

**BEHAVIORAL
HEALTH SOLUTIONS
CENTER SERVICES
AGREEMENT**

TABLE OF CONTENTS

RECITALS	1
Section 1 Definitions	2
Section 2 Contract Documents	2
21 Order of Preference	3
22 Modifications to Budget and Exhibits	4
Section 3 Coordination of Services	5
3. Coordination and Liaison	5
Section 4 Services	5
4. Services	5
Section 5 Compensation	6
5. Compensation and Method of Payment	6
5.1 Budget	6
5.2 Reimbursable Expenses	6
5.3 Invoicing by Both Parties	6
5.4 Allocable Costs	6
5.5 Certification	6
5.6 Maximum Contract Amount Paid by City to MHCD	6
5.7 Maximum Contract Amount Paid by MHCD to City	7
5.8 Recovery of Incorrect Payments	7
5.9 Additional Program Conditions	7
5.10 Funds Contingency	7
5.11 Other Funding	8
5.12 Screen, Refer & Assist in Gaining Eligibility	8
Section 6 Term	8
6.1 Term	8
Section 7 Licensed Premises	9
Section 8 Background Checks	9
8.1 Required Background Check	9
8.2 Hiring and Employment Decisions; Volunteers	9
Section 9 Reports/Correspondence	10
9.1 Submission Deadlines for Reports	10
9.2 Correspondence	10
9.3 Invoices	10

Section 10 Performance Monitoring/Inspection_____10

Section 11 Status of MHCD_____11

Section 12 Licensing/Authorizations_____11

Section 13 Staff Qualifications_____11

Section 14 Eligibility_____11

Section 15 Limitations_____12

Section 16 Remedies for Noncompliance_____12

Section 17 Termination_____13

Section 18 Examination of Records_____14

Section 19 When Remedies and Rights Not Waived_____15

Section 20 Insurance_____15

201 General Conditions_____15

202 Proof of Insurance_____15

203 Additional Insureds_____15

204 Waiver of Subrogation_____16

205 Subcontractors and Subconsultants_____16

206 Workers' Compensation/Employer's Liability Insurance_____16

207 Commercial General Liability_____16

208 Business Automobile Insurance_____16

209 Professional Liability_____16

2010 Property Insurance_____16

2011 Additional Provisions_____17

Section 21 Defense and Indemnification_____17

Section 22 Taxes, Charges and Penalties_____18

Section 23 Assignment; Subcontracting_____18

Section 24 Inurement_____18

Section 25 Enforcement; No Third-Party Beneficiary_____19

Section 26 No Authority to Bind City to Contracts_____19

Section 27 Severability_____19

Section 28 Conflict of Interest	19
Section 29 Notices	20
Section 30 No Employment of Illegal Aliens to Perform Work Under the Agreement	20
Section 31 Governing Law; Venue	22
Section 32 No Discrimination in Employment; Equal Employment Opportunity	22
Section 33 Compliance With All Laws	23
33.1 Grievance Policy	24
33.2 Debarment	24
33.3 Certification	24
33.4 No Discrimination in Program Participation	24
33.5 Prohibited Transactions	25
33.6 Mandatory Disclosures	25
Section 34 Legal Authority	26
Section 35 No Construction Against Drafting Party	26
Section 36 Intellectual Property	26
Section 37 Personal Information; Data Protection; Protected Health Information	27
Section 38 Confidential Information; Open Records	27
38.1 City Proprietary and Confidential Information	27
38.2 Use and Protection of Proprietary Information and Confidential Information	27
Section 39 Disputes	29
Section 40 Survival of Certain Provisions	29

Section 41 Advertising and Public Disclosure	29
41.1 Approval Required	29
41.2 Acknowledgment of Funding	30
Section 42 City Execution of Agreement	30
Section 43 Agreement as Complete Integration-Amendments	30
Section 44 Use, Possession or Sale of Alcohol or Drugs	30
Section 45 Tobacco Products and Smoking Policy	31
Section 46 Electronic Signatures and Electronic Records	31

AGREEMENT

THIS AGREEMENT is made and entered into between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **MENTAL HEALTH CENTER OF DENVER**, a not-for-profit corporation whose address is 4141 East Dickenson Place, Denver, Colorado 80222 (“MHCD”), referred to as the “Parties” collectively.

RECITALS

- A.** The City is committed to enhancing access to the State of Colorado’s Behavioral Health Crisis Response System, which seeks to establish a comprehensive, easily accessible and integrated system.
- B.** A crisis intervention and stabilization clinic provide direct behavioral health care to non-hospitalized individuals experiencing an acute crisis of a psychiatric or substance abuse nature that may jeopardize their current community living situation or which puts them at risk of psychiatric or substance abuse hospitalization.
- C.** Mental health and substance abuse crisis stabilization and transitional step-down centers are authorized and funded by state, federal, and/or local law. They are essential to effective care and treatment for persons experiencing substance abuse and/or behavioral health crises.
- D.** To assist in the initiation of these services, the City solicited proposals from qualified vendors to implement and manage a Behavioral Health Solutions Center (“Center”) for homeless persons, with both:
- 1.** crisis intervention and stabilization services; and
 - 2.** sleeping accommodations with transitional, step down services.
- E.** MHCD submitted a proposal to implement and manage the Center.
- F.** The City reviewed and analyzed all proposals. The City then selected MHCD to be responsible for implementing and managing the Center.
- G.** The City identified a portion of a City property for use as the Center for these services.
- H.** This Agreement and its Exhibits set forth the conditions upon which the Center will be implemented and managed in accordance with applicable law.

THE PARTIES therefore agree as follows.

Section 1

Definitions

1. DEFINITIONS. In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to its exhibits. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

1.1 “Center” refers to the Behavioral Health Solutions Center located on the first and third floors of the Family Crisis Center building located on the Human Services Campus (HSC) at 1200 Federal Blvd., Denver, CO 80204. CSU and triage services will be on the first floor. Transitional shelter services will be on the third floor. The Family Crisis Center on the HSC is and will continue to be leased by the City acting by and through its Department of Human Services under the Lease Purchase Agreement No. 2005 A.

1.2 “City Law” shall include the Denver Charter, Denver Revised Municipal Code, executive orders, rules, regulations, policies and procedures prescribed by the City which govern funds which are or may later become obligated under this Agreement.

1.3 “Furnishings” means new or used items set forth in Exhibit H. Furnishings excludes computers, laptops, tablets, electronic devices, fax machines, copiers, printers, and other related equipment.

1.4 “MHCD Personal Property” means every kind of business personal property provided by MHCD to provide the services in the premises, including without limitation furniture and equipment that is moveable without damage to itself or the premises.

1.5 “Denver Public Facilities Leasing Trust 2005A” means the owner and lessor for the Family Crisis Center building on the HSC.

1.6 “Director” means the Executive Director of DDPHE.

1.7 “DDPHE Director of Facilities” means the DDPHE Director of Facilities who oversees and manages building management matters for the Family Crisis Center building.

1.8 “DDPHE Premises” means collectively the Family Crisis Center buildings and the HSC.

1.9 “Director of Real Estate” means the Director of Real Estate for the City who oversees matters related to the grant of the limited license for the Licensed Premises.

1.10 “DPFLT 2005 Master Lease” means the Lease Purchase Agreement No. 2005A dated August 9, 2005 under which the City subleases from the Denver Public Facilities Leasing Trust 2005A certain real property and leasehold improvements located in the southeast corner of Federal Boulevard and West Holden Place in Denver, Colorado (the “DHS Federal Property” or “HSC”),

including the Family Crisis Center building. (For cross-reference purposes, the DPFLT 2005 Master Lease describes the DHS Federal Property as the “Human Services Center Properties”).

1.11 “Effective Date” shall be the date the City delivers a fully executed electronic copy of this Lease to Lessee. This Lease is expressly subject to, and shall not be or become effective or binding on the City until, approval by its City Council and full execution by all signatories set forth below.

1.12 “Federal” or “State” funds mean an award or appropriation of monies from the Federal or State Government for purposes of providing the within services.

1.13 “Federal” or “State” government shall include representatives of the agency, department or office of the United States of America and/ or the State of Colorado which are or may be empowered to promulgate, review or enforce rules governing the expenditure of Federal or State funds which are or may hereafter become obligated for the services herein.

1.14 “Federal” or “State” law shall include any laws of the United States of America or the State of Colorado which govern funds or services which are or may after become obligated or subject to this Agreement.

1.15 “Licensed Premises” means the space located in the DDPHE premises that has been or will be made available to MHCD to provide the Services during the Term as more particularly described and depicted on Exhibit A. (Each such space by itself and together with the others is a “Licensed Premise”).

1.16 “Program” means any and all authorized activities necessary to establish and implement the crisis intervention and stabilization services and the sleeping accommodations with transitional, step down services.

1.17 “Subcontractor” means an entity that furnishes to MHCD services, materials, equipment, or supplies (other than standard office or medical supplies or printing services) pursuant to this Agreement.

Section 2

Contract Documents

2 CONTRACT DOCUMENTS.

2.1 Order of Preference. This Agreement consists of Sections 1 through 48 (which precede the signature pages) and the following exhibits which are incorporated here and made a part by reference:

- Exhibit A Scope of Work
- Exhibit B Budget
- Exhibit C Examination of Records and Audit
- Exhibit D Certificate of Insurance
- Exhibit E HIPAA/Hitech/42 CFR Business Associate Terms
- Exhibit F Use of City Facilities Terms and Conditions

Exhibit G [INTENTIONALLY DELETED].
Exhibit H City Provided Furniture
Exhibit I Technology and Data Terms and Conditions
Exhibit J Executive Order 94

In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of the Agreement controls.

2.2 Modifications to Budget and Exhibits.

2.2.1. Budget Modification. Budget line items within Exhibit B may be modified by MHCD upon and subject to the written approval of the Director, so long as no budget line item modification(s):

2211 would cause(s) either one or both of the two budget subtotal categories (clinic or shelter) to exceed its subtotal amount; or,

2212 would result in or bind the City to (individually or collectively) an upward adjustment to the Maximum Contract Amount; or,

2213 otherwise materially change(s) the terms of the Agreement.

2.2.2 Other Exhibit Modifications. The Parties may modify other exhibits attached to this Agreement, provided however that no modification to an exhibit shall:

2.2.2.1 result in or bind the City (individually or collectively) to an upward adjustment to the Maximum Contract Amount or,

2.2.2.2 otherwise materially change(s) the terms of the Agreement.

2.2.3 In the event of a modification under this provision, the Parties shall, in each instance, memorialize in writing any and all modifications to an exhibit by revising and restating that exhibit and referencing the City Contract Control number stated on the signature page below. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney's office, and filed with the City Clerk. All such modifications shall contain the date upon which the modified exhibit or exhibits shall take effect.

2.2.4 Any modifications not allowed under this provision shall be evidenced by a written Amendatory Agreement prepared and executed by both Parties in the same manner as this Agreement.

Section 3

Coordination of Services

3. **COORDINATION AND LIAISON.** MHCD(s) shall fully coordinate all services under the Agreement with the Director or Director's Designee.

Section 4

Services

4. **SERVICES.**

4.1 In addition to any and all obligations required by law or stated elsewhere in this Agreement, or on any Exhibit(s), and subject to the terms and conditions of this Agreement and at the direction of the Director, MHCD shall diligently undertake, perform, and complete all of the services for the Program, achieve all of the performance measures, and produce all the deliverables set forth on Exhibit A, Statement of Work (the "Services"), to the City's satisfaction.

4.2 This agreement is intended to fund services to persons not eligible for Medicaid or other third party payment ("ineligible persons"); and, services not covered by Medicaid (see C.R.S. 25.5-5-202 and 203 and related state regulations as well as corollary federal laws) or other third party payers ("noncovered services").

4.3 The Parties understand that DDHS/OBHS funds may only be used to pay for "non-covered services" and services to "ineligible persons".

4.4 Other sources (Medicaid, Medicare, and other benefit plans and programs, etc.) should cover all or a portion of the costs. Contractor is responsible for collecting from those other sources.

4.5 MHCD is ready, willing, and able to provide the Services required by this Agreement.

4.6 MHCD shall faithfully perform the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by qualified individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.

4.7 MHCD is responsible for taking all actions reasonably necessary to ascertain the nature and location of the Services to be performed under this Agreement and to obtain sufficient knowledge of the general conditions that may affect the performance of the Services or the cost thereof. Any failure to take such actions or have such knowledge will not relieve MHCD from its responsibility to successfully perform the Services without additional cost to the City. No oral representation by any officer or employee of the City concerning the nature, location or general conditions relating to the Services at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

Section 5

Compensation

5. COMPENSATION AND METHOD OF PAYMENT.

5.1 Budget. The Parties shall pay as the sole compensation for services rendered and costs incurred under the Agreement amounts not to exceed the budgeted amounts set forth in Exhibit B. MHCD certifies the budget line items contain reasonable allowable direct costs and allocable indirect costs of not more than 10%, in accordance with DDPHE policies and standards [or, if they have a federal letter and 2 C.F.R. 200, Subpart E].

5.2 Reimbursable Expenses. Except as set forth on Exhibit B, there are no reimbursable expenses to be paid by the City allowed under the Agreement.

