be delivered under this agreement and described in this Exhibit A. Additional policies and procedures not referenced above do not require prior review and approval by DHS, though they may be subject to audit(s) or other contract monitoring activities.

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

6/17/2020

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

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

<b>PRODUCER</b> IMA, Inc. - Colorado Division 1705 17th Street, Suite 100 Denver CO 80202	<b>CONTACT NAME:</b> IMA Denver Team <b>PHONE (A/C, No, Ext):</b> 303-534-4567 <b>E-MAIL ADDRESS:</b> DenAccountTechs@imacorp.com	<b>FAX (A/C, No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Denver Options Inc, dba: Rocky Mountain Human Sevices 9900 E Illiff Avenue Denver CO 80231	<b>INSURER A :</b> Philadelphia Indemnity Insurance Co.	
	<b>INSURER B :</b> Pinnacol Assurance	
	<b>INSURER C :</b>	
	<b>INSURER D :</b>	
	<b>INSURER E :</b>	

**COVERAGES****CERTIFICATE NUMBER:** 1307729396**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			PHPK2131787	5/15/2020	5/15/2021	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 20,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 3,000,000
							PRODUCTS - COMP/OP AGG	\$ 3,000,000
								\$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK2131787	5/15/2020	5/15/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB721970	5/15/2020	5/15/2021	EACH OCCURRENCE	\$ 6,000,000
							AGGREGATE	\$ 6,000,000
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4115575	7/1/2020	7/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Professional Liability			PHPK2131787	5/15/2020	5/15/2021	Per Occurrence	1,000,000
							Aggregate	3,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Sexual Abuse and Molestation Coverage is not Excluded.

Crime Coverage: Policy #107273110  
 Effective Dates: 06/15/20-05/15/21 Insurer: Travelers Casualty and Surety Co of Ame  
 \$1,000,000 Employee Dishonesty resulting in loss of Money and Securities; \$25,000 Deductible

See Attached...

**CERTIFICATE HOLDER**

City and County of Denver  
 Dept of Human Services  
 1200 Federal Blvd. 4th Floor  
 Denver CO 80204  
 USA

**CANCELLATION**

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: RMTNHUM

LOC #: \_\_\_\_\_



## ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

<b>AGENCY</b> IMA, Inc. - Colorado Division		<b>NAMED INSURED</b> Denver Options Inc, dba: Rocky Mountain Human Services 9900 E Illiff Avenue Denver CO 80231	
<b>POLICY NUMBER</b>		<b>EFFECTIVE DATE:</b>	
<b>CARRIER</b>	<b>NAIC CODE</b>		

### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Sexual Abuse and Molestation Coverage: Policy #PHPK2131787  
 Effective Dates: 05/15/2020-05/15/2021 Insurer A: See Above  
 \$1,000,000 Limit; \$2,000,000 Aggregate

Cyber Liability Coverage: Policy #CYB100574700  
 Effective Dates: 05/15/2020-05/15/2021 Insurer: Hudson Excess Insurance Company  
 \$5,000,000 Limit; \$5,000,000 Aggregate; \$25,000 Deductible

As required by written contract, the City and County of Denver, its elected and appointed officials, employees and volunteers are included as Additional Insureds on the General and Automobile Liability Policies.

## **EXHIBIT C**

### **Protected Health Information HIPAA/HITECH (Business Associate Terms)**

#### **1. GENERAL PROVISIONS AND RECITALS**

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

#### **2. DEFINITIONS.**

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

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

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

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

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

- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

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

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

- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

**3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.**

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY.



CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

#### **4. SECURITY RULE.**

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

#### **5. BREACH DISCOVERY AND NOTIFICATION.**

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

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

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

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DEH 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

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

6.03.1 The Disclosure is required by law; or

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

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

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

## **7. OBLIGATIONS OF CITY.**

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

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

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

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

## **8. BUSINESS ASSOCIATE TERMINATION.**

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

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

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

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that

CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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

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

**9. SUBSTANCE ABUSE**

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