5.3 MHCD will invoice DDHS/OBHS for budgeted items on a cost reimbursement basis. Invoices will include all documentation necessary to support payment for “noncovered services” and “ineligible persons”. MHCD will identify all persons served and the services provided to them. Charges for “non-covered services” and “ineligible persons” will be identified by MHCD and only those amounts will be paid.

5.4 MHCD shall provide the City with a monthly invoice, submitted within twenty-five (25) days of the end of the prior month, in a format and with a level of detail mutually acceptable to the Parties and in accordance with Exhibit B. MHCD’s invoices must identify reasonable allowable direct costs and allocable indirect costs actually incurred in accordance with the budgeted categories and amounts contained in Exhibit B. The amounts invoiced by MHCD will be payable upon completion of satisfactory performance for the month and as fully documented by MHCD’s monthly invoice. Payments will be made consistent with the time frames and requirements of the City’s prompt pay ordinance. Funds payable by the City hereunder shall be distributed to MHCD on a reimbursement basis only, for work performed during the prior month. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely and must be submitted separately to be considered for payment. Payment for such late submitted invoices shall be made only upon a showing of good cause for the late submission. MHCD’s invoices will set forth the methodology used to determine costs for services invoiced. The City will have the right to dispute, and withhold payment for, any invoice that does not contain a sufficient statement of MHCD’s methodology used to determine costs for services invoiced

5.5 Allocable Costs. MHCD must not allocate costs attributable to this Agreement to payment under any other contract or source without the express written permission of the City.

5.6 Certification. Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind MHCD.

“By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of this Agreement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.”

5.7 Maximum Contract Amount Paid by City to MHCD.

5.7.1 Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **FOUR MILLION FIVE HUNDRED THIRTY NINE THOUSAND FIVE HUNDRED THIRTY-EIGHT DOLLARS AND ZERO CENTS (\$4,539,538.00)** (the “Maximum Contract Amount”) and shall be paid as follows: a) This amount included \$284,194.00 for one month of 2020; b) \$3,410,344.00 for twelve months of 2021, and c) \$845,000 for start-up costs. The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by MHCD beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at MHCD’s risk and without authorization under the Agreement.

5.7.2 The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by 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.

5.8 Recovery of Incorrect Payments. The City has the right to recover from MHCD any and all incorrect payments issued to MHCD due to any omission, error, fraud, and/or defalcation including but not limited to applying a deduction from subsequent payments under this Agreement or other means of recovery by the City as a debt due to the City or otherwise as provided by law. If, as a result of any audit or Program review relating to the performance of MHCD or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then MHCD will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City’s written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City’s favor unless MHCD obtains a resolution in its favor from the responsible official conducting the audit or review. The foregoing in no way limits MHCD’s obligation to reimburse the City for any costs or expenses paid under this Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable federal, state, or local law, including the City’s Charter, ordinances, rules, regulations, policies, and Executive Orders.

5.9 Additional Program Conditions. If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive order, rules and regulations,

or other written policy instrument, MHCD will comply with all such additional conditions. If MHCD is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to MHCD of any unearned funds.

5.10 Funds Contingency. All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of funds for the purposes of the Program. In the event that Federal, State or Local Funds, or any part thereof, are not awarded or authorized, or are reduced or eliminated, the City may reduce or eliminate the total amount of compensation to be paid to MHCD by revising Exhibits A and B, or it may terminate this Agreement.

5.11 Other Funding.

5.11.1 The City cannot as a matter of law and policy pay for goods or services for which another source of funding exists, or for which another person or entity is responsible to provide and pay for.

5.11.2 City payment may not be sought by MHCD, or supplant and existing funding, or be used to pay for goods or services that are already available, or can be funded, reimbursed, or paid from another source, or that are a benefit of another program. That includes, but is not limited to, for covered services eligible for payment under the Colorado State Medicaid Program.

5.11.3 The monies provided for and received under this Agreement are the only and sole funds available to MHCD from or through the City and County of Denver for payment of goods and services provided under this Agreement.

5.11.4 In the event MHCD (or its clients) shall be eligible for or receive any other monies for the services provided under this Agreement, then the associated expense item(s) charged to the City will be deleted and the amount payable by the City will be reduced accordingly. To the extent not already identified in Exhibits A and/or B, MHCD shall report promptly, in writing to the Director, and then offset, all amounts no later than thirty (30) days after identification of same.

5.12 Screen, Refer, and Assist in Gaining Eligibility. In order to maximize the availability of these services, MHCD will screen, refer, and assist in gaining eligibility for and payments from third party payers for all covered services, including for all Medicaid eligible and other private or government funded services and benefits.

Section 6

Term and Termination

6. TERM. The Agreement will commence on **December 1, 2020** or the Effective Date, whichever is later (the “Commencement Date”) and will expire **on December 31, 2021**, unless earlier terminated pursuant to the terms herein contained (the “Expiration Date”) (together, the “Term”). Subject to the Director’s prior written authorization, MHCD shall complete any

work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated.

Section 7

Licensed Premises

7. LICENSED PREMISES

7.1 Subject to any required consent of or by the City including its outside legal bond counsel, and subject to the terms and conditions of this Agreement and Exhibit F the City grants to MHCD a limited license and privilege to use the Licensed Premises during the Term. Any other consent, approval, construction, determination or agreement which may be required with respect to such limited license shall be made for the City by the Director, unless another City official, including without limitation, the Director of Real Estate, the Director of Facilities Management, and the DDPHE Director of Facilities, is specifically given such authority by the Denver Charter, Revised Municipal Code, an Executive Order of the City and County of Denver, or otherwise by written designation of the Mayor for a particular provision of this Agreement and its Exhibits.

7.2 The license privileges under this Agreement are specific to MHCD and may not be transferred or assigned in any manner without the prior written approval of the City.

7.3 MHCD will not take any action or fail to take any action that cause the City to breach or be in default under the DPFLT 2005 Master Lease. MHCD by its signature below acknowledges receipt of a copy of the DPFLT 2005 Master Lease from the Director. This Agreement shall not be effective until the Denver Capital Leasing Corporation actually delivers its written consent to the limited license under this Agreement to the City by signing the last page hereof. Denver Public Facilities Leasing Trust 2005A.

7.4 MHCD accepts the Licensed Premises in an "AS IS", "WHERE IS" condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Licensed Premises.

7.5 The Licensed Premises shall, upon the Commencement Date, be vacant except for the City's Furniture as described on Exhibit H.

Section 8

Background Checks

8. BACKGROUND CHECKS

8.1 **Required Background Checks.** MHCD acknowledges that it, and its officers and employees, are in a position of public trust in the performance of this Agreement and must operate in a manner that maintains the highest standards of honesty, integrity and public confidence.

8.2 **Hiring and Employment Decisions; Volunteers.** In order to prevent unknowingly employing someone or retaining a volunteer who may present a high risk for impropriety, misconduct, malfeasance, or criminal conduct, MHCD, its officers, employees, and Subcontractors, will complete comprehensive criminal background checks on all people working or volunteering for MHCD in

accordance with all applicable laws, rules, regulations, grant awards, funding agreements, manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the Federal Government, State Government, or the City. Additional types of background checks may be required and/or permitted depending on the type of position and nature of the duties performed. These additional background checks may include: Employment History Verifications, Drug Testing, Education /Degree Verification, Motor Vehicle Record (MVR), Commercial Driver's License (CDL), Professional License and Certification, Finger Printing, Child Abuse/Neglect Registry, Medicare/Medicaid Fraud Database, Polygraph Examination (DOS), Credit History, and NCIC or CCID Clearance.

Section 9

Reports/Correspondence

9. REPORTS/CORRESPONDENCE.

9.1 Submission Deadlines for Reports. MHCD shall provide the City with a monthly narrative summary report on activities performed with the assistance of funds provided under this Agreement no later than the fifteenth (15th) day of each month following the effective date of this Agreement, and continuing through the month following the date of termination of this Agreement. Each such report shall set forth in detail the progress of work under this Agreement and any other information reasonably requested by the City and shall be submitted in such a format as may be designated by the City. Such reports may be submitted electronically by disk or e-mail, followed by hard copy transmittal. In addition, MHCD shall comply with any and all contract closeout procedures directed by the Director to be performed under this Agreement for final reimbursement, including but not limited to final review of payments, invoices, referrals, and required reporting documents, including close-out signature.

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

9.3 Invoices. All Invoices shall be delivered electronically to: OBHSinvoices@denvergov.org

Section 10

Performance Monitoring/Inspection

10. PERFORMANCE MONITORING/INSPECTION. MHCD shall permit the Director to monitor and review its performance under this Agreement. MHCD shall make available to the City for inspection any and all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, payrolls and other data, whether in hard copy or electronic format, used in the performance of any of the services required hereunder or relating to any matter covered by this Agreement. All such monitoring and inspection shall

be performed in a manner that will not unduly interfere with the services to be provided under this Agreement.

Section 11

Status

11. **STATUS OF MHCD.** MHCD is an independent contractor retained to perform professional or technical services for limited periods of time. Neither MHCD 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.

Section 12

Licensing/Authorizations

12. **LICENSING/AUTHORIZATIONS.** MHCD is responsible for obtaining and maintaining all professional licenses, permits, and other authorizations necessary or required to provide mental health stabilization and transition shelter services at the subject premises.

Section 13

Staff Qualifications

13. **STAFF QUALIFICATIONS.** MHCD shall provide qualified staff to perform all crisis stabilization, shelter, and other services.

Section 14

Eligibility

14. **ELIGIBILITY.**

14.1 Individuals qualifying for these services must demonstrate a clinical necessity for the service arising from an acute crisis of a psychiatric nature that puts the individual at risk of psychiatric hospitalization.

14.2 Individuals must meet at least two of the following criteria at the time of admission to services:

1421 Experience difficulty in establishing or maintaining normal interpersonal relationships to such a degree that the individual is at risk of psychiatric hospitalization, homelessness, or isolation from social supports;

1422 Experience difficulty in activities of daily living such as maintaining personal hygiene, preparing food and maintaining adequate nutrition, or managing finances to such a degree that health or safety is jeopardized;

1423 Exhibit such inappropriate behavior that immediate interventions by the

mental health, social services, or judicial system are necessary; or

14.2.4 Exhibit difficulty in cognitive ability such that they are unable to recognize personal danger or significantly inappropriate social behavior.

14.3 If an individual has co-occurring mental health and substance use disorders, integrated treatment for both is allowed as long as the treatment for the substance abuse condition is intended to positively impact the mental health condition. The impact of the substance abuse condition on the mental health condition must be clearly documented in the assessment, treatment plan and progress notes.

Section 15

Limitations

15. LIMITATIONS.

15.1 The following individuals shall not be cared at the crisis stabilization center:

15.1.1 individuals with a medical condition that requires hospital care;

15.1.2 individuals with a primary diagnosis of substance abuse;

15.1.3 individuals with a psychiatric condition that cannot be managed in the community (i.e. individuals who are imminently dangerous to themselves or others, or gravely disabled);

15.1.4 individuals who require seclusion or restraint;

15.1.5 individuals who require only room and board, custodial care, or general supervision.

Section 16

Remedies for Noncompliance

16. REMEDIES FOR NONCOMPLIANCE.

16.1 In the event that MHCD does not correct an identified default within thirty (30) calendar days' prior written notice (Cure Period) by the Director, then the City may impose any or all of the following remedial actions or termination, in addition to any and all other actions authorized by law.

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

16.3 Deny any and all requests for payment and/or demand reimbursement from MHCD of

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

16.4 Suspend or terminate this Agreement, or any portion or portions thereof, upon thirty (30) calendar days' prior written notice to MHCD.

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

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

16.7 Refuse to award MHCD, in whole or in part, any and all additional funds for expanded or additional services under the Program.

16.8 Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for MHCD; or

16.9 Modify, suspend, remove, or terminate the Services, in whole or in part. If the Services, or any portion thereof, are modified, suspended, removed, or terminated, MHCD shall cooperate with the City in the transfer of the Services as reasonably designated by the City and in accordance with standards of care for the provision of behavioral health services.

Section 17

Termination

17. TERMINATION.

17.1 The City has the right to terminate the Agreement with cause upon written notice effective immediately, and with cause the expiration of the Cure Period set forth in Section 16 above. However, nothing gives MHCD the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

17.2 Notwithstanding the preceding paragraph, the City may terminate the Agreement Termination for the reasons stated in this paragraph, which termination is effective upon receipt of notice.

17.2.1 If MHCD 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 MHCD's business.

17.2.2 Immediate termination if there is a breach of the license for use of the premises.

Either party may terminate this Agreement for no reason or for any reason upon one hundred eighty (180) days' prior written notice of termination delivered by either Party to the other;

If the Agreement is terminated, the Parties are entitled to and will take possession of all materials, furnishings, equipment, tools, facilities and other property it owns that are in the other Party's possession, custody, or control. The Parties 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 one Party to the other. The Parties shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE".

Section 18

Examination of Records

18. EXAMINATION OF RECORDS.

18.1 MHCD will keep true and complete records of all business transactions under this Agreement. Any authorized representative of the City, including the City Auditor or his or her representative, the State of Colorado, or the federal government will have the right to access and the right to examine during a mutually agreed upon time any pertinent books, documents, papers and records of MHCD, involving transactions related to the Agreement until the latter of seven (7) years after the final payment under the Agreement or expiration of the applicable statute of limitations whichever is longer. This right of access also includes timely and reasonable access to MHCD's active personnel for the purpose of interview and discussion related to such documents.

18.2 MHCD acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget including, but not limited to, all applicable laws, rules, regulations, policy statements, and guidance issued by the Federal Government (including the United States Office of Management and Budget), regarding audit requirements and access to records requirements.

18.3 In addition to the requirements contained in Exhibit C concerning Audits, MHCD's auditor will provide an accounting certification that the audit was conducted in accordance with applicable standards set forth in the U.S. Office of Management and Budget ("OMB") circulars. All accounting practices will be in conformance with Generally Accepted Accounting Principles (GAAP). MHCD will complete and deliver a copy of its audit report as directed by the DHS Director. MHCD's agreements with Subcontractors will contain a clause stating that the Subcontractor is subject to the Audit Requirements of this Agreement or as may be imposed by Federal, State and City Law. Final financial settlement under this Agreement will be contingent upon receipt and acceptance of MHCD's audit.

18.4 If, as a result of any audit relating to the fiscal performance of MHCD or Subcontractor under this Agreement, the City receives notice of any irregularities or deficiencies in said audits, then the City will notify MHCD of such irregularities or deficiencies. MHCD will correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then MHCD will so notify the City in writing and will identify a date that MHCD expects to correct the

irregularities or deficiencies; provided, however, that if MHCD's notice is dated within thirty (30) calendar days prior to the Expiration Date or effective date of earlier termination, then MHCD's corrections will be made and submitted to the City on or before the fifth working day from the Expiration Date or effective date of earlier termination. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes will be deemed to be resolved in the City's favor unless MHCD obtains a resolution in its favor from the responsible federal official.

Section 19

When Rights and Remedies Not Waived

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

Section 20

Insurance

20. **INSURANCE.**

20.1 General Conditions. MHCD 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. MHCD 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 stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written 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, MHCD 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 MHCD. MHCD 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 MHCD. MHCD 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.

20.2 Proof of Insurance. MHCD shall provide a copy of this Agreement to its insurance agent or broker. MHCD may not commence services or work relating to the Agreement prior to placement of coverage. MHCD certifies that the certificate of insurance attached as Exhibit D, 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 MHCD'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.

20.3 Additional Insureds. For Commercial General Liability and Auto Liability, MHCD and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

20.4 Waiver of Subrogation. For all coverages, MHCD's insurer shall waive subrogation rights against the City.

20.5 Subcontractors and Subconsultants. All subcontractors and subconsultants (including independent MHCD 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 MHCD. MHCD 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. MHCD agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

20.6 Workers' Compensation/Employer's Liability Insurance. MHCD 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. MHCD expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of MHCD's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance will act to cause 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 MHCD executes this Agreement.

20.7 Commercial General Liability. MHCD 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.

20.8 Business Automobile Insurance. MHCD 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.

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

20.10 Property Insurance. MHCD shall maintain All-Risk Form Property Insurance on a replacement cost basis. The City and County of Denver shall be named Loss Payee as its interest may appear.

20.11 Additional Provisions.

- 20.11.1 For Commercial General Liability and Excess Liability, the policies must provide the following:
- 20.11.2 That this Agreement is an Insured Contract under the policy;
- 20.11.3 Defense costs in excess of policy limits;
- 20.11.4 A severability of interests, separation of insureds or cross liability provision;
- 20.11.5 A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
- 20.11.6 No exclusion for sexual abuse or molestation.
- 20.11.7 For claims-made coverage:
- 20.11.8 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.
- 20.11.9 MHCD 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, MHCD will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

Section 21

Defense and Indemnification

- 21. DEFENSE AND INDEMNIFICATION.** MHCD hereby 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 MHCD 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.

MHCD’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.

Insurance coverage requirements specified in this Agreement shall in no way lessen or limit

the liability of MHCD under the terms of this indemnification obligation. MHCD shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

Section 22

Taxes, Charges and Penalties

22. **TAXES, CHARGES AND PENALTIES.** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, et seq. MHCD shall promptly pay when due, all taxes, bills, debts and obligations it incurs performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against City property.

Section 23

Assignment; Subcontracting

23. **ASSIGNMENT; SUBCONTRACTING.**

23.1 MHCD shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent.

23.2 Any assignment or subcontracting without such consent will be ineffective and void and shall be cause for termination of this Agreement by the City.

23.3 The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting.

23.4 In the event of any subcontracting or unauthorized assignment: MHCD shall remain responsible to the City; and no contractual relationship shall be created between the City and any MHCD subcontractor or assign.

Section 24

Inurement

24. **INUREMENT.** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.

Section 25

Enforcement; No Third-Party Beneficiary

25. ENFORCEMENT; NO THIRD-PARTY BENEFICIARY.

25.1 Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties.

25.2 Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity.

25.3 Any person or entity other than the City or MHCD receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

Section 26

No Authority to Bind City to Contracts

26. NO AUTHORITY TO BIND CITY TO CONTRACTS. MHCD 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.

Section 27

Severability

27. 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.

Section 28

Conflict of Interest

28. CONFLICT OF INTEREST.

28.1 No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. MHCD 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.

28.2 MHCD shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. MHCD 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 MHCD by placing MHCD's own interests, or the interests of any party with whom MHCD 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 MHCD written notice describing the conflict.

Section 29

Notices

29. NOTICES.

29.1 Notices concerning termination of the Agreement, alleged or actual violations of the terms of the Agreement, and matters of similar importance 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 MHCD at the address first above written, and if to the City at:

Executive Director , Denver Department of
Public Health and Environment and Manager
Office of Behavioral Health
City and County of Denver
101 W. Colfax Ave
Suite 800
Denver, CO 80202

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

29.2 Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by mail are effective upon deposit with the US 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.

Section 30

No Employment of Illegal Aliens to Perform Work Under the Agreement

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

30.1 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”).

30.2 MHCD certifies that:

30.2.1 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.

30.2.2 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.

30.3 MHCD also agrees and represents that:

3031 It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3032 It shall not enter into a contract with a subconsultant or subcontractor that fails to certify to MHCD that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3033 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.

3034 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 that otherwise requires MHCD 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.

3035 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. MHCD will also then 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.

3036 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.

30.4 MHCD is liable for any violations as provided in the Certification Ordinance. If MHCD 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, MHCD 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 MHCD from submitting bids or proposals for future contracts with the City.

Section 31

Governing Law; Venue

31. GOVERNING LAW; VENUE.

31.1 The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement.

31.2 Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

Section 32

No Discrimination in Employment; Equal Employment Opportunity

32. NO DISCRIMINATION IN EMPLOYMENT; EQUAL EMPLOYMENT OPPORTUNITY.

32.1 In connection with the performance of work under the Agreement, MHCD 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 variance, marital status, or physical or mental disability. MHCD shall insert the foregoing provision in all subcontracts.

32.2 Federal requirements:

In carrying out its obligations under the Agreement, MHCD and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with 29 CFR Part 37, Title VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations. MHCD agrees not discriminate against any employee or applicant for employment because of race, religion, national origin, ancestry, color, gender,

gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. MHCD will ensure that all qualified applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training (including apprenticeship), or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status.

32.2.1 MHCD agrees to post notices affirming compliance with all applicable federal and state non-discrimination laws in conspicuous places accessible to all employees and applicants for employment. MHCD will affirm that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of MHCD.

32.2.2 MHCD will incorporate the foregoing requirements of this section in all of its subcontracts.

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

Section 33

Compliance with All Laws

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

33.1 Grievance Policy. The Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by MHCD. Also, clients must be allowed adequate opportunity to communicate

dissatisfaction with the facilities or services offered by MHCD. In order to satisfy this requirement, MHCD agrees to provide a written "Grievance Policy" as a mechanism to provide opportunities for the City and its clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of services. MHCD agrees that a formal "Grievance Policy" will be adopted by its governing body and submitted to the Director for approval at the Director's discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement;

33.2 Debarment. MHCD is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. By its signature below, MHCD assures and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. MHCD shall provide immediate written notice to the Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of changed circumstances. If MHCD is unable to certify to any of the statements in the certification contained in this paragraph, MHCD shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if MHCD is unable to certify to any of the statements in the certification contained in this paragraph, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to MHCD.

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

33.4 No Discrimination in Program Participation. MHCD will comply with any and all applicable federal, state, and local laws that prohibit discrimination in programs and activities funded by this Agreement on the basis of race, color, national origin, sex, disability, and age including but not limited to Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and MHCD agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph. Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). MHCD hereby warrants and assures that LEP persons will have meaningful access to all services provided under this Agreement. To the extent MHCD provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance. Further, MHCD acknowledges the City's Office of Human Rights and Community Partnerships, Office of Sign Language Services

(OSLS) oversees access for deaf and hard of hearing people to City programs and services. MHCD will comply with any and all requirements and procedures of the OSLS, as amended from time to time, concerning the provision of sign language interpreter services for all services provided by MHCD under this Agreement.

33.5 Prohibited Transactions.

- 33.5.1 Interest of MHCD.** MHCD covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. MHCD further covenants that in the performance of this Agreement, no person having any such interest will be employed.
- 33.5.2 Members of Congress.** No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise from this Agreement.
- 33.5.3 Employees.** No officer or employee of either the City or MHCD shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other Party to this Agreement. Any contractual provision that contravenes the provisions of this Section shall be null and void. This Section shall not prohibit an officer or administrator of one Party to this Agreement from being reimbursed by the other Party for actual, out-of-pocket expenses incurred on behalf of the other Party.
- 33.5.4 No Political Activity.** Without limiting the foregoing, MHCD agrees that political activities are prohibited under this Agreement and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.
- 33.5.5 Byrd Anti-Lobbying.** If the Maximum Contract Amount exceeds \$100,000, MHCD must complete and submit to the Agency a required certification form provided by the Agency certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. MHCD must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

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

Section 34

Legal Authority

34. LEGAL AUTHORITY.

34.1 MHCD represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement.

34.2 Each person signing and executing the Agreement on behalf of MHCD represents and warrants that he has been fully authorized by MHCD to execute the Agreement on behalf of MHCD and to validly and legally bind MHCD to all the terms, performances and provisions of the Agreement.

34.3 The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either MHCD or the person signing the Agreement to enter into the Agreement.

Section 35

No Construction Against Drafting Party

35. NO CONSTRUCTION AGAINST DRAFTING PARTY. The Parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any Party merely because any provisions of the Agreement were prepared by a particular Party.

Section 36

Intellectual Property

36. INTELLECTUAL PROPERTY.

36.1 The City and MHCD intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by MHCD and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Materials"), shall belong to the City. MHCD shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Agreement.

36.2 To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the

Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created.

36.3 To the extent that the Materials are not a “work made for hire,” MHCD (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity.

Section 37

Personally Identifiable Information; Data Protection; Protected Health Information

37. See Exhibit E

Section 38

City Confidential Information/Open Records

38. CONFIDENTIAL INFORMATION; OPEN RECORDS.

38.1 Proprietary and Confidential Information of the Parties. The Parties acknowledge and accept that, in performance of all work under the terms of this Agreement, a Party may have access to proprietary information and confidential information that may be owned or controlled by the other Party, and that the disclosure of such information may be damaging to the other Party or third parties. The Parties agree that all proprietary information and confidential information or any other data or information provided or otherwise disclosed by one Party to the other will be held in confidence and used only in the performance of its obligations under this Agreement. The Parties 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 Parties’ 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 one Party by the other Party. Such proprietary information and confidential information may be in hardcopy, printed, digital, electronic, or other format.

38.2 Use and Protection of Proprietary Information and Confidential Information.

38.2.1 Except as expressly provided by the terms of this Agreement, the Parties agree that they 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 Parties further acknowledge that by

providing proprietary information or confidential information, they are not granting to the other Party any right or license to use such information except as provided in this Agreement. The Parties further agree 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 other Party and will immediately notify the other Party if any proprietary information or confidential information is requested from third party.

- 3822** The Parties agree, with respect to the proprietary information and confidential information, that: (A) they will not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the other Party; (B) they will retain no copies, recreations, compilations, or de-compilations, in whole or in part, of such data; and (C) they will, upon the expiration or earlier termination of this Agreement, at the other Party's election, either destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the other Party.
- 3823** They 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 Parties 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.
- 3824** The Parties will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations under this Agreement will survive the expiration or earlier termination of this Agreement. The Parties will 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.
- 3825** If the City is furnished with proprietary data or confidential information that may be owned or controlled by MHCD ("MHCD's Confidential Information"), the City will endeavor, to the extent provided by law, to comply with the requirements provided by MHCD concerning MHCD's Confidential Information. However, MHCD understands that all the material provided or produced by MHCD under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S. (2015). In the event of a request to the City for disclosure of such information, the City will advise MHCD of such request in order to give MHCD the opportunity to object to the disclosure of any of its MHCD 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 MHCD agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. MHCD further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of MHCD's intervention to protect and assert its claim of privilege against disclosure under this Section 18.2.5 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.

Section 39

Disputes

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

Section 40

Survival of Certain Provisions

40. **SURVIVAL OF CERTAIN PROVISIONS.**

40.1 The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable.

40.2 Without limiting the generality of this provision, MHCD's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

Section 41

Advertising and Public Disclosure

41. **ADVERTISING AND PUBLIC DISCLOSURE.**

41.1 **Approval Required.** MHCD shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of MHCD's advertising or public relations materials without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. MHCD shall notify the Director in advance of the date and

time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

41.2 Acknowledgment of Funding. In accordance with applicable federal or state requirements, MHCD shall prominently insert the following acknowledgement (or substantially similar acknowledgement) in all allowable advertising, public relations items, or informational materials, including without limitation, signs, media releases, promotional items, giveaways, and public announcements. “The activities, services, programs, and materials are made possible by support from the City of and County of Denver.”

Section 42

City Execution of Agreement

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

Section 43

Agreement as Complete Integration- Amendments

43. AGREEMENT AS COMPLETE INTEGRATION - AMENDMENTS.

43.1 The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement.

43.2 No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing.

43.3 No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

Section 44

Use, Possession or Sale of Alcohol or Drugs

44. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS.

44.1 MHCD shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession, or sale of alcohol or drugs. See attached Exhibit L.

44.2 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.

Section 45

Tobacco Products and Smoking Policy

- 45. Tobacco Products and Smoking Policy.** There shall be no sale or advertising of tobacco products on the Licensed Premises, the City Buildings, or other facilities owned or operated or controlled by Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities. MHCD and its officers, agents and employees will fully comply with the provisions of Denver Executive Order No. 99 prohibiting smoking in all indoor City Buildings and facilities.

Section 46

Electronic Signatures and Electronic Records

- 46. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.**

46.1 MHCD consents to the use of electronic signatures by the City.

46.2 The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City.

46.3 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.

46.4 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.

Exhibit A Scope of Work

Exhibit B Budget

Exhibit C Examination of Records and Audit

Exhibit D Certificate of Insurance

Exhibit E HIPAA/Hitech/42 CFR Business Associate Terms

Exhibit F Use of City Facilities Terms and Conditions

Exhibit G [INTENTIONALLY DELETED].

Exhibit H City Provided Furniture

Exhibit I Technology and Data Terms and Conditions

Exhibit J Executive Order 94

Contract Control Number: ENVHL-202056133-00
Contractor Name: MENTAL HEALTH CENTER OF DENVER

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:

ENVHL-202056133-00
MENTAL HEALTH CENTER OF DENVER

By:  _____
23F652ED077C4A9...

Name: Carl Clark, MD
(please print)

Title: President and CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A – SCOPE OF WORK

I. CRISIS INTERVENTION/STABILIZATION CLINIC

1. Clinical Services

Services will include crisis intervention and behavioral health treatment for up to five days. Crisis stabilization services will assist individuals who are voluntary and who need a safe and secure environment. These persons are not in need of a hospital level of care and are not appropriate for booking into jail (e.g. non-violent individuals contacted by police). The goal of the crisis stabilization services is to provide: assessment, stabilization, treatment, and re-integration into the community. The clinic will offer the following general services:

- a. Screening and nursing assessment
- b. Triage
- c. Crisis stabilization (including behavioral health medication)
- d. Treatment supervised by a psychiatrist and provided by appropriate mental health clinicians and medical staff
- e. Case management and connection to community services

Services provided will focus on: de-escalation and crisis management, psychiatric assessments, treatment planning, interventions and therapy, and medication management.

2. Individuals to be served: The Solution Center will accept individuals who are experiencing a behavioral health crisis and who have had significant interaction with the city of Denver's first responders. This includes any law enforcement professionals, fire department/EMT units, designated mental health professionals, and social workers from hospital emergency departments located in Denver.

3. Specific Services to be Offered

Below is a list of specific services to be offered at the Solution Center. MHCD may propose additional services to be offered at the Solution Center in addition to the services below, as value add services:

- a. Trauma informed crisis response in accordance with C.R.S. 27-65
- b. Triage/screening (risk of violence or suicide)
- c. Service needs assessment
- d. Psychiatric assessment
- e. Treatment planning
- f. 24/7 Monitoring/supervision
- g. Peer/family support programs
- h. De-escalation and crisis management
- i. Brief therapy
- j. Medication management
- k. Coordination with medical services
- l. Service coordination and referral to other community organizations

- m. Benefit acquisition and ability to access benefits and/or bill insurance (private, Medicaid, Medicare, etc.) as appropriate
- n. Discharge planning

4. Additional General tasks:

- a. Overall facility management: This includes security, staff, materials/supplies, and general maintenance. Refer to sample contract for additional information.
- b. Management of all health records, data management, reporting and information sharing.

5. Coordination and Collaboration

- a. Coordination of crisis services will be provided to every individual served. Coordination includes but is not limited to: identifying and linking individuals with available services necessary to stabilize the crisis, ensuring transition to routine and follow-up care, active discharge planning and conducting follow-up to determine satisfaction, and the need for additional services and supports. Coordination may also include coordination with appropriate law enforcement and criminal justice agencies.

6. Coordination of Care: with Non-Profit and Private Agencies, The Criminal Justice System, Existing Behavioral Health Treatment Options, and Homeless Service Providers

- a. MHCD shall ensure that the Solution Center is connected to properly trained crisis intervention programs and services as well as long term-options for patients being discharged from the Center, to promote the development of a comprehensive system.
- b. MHCD will work with behavioral health organizations and housing providers to ensure that clients are provided ongoing resources.

II. STEP DOWN SERVICES

- 1. Transitional Housing will be available to homeless individuals referred directly from the Triage service, the Crisis Stabilization Unit and MHCD's Walk in Center.
 - a. Sleeping accommodations will be provided.
 - b. Accessory support services and connections to longer term housing options and/or comprehensive supportive housing, trauma-informed interventions, and treatment opportunities will be offered to persons served in the housing accommodations.
- c. The primary services offered will be safe, secure, transitional sleeping accommodations, and individuals using these services will have access to traditional MHCD services including case management as appropriate.
- 2. The transitional housing floor is designed to be a "step-down" opportunity that provides secure sleeping accommodations for homeless individuals while they transition to other options that build upon their stabilization.
- 3. Individuals Served
Persons who are homeless in Denver and referred directly from the Triage (onsite) or Crisis Stabilization Unit (onsite), and persons who are homeless in Denver that are referred from MHCD's Walk-In Center.

4. Primary Services Offered

Safe, secure, individual sleeping accommodations

5. Accessory Support Services

In addition to the primary services offered, the transitional housing will coordinate with the Crisis Stabilization Unit to provide the following support services:

- a. Medication management
- b. Access to limited medical services such as first aid and treatment provided at the CSU
- c. Case management, service coordination, and referral
- d. Discharge planning

6. Additional General task/s MHCD will be responsible for:

- a. In addition to initializing and running the program scope of work above, MHCD shall also be responsible for the following tasks:
 - i. Complete facility management. This includes all security, staff, materials/supplies, general maintenance. Refer to sample contract for additional information.
 - ii. Maintenance of all appropriate records.
 - iii. Coordination and communication with appropriate City personnel.

7. Coordination and Collaboration

- a. MHCD shall establish connections and maintain relationships to longer-term housing options, especially supportive housing.
- b. In the case-management process, MHCD shall identify and link individuals with all available services necessary to ensure transition to follow-up care and routine care, provide necessary assistance in accessing those services, and conduct follow-up to determine the need for additional services and support.

III. ADDITIONAL REQUIREMENTS

1. In addition to performing the scopes of work listed above (either individually or in a partnership), MHCD shall also participate in the following.

- a. Performance Management & Evaluation
 - i. MHCD shall participate and must cause its partner organizations to participate in process/program performance measurement and evaluations that are initiated by the City. This includes working with designated City staff in ensuring data entry and data integrity efforts regarding client data in an excel database and participation in collecting performance measures.
 - ii. In addition to City data requirements, MHCD shall enter data into the Homeless Management Information System (HMIS) (permissions will be granted) and/or any required database.
 - iii. To evaluate the program, some duplication of data may be required. Reviews of performance may include but are not limited to:
 1. operations management,
 2. client outcomes, and successful service referrals.

- iv. MHCD will ensure its staff and its partner organizations are trained on the database(s) and populate information in a timely and accurate manner and is familiar with data performance measures.
- v. MHCD shall maintain and provide, and cause its partner organizations to maintain and provide, data records as requested by the City and its partners for performance management/evaluation.

2. Neighborhood Impact

- a. The City believes that a proactive and ongoing relationship with the Sun Valley neighborhood, particularly the Sun Valley Community Coalition (SVCC) is important to the success of the Center.
- b. The City expects MHCD to engage the neighborhood organization in the development of a good neighbor agreement and to develop a process for ongoing communication.

3. Reporting & Communication

- a. MHCD shall be required to coordinate with appropriate City personnel to develop a reporting structure.
- b. Different types of reports may be requested at various intervals, including daily, quarterly, or yearly.
- c. MHCD shall also be required to maintain statistical data of facility use for the duration of the contract.

EXHIBIT B

Behavioral Health Solutions Center			
A. Initial/start up Expenses			
ITEM DESCRIPTION	QUANTITY	EA/PER	COST
1. Crisis Intervention/Stabilization			
Bedroom Furniture (bed, nightstand, drawers, lockers)	16	1,488	23,808
Security Furniture (task chair)	1	350	350
Waiting Room Furniture (chairs, end table, magazine rack)	1	5,250	5,250
Medication Storage Pyxis			-
Medication Refridgerator	1	1,300	1,300
Staff Station (equipment, supplies)	6	3,150	18,900
Reception Furniture (desk, task chair)	1	3,255	3,255
Client Room Furniture (6 recliners, 6 Visitor chairs.)	6	1575 / 253	10,968
Computer on wheels	2	748	1,495
Medical Exam Room (treatment table, guest chair)	1	1,050	1,050
Office Furniture (desk, task chair, bookcases, file cabinets)	4	4,725	18,900
Charting (desk, task chair, bookcases, file cabinets)	4	4,725	18,900
Peer Space (desk, task chair, bookcases, file cabinets)	2	4,725	9,450
Engagement Space (lounge chairs, tables)	2	3,150	6,300
Medication Room (desk, task chair, lounge chair)	1	2,100	2,100
Telemedicine Room (desk, task chair)	1	2,100	2,100
Nurse Station (task chair, mobile files, computer on wheels)	1	2,625	2,625
Lab Chair	1	550	550
Interview Room (sofa, lounge chair, end table)	1	1,575	1,575
Linens (bedroom linens, towels)	16	315	5,040
Alarm Clock	16	21	336
Biohazard/Dirty Linens	1	1,300	1,300
Clocks (public spaces)	10	84	840
6-32" TV's + 2-60" TV's w/flat mount	9	325 945	4,165
Computers for Engagement spaces 1 per space	2	1,400	2,800
Entry Mats	9	158	1,418
AED	1	2,625	2,625
Sharps container	12	105	1,260
Lamps Common Spaces	2	105	210
Courtyard Funiture (tables, chair, umbrella)	4	1,785	7,140
Refrigerator/residential	1	630	630
Washer/Dryer Set	2	2,100	4,200
Storage room shelving	1	1,500	1,500
Crisis Intervention/Stabilization Total			162,340
2. Sleeping Accommodations/Step-Down			
Bedroom Furniture (bed, nightstand, drawers, lockers)	30	1,488	44,640
Alcove Space Furniture	5	882	4,410
Office Furniture (desk, task chair, bookcases, file cabinets)	1	6,064	6,064
Recliners	3	1,575	4,725

EXHIBIT B

Behavioral Health Solutions Center			
A. Initial/start up Expenses			
ITEM DESCRIPTION	QUANTITY	EA/PER	COST
Gym (elliptical, treadmill, stationary bike)	1	7,718	7,718
Engagement Space (lounge chairs, tables)	4	3,859	15,435
Security Furniture (task chair)	1	350	350
Staff Station Equipment & Supplies	3	3,500	10,500
Staff Lounge (tables, chairs, fridge)	1	2,854	2,854
Linens (bedroom linens, towels)	30	331	9,923
Storage room shelving	3	833	2,500
60" TV's w/flat mount	5	992	4,961
Clocks (public spaces)	10	88	882
Lamps Common Spaces	4	110	441
Alarm Clock	30	22	662
AED	2	2,756	5,513
Sharps container	8	110	882
Kitchen Supplies/Catering Equipment (utencils, cooking utensils, kitchen linen)	1	7,718	7,718
coffee makers/urns	3	165	450
Washer/Dryer Set	2	2,205	4,410
<u>Sleeping Accommodations/Step-Down total</u>			135,035
3. Misc. Expenses			
<u>IT/Technical</u>			
Electronic Access (key cards)	1	27,563	27,563
Building Access Security	1	35,280	35,280
Video Security 44 Cam System	1	115,211	115,211
Mitel 3300 ICP server	1	55,125	55,125
Overhead Paging System	1	15,104	15,104
UPS/Battery Back	4	1,654	6,615
Wireless AP Throughout building	9	1,323	11,907
Network Switches HP	6	2,756	16,538
Network Modular Switch (5400 series) HP	1	8,820	8,820
Network Modular Switch Warranty 4 Hr support	1	5,513	5,513
Network Switch Components	1	3,308	3,308
5 UPS - rackmount APC	5	1,103	5,513
Router	1	3,308	3,308
Century Link conduit	1	39,000	39,000
Mini PC	10	1,200	12,000
Mini PC W/Wireless	10	1,300	13,000
Computers/ Laptops - new (remote) staff	10	1,500	15,000
<u>IT/Technical Total</u>			388,802
<u>Start up Costs</u>			
Furniture Delivery & Install			11,025
Business Cards for Staff			1,050

EXHIBIT B

Behavioral Health Solutions Center			
A. Initial/start up Expenses			
ITEM DESCRIPTION	QUANTITY	EA/PER	COST
2/ea Vehicles	2	27,563	55,125
Cleaning Equipment/Vacuums			1,103
Cleaning supplies	1	525	525
General Start up Supplies			11,025
IT Start up Costs			16,538
Badges and Signage			34,870
Project Contingency			27,563
Total Start Up Costs			158,823
City of Denver Total Start Up Expense			845,000
B. Annual Operating and Service Expense			
Position	FTE	Annual Salary	Total
1. Crisis Intervention/Stabilization			
Food Service Coordinator	0.70	55,803	39,062
Housekeeping/day porter	1.00	36,065	36,065
Janitorial/Maintenance	0.70	48,107	33,675
Licensed staff, LCSW or LPC	13.80	67,187	927,187
Nurse Practitioner for physicals	3.00	148,191	444,574
Nurses, RN	4.60	75,582	347,677
Peer Specialists	5.60	34,876	195,308
Program Director	0.65	100,334	65,217
Program Managers	1.00	83,245	83,245
Psychiatrists	0.00	269,514	-
Residential Counselors	4.60	43,729	201,151
Support Staff, AA	2.98	39,933	118,799
Contract costs for PTO etc.,			370,000
Crisis Intervention/Stabilization Personnel Subtotal			2,861,961
Fringe Benefits @ 21.9%			545,739
Crisis Intervention/Stabilization Personnel Total			3,407,701
2. Sleeping Accommodations/Step-Down			
Food Service Coordinator	0.70	55,803	39,062
Housekeeping/Day Porter	1.00	36,065	36,065
Janitorial/Maintenance	0.70	48,107	33,675
Peer Specialists	3.50	34,876	122,067
Program Managers	1.00	83,245	83,245

EXHIBIT B

Behavioral Health Solutions Center			
A. Initial/start up Expenses			
ITEM DESCRIPTION	QUANTITY	EA/PER	COST
Residential Milieu Staff	9.20	43,729	402,303
Support Staff, AA	1.75	39,933	69,882
Contract costs			55,000
<u>Sleeping Accommodations/Step-Down Personnel Subtotal</u>			841,299
Fringe Benefits @ 21.9%			172,200
<u>Sleeping Accommodations/Step-Down Personnel Total</u>			1,013,499
3. Misc. Expenses			
Medication			32,000
Medical Supplies			11,000
Recreation			12,000
RTD/Cab			18,000
Misc. Expenses-(clothing, hygiene products etc...)			35,000
Catered Breakfast -5/ea/per meal			22,630
Catered Lunch- 5/ea/per meal			33,945
Catered Dinner- 7/ea/per meal			83,950
<u>Client Expense</u>			248,525
Staff Development/ Training			20,000
Office Supplies			15,000
Mobile Device	2	220	440
Mobile Phone/monthly plan \$40/month			960
Staff Clearance-Background/credential checks			20,000
Copper 1BF Lines & 40M QMOE		11,080	132,960
Back up Circuit Comcast Internet		275	3,300
Linen Service - Sno White		650	7,800
Water Dispensers/Filters		200	2,400
Printers/Copiers 3 per floor-Lease		720	4,104
Coffee		200	2,400
Safety Officers-Denver Security Service	9.20	42,536	-
<u>Operational Cost Total</u>			209,364
Gas, Electricity, Utilities, Maintenance			212,708
Security			105,600
Phone			10,776
Janitorial			39,996
<u>Occupancy Total</u>			369,080

EXHIBIT B

Behavioral Health Solutions Center			
A. Initial/start up Expenses			
ITEM DESCRIPTION	QUANTITY	EA/PER	COST
<u>Misc. Expense Total</u>			826,969
Indirect Cost @ 30%			1,463,727
0% Sustainability			-
Component B. Total			6,711,895
Program Income			3,301,550
<u>Component B. City of Denver Total</u>			3,410,344

Exhibit C

Audit Provisions

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 Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Owner 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 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 Owner to make disclosures in violation of state or federal privacy laws. Owner shall at all times comply with D.R.M.C. 20-276.

EXHIBIT E

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.

- 201 "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.

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

203 "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.

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

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

- 206 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 207 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 208 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 209 "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.

- 301 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.
- 302 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.
- 303 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.
- 304 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.
- 305 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.
- 306 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.
- 307 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.
- 308 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.

501 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.

502 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.

503 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.

- 601 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.
- 602 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 603 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.

604 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.

605 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.

701 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.

702 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.

703 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.

704 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.

801 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.

8.01.3 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.

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

8.01.5 CONTRACTOR shall retain no copies of the PHI.

8.01.6 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.

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

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

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

EXHIBIT F
Use of City Facilities Terms and Conditions

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation and home rule city of the State of Colorado (the "City" or "Lessor"), and **MENTAL HEALTH CENTER OF DENVER**, a not-for-profit corporation whose address is 4141 East Dickenson Place, Denver, Colorado 80222 (the "Lessee").

W I T N E S S E T H:

WHEREAS, the City is the owner of certain property located at 2929 West 10th Avenue, Denver, CO 80204; and

WHEREAS, the City is desirous of leasing a certain portion said property to Lessee; and

WHEREAS, the City and Lessee are parties to that certain Agreement dated December 1, 2020, having Contract No. ENVHL-202056133, pursuant to which Lessee is to provide certain triage services and transitional shelter services ("Service Contract").

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter contained, the City and the Lessee agree as follows:

1. **LEASED PREMISES**: Subject to the terms of this Lease Agreement (hereinafter referred to as "Lease"), the City agrees to lease, demise, and let unto Lessee and the Lessee does hereby lease from the City the first and the third floors consisting of 26,486 square feet of the building commonly known as Family Crisis Center located on the Human Services Campus located at 2929 West 10th Avenue, Denver, CO 80204 (the "Property"), as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein (the "Leased Premises"). The description contained on Exhibit A may be modified upon the written authorization of the Director of Real Estate to correct minor, technical errors.

2. **TERM**: The term of this Lease shall begin on December 1, 2020 or the Effective Date (defined below), whichever is later, and terminate four (4) years thereafter (the "**Term**"), unless earlier terminated pursuant to the terms herein; *provided, however*, in the event the Service Contract expires or is terminated before the end of the Term hereunder, then this Lease shall also expire or terminate, as applicable, it being the intent of the Parties that this Lease and the Service Contract shall be coterminous. Upon the expiration or termination of the Service Contract, then

this Lease shall also terminate thirty (30) days after such date the Service Contract expires or terminates, at which point Lessee shall vacate and surrender the Leased Premises pursuant to Section 10 below.

3. **RENT**: The Lessee shall pay to the City for the rent of the Leased Premises the sum of ten dollars (\$10.00) per year or Forty Dollars (\$40.00) for the full Lease term, the receipt and sufficiency of which is hereby acknowledged.

4. **USE**: The Leased Premises are to be used and occupied by Lessee solely for the purpose of providing certain triage services on the first floor and transitional shelter services on the third floor of the Leased Premises, pursuant to the terms of the Service Contract. The Lessee shall use the premises in a careful, safe, and proper manner, and shall not use or permit the Leased Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, or the Charter or ordinances of the City and County of Denver. The Lessee shall not commit or suffer to be committed any waste or damage upon the Leased Premises or any nuisance to be created or maintained thereon. The Lessee shall also keep the Leased Premises free and clear from all trash, debris, and waste resulting from its use or the use by its employees, officers, agents, invitees and visitors.

5. **“AS IS” CONDITION**: Upon issuance of a Certificate of Occupancy, the Leased Premises are accepted by Lessee in an “AS IS,” “WHERE IS” condition, with all faults and defects. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Leased Premises.

6. **QUIET ENJOYMENT**: Lessee shall and may peacefully have, hold and enjoy the Leased Premises, subject to the other terms hereof, provided that Lessee pay the rental herein recited and performs all of Lessee's covenants and agreements herein contained.

7. **MAINTENANCE AND OPERATIONS COSTS AND CHARGES**:

a. On the first day of each month of the Term, Lessee shall pay to the City estimated operating expenses for all day to day utilities, operations and maintenance costs for the Leased Premises, including water, gas, sewer, heat, lights, maintenance of mechanical systems and the building exterior; *provided, however*, the City shall maintain or cause to be maintained landscaping and provide snow removal services for the entire Castro Building campus (including

the Property) at no cost or charge to the Lessee. Any past due payments shall accrue interest at the rate of twelve percent (12%) per annum until paid in full. Lessee shall make monthly operating expenses to the following address:

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

b. Lessee's percentage share of such operating expenses shall be a percentage equal to the square footage of the Leased Premises multiplied by the number of hours of Lessee's operations. In the event that either the square footage of the Leased Premises is expanded or reduced, or the Lessee's hours of operation are reduced, Lessee's percentage share shall be adjusted accordingly. As of the Effective Date, based on the current square footage of the Leased Premises (26,486sf) and Lessee's 24/7 operations, Lessee's percentage share of the operating expenses is eighty-five point five percent (85.5%) (the "Percentage Share").

c. For the first year of the Term, the annual operating expenses shall be Two Hundred Ten Thousand Two Hundred Ninety-Three Dollars (\$210,293.00) payable by Lessee to the City on a monthly basis in the amount of Seventeen Thousand Five Hundred Twenty-Four Dollars and Forty-One Cents (\$17,524.41).

d. For each subsequent year after the first year of the Term, within ninety (90) days after the end of the prior year of the Term, the City shall submit a statement to Lessee showing the actual operating expenses for such prior year as allocated to the Leased Premises based on the Percentage Share. The estimated monthly payment of operating expenses shall be adjusted each year based on the prior year's actual operating expenses. If for any year Lessee's estimated monthly payments exceed the amount of actual operating expenses for such year, then the City shall give Lessee a credit in the amount of overpayment toward Lessee's future payments of estimated operating expenses. If for any year Lessee's estimated monthly payments are less than the actual operating expenses, then Lessee shall pay the total amount of deficiency to the City within thirty (30) days after notice from the City with any late payments accruing interest in accordance with Section 7(a) above. The City's and Lessee's obligations with respect to any overpayment or under payment of operating expenses shall survive the expiration or termination of this Lease.

e. The Lessee shall pay for and ensure proper performance of all but major maintenance and repairs. For purposes of this Lease, “major” maintenance and repair is defined as all individual maintenance requirements or repair occurrences that cost over \$2,000 each.

f. The City at its sole discretion reserves the right to undertake capital improvements during the term of this Lease at its own expense. The City agrees that it will consult with the Lessee before undertaking any such improvements. The City agrees to collaborate with the Lessee to develop a written schedule of work to be performed that will minimize disruption to persons being served on the Property before undertaking any such improvements.

8. **IMPROVEMENTS AND ALTERATIONS:**

a. By City: Unless otherwise expressly stipulated herein and except for the tenant improvements completed by the City, the City shall not be required to make any improvements to or repairs of any kind or character on the Leased Premises during the term of this Lease, except repairs as may be deemed necessary by the City for normal maintenance operations of the Leased Premises.

b. By Lessee: Lessee shall make no alterations in or additions to, nor post any signage on, the Leased Premises without first obtaining the written consent of the Director of Real Estate on behalf of the City, which consent shall be within the City’s sole discretion. Lessee shall, after obtaining the written consent of the Director of Real Estate, repair any damage resulting from Lessee’s occupancy of the Leased Premises, and shall indemnify and hold the City harmless against any liability, loss, damage, costs or expenses, including attorneys’ fees, on account of any claims of any nature whatsoever, including but not limited to claims of liens by laborers, material suppliers, or others for work performed, or materials or supplies furnished to Lessee or persons claiming under Lessee.

9. **ENTRY BY CITY:** Upon twenty-four (24) hours advance notice, Lessee shall permit representatives of the City to enter into upon the Leased Premises during normal business hours between 8am and 5pm to inspect the same, and make any repairs deemed necessary by the City, and Lessee shall not be entitled to any abatement or reduction of rent by reason thereof. Notwithstanding the foregoing, the City shall have the right to enter the Leased Premises at any time without any advance notice to Lessee in cases of emergency requiring immediate repairs or actions to prevent damage to the Leased Premises.

10. **CARE AND SURRENDER OF THE LEASED PREMISES:** At the termination of this Lease, Lessee shall deliver the Leased Premises to the City in the same condition as the Leased Premises were in at the beginning of this Lease term, ordinary wear and tear excepted; and Lessee shall remove all of Lessee's movable furniture and other effects. In the event any furniture and other effects remain on the Leased Premises, after twenty-four (24) hours written notice from the City to Lessee, all moveable furniture and other effects not so removed shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by the City without notice to Lessee or any other person, and without obligation to account therefor, and Lessee shall pay the City all expenses incurred in connection with disposing such property. Lessee's obligation to observe or perform this covenant shall survive the termination of this Lease. Lessee shall pay before delinquency any and all taxes, assessments, and other charges levied, assessed or imposed, and which become payable during the term of this Lease upon Lessee's operations, occupancy, or conduct of business at the Leased Premises, or upon Lessee's equipment, furniture, appliances, trade fixtures, and other personal property of any kind installed or located on the Leased Premises.

11. **INDEMNITY:**

a. Lessee hereby 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 this Lease Agreement, whether during the Lease Term or after, ("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 Lessee 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.

b. Lessee'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 suit has been filed and even if Lessee is not named as a defendant.

c. Insurance coverage requirements specified in this Lease Agreement shall in no way lessen or limit the liability of the Lessee under the terms of this indemnification obligation.

The Lessee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection

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

12. **LOSS OR DAMAGE**: The City shall not be liable or responsible to Lessee for any loss or damage to any property or person occasioned by theft, fire, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Leased Premises, Lessee shall immediately give notice thereof to City. If the Leased Premises, through no fault or neglect of Lessee, its agents, its employees, invitees, or visitors shall be partially destroyed by fire or other casualty so as to render the Leased Premises untenable, and the City elects to repair the same, the lease shall continue in full force and effect. In the event such repairs cannot be made within 90 days, Lessee may elect to terminate this Lease. In the event of the total destruction of the Leased Premises, or partial destruction in the event the City elects not to repair the Leased Premises, without fault or neglect of the Lessee, its agents, employees, invitees, or visitors, or if from any cause the Leased Premises shall be so damaged that the City shall decide not to rebuild (which decision City may make in its sole discretion), then all rent owed up to the time of such destruction or termination shall be paid by Lessee and this Lease shall cease and come to an end.

13. **HAZARDOUS SUBSTANCES**: Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Lessee, Lessee's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner due to the actions or inactions of the Lessee, Lessee shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant, and expert fees) arising during or after the Lease Term and arising as a result of those actions or inactions by Lessee. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Lessee causes or

permits the presence of any Hazardous Substance on the Leased Premises and that results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the premises. Lessee shall first obtain City's approval for any such remedial action. As used herein, "Hazardous Substance" means any substance that is toxic, ignitable, reactive, or corrosive and that is regulated by any local government, the State of Colorado, or the United States Government. "Hazardous Substance" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or a "hazardous substance" pursuant to state, federal, or local governmental law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls ("PCBs"), and petroleum.

14. **HOLDING OVER:** If after the expiration of the term of this Lease, Lessee shall remain in possession of the Leased Premises or any part thereof, and continue to pay rent, without any express agreement as to such holding, then such holding over shall be deemed and taken to be a periodic tenancy from month-to-month, subject to all the terms and conditions of this Lease. Such holding over may be terminated by City or Lessee upon sixty (60) days' notice. In the event that Lessee fails to surrender the Leased Premises upon termination or expiration of this Lease, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering the Leased Premises.

15. **SECURITY AND ACCESS.**

a. The Parties acknowledge that the security and access system currently located at the building is the property of the City and maintained by the City, including certain security cameras located at the building that shall not be removed or altered by Lessee. Any additional safety officers and additional security cameras shall be provided for by Lessee at its cost and expense. Lessee shall have access only to its Leased Premises and the building stairwell for Lessee's employees and invitees. The City will issue access badge(s) to Lessee in the amount of Ten Dollars (\$10.00) per access badge which may be issued between the hours of 8:00am – 4:00pm, Monday through Friday except for any City recognized holidays or closures due to weather or emergency situations. Within thirty (30) days of its receipt of an invoice from the City for issuance of access badges, Lessee shall remit payment to the City. Any past due payments shall accrue interest in accordance with Section 7(a) above. Lessee shall not permit any unauthorized use of the access badges. If Lessee loses any access badge, all costs and expenses incurred by the

City to adjust the access system due to such loss or to replace the badge shall be paid by Lessee. Upon termination of any employee's employment with Lessee, Lessee shall immediately notify the City and upon such notice, the City shall adjust the access system, at Lessee's cost and expense. Upon expiration or termination of this Lease, Lessee shall surrender to the City all access badges.

b. The Parties acknowledge that a public address system serves the Property, including the Leased Premises. Lessee shall be responsible for the fees and initial testing of such systems and the City shall reimburse Lessee for the costs upon receipt of an itemized invoice reflecting the fees and costs of initial testing.

16. **REMEDIES UPON BREACH:** In the event of a breach of this Lease by Lessee, the City may have the following remedy, in addition to all of the rights and remedies provided at law or in equity, the City may retake possession of the Leased Premises and shall have the right, but not the obligation, without being deemed to have accepted a surrender thereof, and without terminating this Lease, to relet same for the remainder of the term provided for herein

17. **TERMINATION:** Either party may, (at the discretion of the Director of Real Estate acting on behalf of the City), terminate this Lease upon sixty (60) days written notice to the other party in the event the party does not meet the obligations set forth in this Lease. Such defaulting party shall be given the right to cure any deficiencies noted within sixty (60) days of notice from the other party. If such cure is effected within the sixty (60) day period, or in the event the cure cannot be fully completed within sixty (60) days, and the defaulting party has started making good faith efforts to cure any violations, and has completed such actions within ninety (90) days, this Lease will not be terminated. Acting on behalf of the City, determination of whether a cure has been effected shall be at the sole discretion of the Director of Real Estate.

18. **PAYMENT OF CITY MINIMUM WAGE:** To the extent applicable, Lessee shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Lessee expressly acknowledges that Lessee is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Lessee, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

19. **NONDISCRIMINATION**: In connection with Lessee's performance pursuant to this Lease, Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, marital status, sexual orientation, gender identity or gender expression, or physical or mental disability; and further agrees to insert the foregoing provision in all contracts hereunder for work on the Leased Premises-

20. **LESSEE'S INSURANCE**: From the commencement of this Lease, and at all times throughout the term, Lessee (or its Lessee(s)) shall carry and maintain the following insurance policies. Lessee 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, Lessee 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. Lessee 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 Lessee. The Lessee 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.

a. **Workers' Compensation/Employer's Liability Insurance**: Lessee 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;

b. Property Insurance: Lessee shall provide 100% replacement cost for Lessee's tenant improvements and personal property.

c. Commercial General Liability: Lessee 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.—The City and County of Denver, its officers, officials and employees shall be included as additional insureds.

d. Waiver of Subrogation and Rights of Recovery against the City, its officers, officials and employees for all coverages required;

e. The certificates evidencing the existence of the above policy or policies, all in such form as the City's Risk Management Office may require, are to be provided to the City upon execution of this Lease. 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 Lessee'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.

Lessee understands and acknowledges that the City does not provide any insurance coverage for any property of the Lessee, its agents, employees or assignees located in the Leased Premises and Lessee acknowledges and agrees that the Lessee, its agents, employees and assignees have no claim against the City for any damage or loss of personal property and belongings of Lessee, its agents, employees or assignees in the Leased Premises.

21. **VENUE, GOVERNING LAW**: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law thereof, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the State District Court in and for the City and County of Denver, Colorado.

22. **ASSIGNMENT AND RIGHT TO SUBLEASE**: The Lessee shall not assign, sublet or transfer its rights under this Lease without first obtaining the written consent of the Director of Real Estate.

23. **NO SALE OR ADVERTISING OF TOBACCO PRODUCTS**: The Lessee, its officers, agents, and employees shall cooperate and comply with the provisions of Executive Order No. 13, which prohibits the sale or advertisement of tobacco products on City owned property and in facilities owned or operated or controlled by the City and County of Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever, but does not include any advertising and sponsoring which is a part of a performance or show or any event displayed or held in City facilities.

24. **EXAMINATION OF RECORDS**: 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 Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Owner 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 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 Owner to make disclosures in violation of state or federal privacy laws. Owner shall at all times comply with D.R.M.C. 20-276.

25. **AMENDMENT**: No alteration, amendment or modification of this Lease shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Lease, however, the Director of Real Estate shall have the authority to execute agreements which make technical, minor, or non-substantive changes to this Lease. The failure of either party hereto to insist in any one or more instances upon the strict compliance or performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision or condition, but the same shall remain in full force and effect.

26. **SEVERABILITY**: If any portion of this Lease is determined by a court to be unenforceable for any reason, the remainder of the Lease remains in full force and effect.

27. **BINDING EFFECT**: This Lease when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto, subject to assignment or sublease in accordance with paragraph 21 above.

28. **THIRD PARTIES**: This Agreement does not, and shall not be deemed or construed to, confer upon or grant to and third party or parties any right to claim damages or to bring any suit, action or other proceeding against the parties hereto because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

29. **NOTICES**: All notices hereunder shall be given to the following by hand delivery or by certified mail, return receipt requested:

To the City: Mayor's Office
City and County Building
1437 Bannock Street, Room 350
Denver, CO 80202

With copies to: Denver City Attorney
Denver City Attorney's Office
201 West Colfax Avenue, Dept. 1207
Denver, CO 80202

Director of Real Estate
201 West Colfax Avenue, Dept. 1010
Denver, Colorado 80202

To Lessee: Mental Health Center of Denver
4141 East Dickenson Place
Denver, CO 80222
Attention: Director of Payer Strategies
Email: Contracts@mhcd.org

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons to receive such notices. The effective date of service of any such notice shall be the date such notice is deposited in the mail or hand-delivered to the Party.

30. **ENTIRE AGREEMENT**: The parties acknowledge and agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no

effect. Further, this Lease supersedes any and all prior written or oral agreements between the parties.

31. **WHEN RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any performance hereunder constitute or be construed to be a waiver by any party or any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any breach or default exists shall in no way impair or prejudice any right or remedy available with respect to such breach or default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Lease shall be deemed or taken to be a waiver of any other default or breach.

32. **NO PERSONAL LIABILITY**: No elected official, director, officer, agent or employee of the City, nor any director, officer, employee or personal representative of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Lease.

33. **CONFLICT OF INTEREST BY CITY OFFICER**: Lessee represents that to the best of its information and belief, no officer or employee of the City is either directly or indirectly a party or in any manner interest in this Lease, except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

34. **APPROPRIATION**: All obligations of the City under and pursuant to this Agreement are subject to prior appropriation of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

35. **REASONABLENESS OF CONSENT OR APPROVAL**: Whenever under this Lease “reasonableness” is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

36. **AUTHORITY TO EXECUTE**: Lessee represents that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind Lessee.

37. **PARAGRAPH HEADINGS**: The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit or describe the scope or intent of this Lease or the particular paragraphs to which they refer.

38. **CITY'S EXECUTION OF AGREEMENT:** This Lease is expressly subject to, and shall not be or become effective or binding on the City until approval by its City Council and full execution by all signatories set forth below.

39. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Lessee consents to the use of electronic signatures by the City. The Lease, 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 Lease 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 Lease 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.

40. **EFFECTIVE DATE:** This Lease is expressly subject to, and shall not be or become effective or binding on the City until, approval by its City Council and full execution by all signatories set forth below. The effective date shall be the date the City delivers a fully executed electronic copy of this Lease to Lessee ("Effective Date").

41. **SIGNAGE:** Subject to the City's prior written approval, in its reasonable discretion, Lessee, at its sole cost and expense, may install identification and wayfinding signage throughout the interior and exterior areas of the building, including the parking lot(s). All permitted signs shall be maintained by Lessee at its expense in a good and safe condition and appearance. Upon the expiration or earlier termination of this Lease, Lessee shall remove all of its signs at Lessee's sole cost and expense. Lessee shall repair any damage to the Leased Premises or the building, interior or exterior areas, resulting from installation, maintenance or removal of any signs.

42. **CITY EQUIPMENT:** Included within the Leased Premises is certain City provided equipment as described on Exhibit B attached hereto ("City Equipment"). Lessee shall use the City Equipment in a careful and proper manner and shall comply with and conform to all laws, ordinances and regulations in any way relating to the possession, use or maintenance of the City Equipment. THE CITY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Lessee, at its own cost

and expenses, shall keep the City Equipment in good repair, condition and working order. In the event of loss or damage to the City Equipment caused by Lessee, Lessee at its cost and expense, shall replace and/or repair the City Equipment. Upon expiration or termination of this Lease, the City Equipment shall remain on the Leased Premises in substantially the same condition as of the Effective Date, normal wear and tear excepted.

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EXHIBIT A
Description and Depiction of Leased Premises

Exhibit H
City Provided Inventory List

1. Assets Items
 - a. Property fencing (BA-00011203)
 - b. Walk-in Freezer (BA-00062284) see below information for brand/model.

2. Kitchen Inventories

Items Description	Quantity	Brand	Model	Serial No.
Walk-In Cooler	1	American Panel Corp.	FW477.11 TNWNL	29065
Walk-In Freezer	1	Norlake	FTF1521990/192512	15100601
Cold Pan	1	Delfield	8130B	82501M
Hot Pan	1	Delfield	8731	82022M
Dishwasher	1	Champion	UH130B-70 M3.5	W130939328
Stacked Convection Ovens	1	Blodgett	DFG-100/200 w/cook	
36" Range with 6 Open Burner	1	Southbend	S36A1	20K38266
Exhaust Hood	1	CaptiveAire	ND-2	

Exhibit I
Technology and Data Terms and Conditions

1. MHCD responsibilities
 - a. Acquiring hardware and software necessary to perform services required by the term and condition of this contract agreement
 - b. Fully responsible for the maintenance and ongoing support related to technology and data to perform services required by the term and condition of this contract agreement
2. DDPHE Responsibilities
 - a. None

EXHIBIT - J

City and County of Denver Employee's Alcohol and Drug Policy

EXECUTIVE ORDER NO. 94

TO: All City Agencies

FROM: Wellington E. Webb
MAYOR

DATE: October 29, 2002

SUBJECT: CITY and COUNTY of DENVER EMPLOYEES' ALCOHOL and DRUG POLICY

PURPOSE: As an employer, the City and County of Denver (City) is required to adhere to various federal, state, local laws and regulations regarding alcohol and drug use. The City also has a vital interest in maintaining a safe, healthy and efficient environment for its employees and the public. Being under the influence of, subject to the effects of, or impaired by alcohol or a drug on the job may pose serious safety and health risks to the user, the user's co-workers and the public. Additionally, the possession, use or sale of an illegal drug in the workplace may pose an unacceptable risk to the safe, healthy and efficient operation of the City.

The City maintains the Mayor's Office of Employee Assistance, provides Department of Safety psychologists and some outside contractors, who offer help to employees who seek assistance for alcohol and/or drug use and other personal or emotional issues.

RESPONSIBLE AUTHORITY(S): City Attorney

This executive order, effective on the above date, establishes and confirms the policy of the City concerning the problem of drug and alcohol use in the workplace. On the date it becomes effective, this executive order supersedes all previously enacted alcohol and drug executive orders.

I. PROHIBITIONS FOR ALL CITY EMPLOYEES INCLUDING CLASSIFIED MEMBERS OF THE POLICE AND FIRE DEPARTMENTS.

A. Alcohol

Employees are prohibited from consuming, being under the influence of, or impaired by alcohol while performing City business, while driving a City vehicle or while on City property.

There are three exceptions to this prohibition. (1) An employee is not on duty **and** attending an officially sanctioned private function, e.g., an invitation-only library reception. (2) An employee is not on duty **and** at a City location as a customer, e.g., playing golf on a City course. (3) An employee is a member of the Police Department **and** as a part of the employee's official duties, consumes alcohol in accordance with Police Department procedures.

Executive Order 94
Page two

The alcohol levels defined by the state legislature that may be amended from time to time for defining "under the influence of alcohol" and "impaired by alcohol" are adopted here for purposes of this executive order.

Employees holding Commercial Driver's licenses (CDL) are **also** subject to the alcohol levels defined by the Department of Transportation (DOT) regulations that may be amended from time to time for "under the influence" which are adopted here for purposes of this executive order.

Current alcohol level definitions are contained in the Addendum to this Order. If there is a conflict between the state legislature and the DOT regulation, alcohol level definitions and the ones contained in the Addendum to this Order, the state legislature and DOT regulation definitions will take precedence.

As part of official duties, members of the Police Department according to established procedures may consume alcohol. However, it is grounds for discipline, up to including immediate dismissal, if members of the Police Department consume alcohol in violation of their department procedures.

B. Legal Drugs

1. It is the responsibility of the employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public to advise their supervisors that they are taking prescription medication that may affect their performance.
2. Employees who work in positions operating vehicles or dangerous equipment or positions affecting the health or safety of co-workers or the public are prohibited from consuming, being under the influence of, subject to the effects of or impaired by legally obtained prescription drugs while performing City business, unless the following two determinations have been made:
 - a. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the Occupational Health and Safety Clinic (OHSC) personnel, that the employee's job performance will not be affected **and** that the employee does not pose a threat to his/her own safety.
 - b. It is determined by both the employee's supervisor **and** either the employee's Human Resource Specialist or Safety Officer, after consulting with the OHSC personnel, that the employee will not pose a threat to the safety of co-workers or the public, **and** the employee will not disrupt the efficient operation of the agency.

Executive Order 94
Page three

If appropriate, the OHSC personnel may contact the employee's personal physician. Prior to making contact with the employee's personal physician, the OHSC personnel should obtain a medical release from the employee.

Employees may be required to use sick leave, take a leave of absence or comply with other appropriate non-disciplinary actions determined by the appointing authority until the above determinations can be made.

The OHSC shall keep the medical records that disclose the identity of the legal drug confidential in accordance with state and federal laws.

3. The DOT regulations prohibit employees with CDLs from using marijuana, even for approved medical reasons. If the federal and Colorado laws are in conflict on this issue, the federal law will take precedence. Therefore, a positive marijuana drug test will be treated as an illegal drug use for employees with CDLs, subjecting them to all rules contained herein for illegal drug use even if a physician has prescribed the marijuana for medical reasons.

C. Illegal Drugs

1. Employees are prohibited from consuming, being under the influence of, subject to the effects, of or impaired by illegal drugs while performing City business, while driving a City vehicle or while on City property.
2. Employees are also prohibited from selling, purchasing, transferring or possessing an illegal drug.

There is one exception to this prohibition. An employee of the Classified Service of the Police and Fire Departments or the Denver Sheriff's Department as a part of the employee's official duties, may sell, purchase, transfer or possess illegal drugs in accordance with the employee's department procedures. However, it is grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs at any time other than as a part of their official duties. It is also grounds for immediate dismissal if members of the Classified Service of the Police and Fire Departments or Sheriff Department sell, purchase, transfer or possess illegal drugs in violation of the employee's department procedures.

The illegal drug cut-off levels established by the DOT regulations, that may be amended from time to time, are adopted here for purposes of this executive order. Current illegal drug levels are contained in the Addendum to this Order. If there is a conflict between the DOT regulation, illegal drug levels and the ones contained in the Addendum to this Order, the DOT regulation definition will take precedence.

II. DRUG AND ALCOHOL TESTING

A. Pre-Employment/Pre-Placement Testing

1. The City may implement, with the City Attorney's approval, pre-employment screening practices designed to prevent hiring individuals for job positions:

Executive Order 94
Page four

- a. whose use of illegal drugs may affect the public health or safety and
- b. whose use of alcohol or legal drugs indicates a potential for impaired or unsafe job performance where the public health or safety may be affected.

The Civil Service Commission, Career Service Authority, OHSC or interviewing agency shall inform a job applicant of these pre-employment screening practices prior to such screening.

2. Employees who will be filling jobs defined as safety-sensitive or requiring a CDL, prior to the first time the employee performs a safety-sensitive function, shall be tested for controlled substances and may be tested for alcohol.
3. Refusal by an applicant to submit to a pre-employment test shall result in denial of employment.
4. Pre-employment/Pre-placement test results:
 - a. **Alcohol**

Where alcohol use is detected and it is determined to be a potential safety risk, employment shall be denied.
 - b. **Legal Drugs**
 - i. Where use of a prescription drug is detected, applicants may be required to offer proof that the drug has been prescribed by a physician for the applicant. If the applicant is unable to provide such proof, employment may be denied.
 - ii. Where the applicant's future or continued use of the drug poses a potential safety risk or would impair job performance, employment may be denied in accordance with the applicable state and federal laws.
 - c. **Illegal Drugs**
 - i. Employment shall be denied when the presence of an illegal drug is detected.
 - ii. Employment shall be denied when the presence of a known masking agent is detected.
 - iii. A second direct observation urinalysis test may be required prior to offering employment to an applicant whose drug test evidences the urine sample has been diluted.

Executive Order 94
Page five

B. Reasonable Suspicion Testing

1. When a supervisor has reasonable suspicion that any employee is in violation of this policy, after taking appropriate safety measures, i.e. removing the employee from any situation which may pose a safety risk to the employee, co-workers or the public, the supervisor shall immediately consult with his/her Human Resource Specialist, Safety Officer or the City Attorney's Office to determine further actions. However, if immediate consultation is not possible, it is the responsibility of the supervisor to promptly initiate alcohol and drug testing. The supervisor shall initiate testing as follows:

a. Alcohol

- i. Document in writing the specific reasons for the decision to initiate testing based on specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the testing site for testing.
- iv. Escort the employee to the testing site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for testing. The individual selected to escort the employee shall be of a higher grade/rank than the employee being tested.
- v. Require the employee to bring a picture identification card and proof of the employee's Social Security or employee number to the testing site.
- vi. If the employee refuses to go to the testing site, or refuses to participate in the testing process, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.
- vii. After the initial test results are known, the supervisor shall contact the appointing authority for further guidance. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending results of testing or other administrative determination.

Executive Order 94
Page six

- viii. No supervisor or escort should allow an employee to drive to or away from the testing or the work site. However, if the employee does drive off, notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel and reason for ordering the alcohol and/or drug testing.

During regular OHSC hours, the testing shall be conducted at one of the OHSC testing sites. After regular hours, the supervisor shall page the OHSC alcohol and drug testing personnel to arrange for immediate testing.

Testing should be administered within two (2) hours of making a reasonable suspicion determination. If this two (2) hour time frame is exceeded, the supervisor should document the reasons the test was not promptly administered. Supervisors who do not test employees within this established time frame may be subject to discipline, up to and including dismissal.

Supervisors and escorts shall keep the employee's name and identifying information restricted to persons who "need to know."

b. Legal drugs

- i. Document in writing the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors that provide reasonable suspicion that the employee's use of, or being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk or would impair job performance.
- ii. When possible, have a second supervisor confirm the specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odors.
- iii. Advise the employee that the supervisor is ordering the employee to go to the OHSC for evaluation.
- iv. Escort the employee to the evaluation site as soon as possible. However, if the supervisor is unable to escort the employee, the supervisor should have another individual escort the employee for evaluation.
- v. If the employee refuses to go to the evaluation site, the supervisor or the escort should tell the employee that the testing request is a direct order and that refusal to comply with the direct order might subject the employee to discipline, up to and including dismissal.

Executive Order 94
Page seven

- vi. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug poses a potential safety risk **or** would impair job performance; the supervisor shall contact the appointing authority for further guidance.
- vii. If the appointing authority is unavailable and the supervisor has a reasonable doubt about the employee's ability to satisfactorily and safely meet job requirements, the supervisor shall place the employee on investigatory leave pending such consultation. However, no supervisor or escort should allow an employee to drive to, or away from, the evaluation site. If the employee does drive off, the supervisor or escort shall notify the Police Department immediately and provide them pertinent information, i.e., employee's car make; model and color; license plate number; direction of travel; and reason for ordering the evaluation.
- viii. If the clinic personnel determine that the employee's use of, being under the influence of, subject to the effects of, or impaired by a legal drug **does not** pose a potential safety risk **and does not** impair job performance, have the employee return to work.

c. Illegal drugs

Follow the steps listed above in Section B.1.a.

However, testing for illegal drugs should be administered within eight (8) hours of making a reasonable suspicion determination. If this eight-hour (8) time frame is exceeded, the supervisor must document the reasons the test was not promptly administered. Supervisors who do not test employees within the established time frame may be subject to discipline, up to and including dismissal.

The police **shall be** contacted when a supervisor has reasonable suspicion that an employee appears to be in possession of, selling or transferring illegal drugs.

C. Post-Accident Testing

- 1. As soon as practicable following a driving or other workplace accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when the accident:
 - a. may have been the fault of the employee **and** the accident involves a fatality;
 - b. may have been the fault of the employee **and** any individual was injured severely enough to receive medical treatment immediately away from the scene of the accident;
 - c. may have been the fault of the employee **and** the accident resulted in disabling damage to any vehicle or any equipment; or,

Executive Order 94
Page eight

- d. there is reasonable suspicion to test the employee.
2. Post-accident alcohol and drug testing should be administered within two (2) hours following the accident. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.
3. "Disabling damage" for a vehicle accident is defined as precluding the departure of the vehicle from the scene of an accident in its usual manner. Vehicle damage that can be remedied temporarily at the scene without special tools or parts, i.e., replacing a tire with the spare, taping over a headlight or tying down the hood of a car, are not considered disabling.
4. "Disabling damage" for a workplace accident is defined as precluding the use of the equipment from its usual operation. Equipment that can be remedied temporarily at the scene without special tools or parts is not considered disabling.

D. Return to Duty Testing

If an employee has violated the prohibited conduct listed in Sections I (A) or I (C) of this Order, the employee shall not return to work unless the employee has taken an alcohol and drug test at the OHSC and both tests were verified negative.

E. Unannounced Testing

If an employee has been placed on a Stipulation and Agreement in accordance with this executive order, as a part of that Stipulation and Agreement, the employee may be tested for alcohol and/or drugs by the agency without prior notice of the testing date or time for at least 36 months from the last date in time that the stipulation and agreement is signed by the parties.

F. Random Testing

The City may implement, with the City Attorney's approval, random alcohol and drug testing for employees deemed to perform safety-sensitive functions for the City or any of its agencies.

G. Commercial Driver's License Testing

For those positions requiring a CDL, the City shall implement drug testing pursuant to applicable DOT regulations, as may be amended from time to time **in addition to** the testing described in Sections II (B), II (C) and II (D) of this Order.

1. Pre-Employment Testing

Prior to the first time a driver performs safety-sensitive functions for the City or any of its agencies, the driver shall be tested for illegal drug usage in compliance with the DOT and state regulations, as may be amended from time to time.

Executive Order 94
Page nine

2. Reasonable Suspicion Testing

a. Alcohol

The procedures described in Section II (B)(1)(a) of this Order shall be followed.

b. Legal Drugs

The procedures described in Section II (B)(1)(b) of this Order shall be followed.

c. Illegal Drugs

The procedures described in Section II (B)(1)(c) of this Order shall be followed.

3. Post-Accident Testing

- a. As soon as practicable following an accident, the supervisor shall ensure that driver-employee is tested for alcohol and drugs when:
- i. the accident occurred while the vehicle driver was performing safety-sensitive functions with respect to the vehicle **and** the accident involved the loss of human life;
 - ii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** an individual was injured severely enough to receive medical treatment immediately away from the scene;
 - iii. the vehicle driver was cited under the state or local law for a moving violation arising from the accident **and** one or more of the vehicles involved in the accident sustained disabling damage. "Disabling damage" is defined in Section II (C)(2) and (3) in this Order;
 - iv. there is reasonable suspicion to test the employee.
- b. If the supervisor does not initiate alcohol testing within eight (8) hours of the accident or drug testing within thirty-two (32) hours of the accident, the supervisor shall cease attempts to administer the tests and shall state in writing for the record the reasons for not administering the tests. Supervisors who do not test employees within the established time frames may be subject to discipline, up to and including dismissal.

Executive Order 94
Page ten

4. Random Testing

a. Alcohol

Pursuant to the DOT regulations, random alcohol testing shall be conducted annually on 25% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Alcohol testing shall be conducted on a random, unannounced basis just before, during or just after the employee performed safety-sensitive functions.

b. Illegal Drugs

Pursuant to the DOT regulations, random drug testing shall be conducted annually on 50% of the average number of City commercial driver's license positions in existence. This percentage may be amended from time to time by the DOT. Drug testing shall be conducted on a random, unannounced basis. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

5. Return to Duty Testing

a. Alcohol

If an employee has violated the prohibited conduct listed in Section I (A) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has completed a successful return to duty alcohol test.

b. Illegal Drugs

If an employee has violated the prohibited conduct listed in Section I (C) of this Order, the employee shall not return to perform safety-sensitive duties unless the employee has been cleared by a Substance Abuse Professional and has completed a successful return to duty drug test.

6. Follow-Up Testing

a. Alcohol

- i. The number and frequency of the follow-up alcohol tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first twelve (12) months following the employee's return to work.
- ii. Follow-up testing shall be unannounced and shall be conducted just before, during or just after the employee performed safety-sensitive functions.

Executive Order 94
Page eleven

b. Illegal Drugs

- i. The number and frequency of the follow-up drug tests shall be directed by the Substance Abuse Professional and shall consist of at least six (6) tests in the first (12) twelve months following the employee's return to work.
- ii. Follow-up testing shall be unannounced. There is no requirement that this testing be conducted in immediate time proximity to performing safety-sensitive functions.

H. Members of the Classified Service of the Police and Fire Departments and Deputy Sheriffs Testing

For those employees who are members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs, the City may implement drug testing pursuant to their respective department procedures, as may be amended from time to time **in addition to** the testing described in Sections II (A), II (B), II (C), II (D), II (E), II (F), and II (G) of this Order.

III. EXECUTIVE ORDER 94 TRAINING

A. All City Employees

All new City employees should be trained on this Order during their first year of employment. Training, at a minimum, should include study of the Order and instruction on the recognition of drug and alcohol impairment and use. Additionally, a copy of this Order should be given to each employee with each employee acknowledging, in writing, receipt of the policy and the training.

B. All Employees With Supervisory Duties

1. All employees with supervisory duties should be trained on this Order during the first six months following their promotion. This training, at a minimum, should include study of the Order, instruction on the recognition of drug and alcohol impairment and use, the proper documentation of the supervisor's reasonable suspicion, and the supervisor's responsibility for escorting employees to the testing sites and through the testing process.
2. Supervisors shall ensure that all drug and alcohol tests are accomplished immediately after the justification for testing is established. Timeliness for testing is outlined in this Order and its Addendum. Further, once a supervisor has reasonable suspicion that an employee appears to be under the influence of alcohol or drugs, the agency cannot condone the employee's driving of a motor vehicle. If the employee drives off in his/her own or a City vehicle, the Police Department must be notified immediately. Supervisors whom elicit the use of another individual to escort an employee to testing or evaluation sites shall educate the individual on the duties of the escort as provided herein prior to allowing that individual to escort the employee.

Executive Order 94
Page twelve

3. Supervisors are subject to discipline for failing to fulfill the responsibilities set forth for supervisors in this Order. However, although a supervisor's failure to fulfill his/her responsibility may result in disciplinary action being taken against the supervisor, up to and including dismissal, such failure does not, in any way, excuse the employee's violation of this Order or negate the agency's disciplinary action against the employee.

CAUTION: No physical force may be used against an employee to enforce any order under this policy. The employee must be advised that noncompliance with a supervisor's order will be viewed as refusal to obey the order of a supervisor and subject to discipline, up to and including dismissal.

CAUTION: Supervisors are to restrict communications concerning possible violations of this policy to those persons who are participating in the evaluation, investigation or disciplinary action and who have a "need to know" about the details of the drug/alcohol evaluation, investigation and disciplinary action. This restriction includes not mentioning the names of employees who are suspected of, or disciplined for, violating this policy.

IV. DISCIPLINARY ACTIONS

- A. If it is determined after the appropriate predisciplinary meeting that any of the following situations apply; the employee shall be dismissed even for the first offense for the following conduct.
 1. Members of the Classified Service of the Police and Fire Departments or Deputy Sheriffs that violate their respective departments' prohibitions regarding illegal use of controlled substances;
 2. Safety-sensitive members of the Department of Aviation that violate their department's prohibitions regarding alcohol or drug use;
 3. The employee has endangered the lives of others, or foresee ably could have endangered the lives of others;
 4. The employee refuses to submit to any testing under this Order including, but not limited to, pre-placement, reasonable suspicion, random, post-accident, return to duty, follow-up or unannounced testing;
 5. The employee uses, or attempts to use, a masking agent to alter the sample and/or drug and/or alcohol test results;
 6. The employee's disciplinary history compels dismissal as a matter of progressive discipline;
 7. The employee has refused to enter into a Stipulation and Agreement;
 8. The employee has violated the Stipulation and Agreement;

Executive Order 94
Page thirteen

9. The employee violates Executive Order 94 for the second time in the employee's career with the City and County of Denver and/or its agencies.
- B. A first time violation of this policy, which does not result in a dismissal pursuant to Section IV (A) of this Order shall result in a lesser disciplinary action in conjunction with a Stipulation and Agreement for treatment.
1. Employee Assistance Counselors of the Mayor's Office of Employee Assistance, or such other substance abuse professional(s) as may be designated, shall conduct an assessment of the employee and create a treatment plan.
 2. Each such agreement shall be in writing and approved by the City Attorney's Office. The City shall offer no employee more than one such agreement during his or her employment with the City.
 3. Employees who participate in a supervisor-approved inpatient treatment plan shall be allowed to take one (1) day per month sick leave or vacation leave, or allowed to work one (1) day per month but not in safety-sensitive positions, to assure continued health coverage.

V. MISCELLANEOUS PROVISIONS

A. Driver's License

It is the responsibility of employees required to drive as part of their assigned duties or job specifications to report to their appointing authority any loss of a driver's license or the restriction of driving privileges, no later than the beginning of the employee's next scheduled shift. Every employee who is required to drive, as part of their assigned duties or job specifications, shall certify that they have a current valid driver's license in accordance with Executive Order 25 as may be amended from time to time.

B. Searches

1. Before any search is conducted, supervisors shall contact the City Attorney's Office for guidance.
2. Management has the right to search City-owned property, e.g., a desk, storage cabinet or City vehicle, when the search is necessary for a non-investigatory work-related purpose such as retrieving a needed file. Additionally, management may search City-owned property, e.g., a desk, file cabinet, locker, or City vehicle, when predicated by reasonable suspicion that evidence of misconduct will be found. Finally, management may search an employee's personal property, e.g., their personal vehicle parked on City property, lunch boxes, briefcases, purses, tool kits, and backpacks, upon consent of the employee.

Executive Order 94
Page fourteen

3. Clearly posted notices explaining the City's right to carry out search activities should be displayed in appropriate locations throughout the work area. The posted notices should contain the language listed above in paragraph V (B) (2) of this Order. Any deviation from this language must be approved by the City Attorney's Office prior to posting.

C. Contracts

1. This Executive Order is applicable to contract personnel. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring contract personnel from City facilities or from participating in City operations.
2. All City contracts shall inform contractors doing work for the City about this Executive Order.

D. Mayor's Office of Employee Assistance and Department of Safety Psychologists


The City maintains the Mayor's Office of Employee Assistance (MOEA) and provides Department of Safety psychologists who offer help to employees who suffer from alcohol or drug use or other personal or emotional issues. It is the responsibility of each employee to seek help from the MOEA, Department of Safety psychologist or other appropriate health care professionals before alcohol and drug use leads to disciplinary actions.

E. Memorandum to this Order

The City Attorney shall have the authority to amend definitions and drug testing cut-off levels contained in the Order's Memorandum, from time to time, consistent with Colorado statutes and the DOT regulations, without obtaining signatures of the Mayor or City Council. For purposes of this Executive Order, all references to Agency head, Department head or appointing authority will also include the designee of the Agency head, Department head or appointing authority.


Executive Order 94
Page fifteen

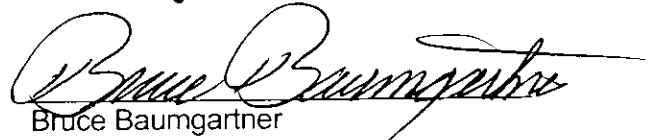
Approved for Legality

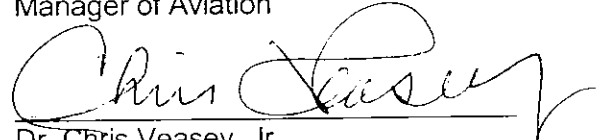


J. Wallace Wortham, Jr.
City Attorney

Approved:




Wellington E. Webb
MAYOR

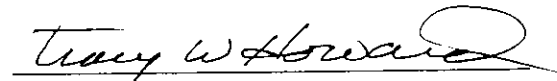
Bruce Baumgartner
Manager of Aviation

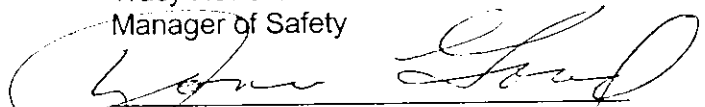
Dr. Chris Veasey, Jr.
Manager of Environmental Health

Thomas J. Migaki
Manager of General Services

James Mejia
Manager of Parks & Recreation

Stephanie Foote
Manager of Public Works

Cheryl D. Cohen
Manager of Revenue

Tracy Howard
Manager of Safety

Donna Good
Manager of Human Services

Page fifteen
Executive Order 94

MEMORANDUM NO. 94A

TO: All Agencies Under the Mayor
FROM: John W. Hickenlooper
Mayor
DATE: August 26, 2004
SUBJECT: STATUTORY PROVISIONS

This memorandum to Executive Order 94 was originally referred to as an addendum, effective April 10, 1989, amended April 13, 1999, January 10, 2000, March 1, 2000, March 15, 2001 and is hereby continued in effect as amended and retitled as a memorandum this August 26, 2004. This Memorandum shall be attached to and become a part of Executive Order 94, dated, October 29, 2002, subject "City and County of Denver Employees' Alcohol and Drug Policy."

I. ALCOHOL PROVISIONS

- A. Under the Colorado statutes, as may be amended from time to time, "impaired by alcohol" is defined as having 0.05 grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood), but less than 0.08 grams of alcohol. Under the "influence of alcohol" is defined as having 0.08 or more grams of alcohol (per two hundred ten liters of breath or per one hundred milliliters of blood).
- B. Under the DOT regulations, as may be amended from time to time, "under the influence of alcohol" is defined as having 0.04 percent alcohol concentration, or more; as prescribed by state law; or in the event of refusal to undergo such testing as is required by the state or jurisdiction.

DOT regulations, as may be amended from time to time, state that post-accident alcohol testing should be administered within two (2) hours following the accident, but must be administered within eight (8) hours following the accident. *These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.*

II. ILLEGAL DRUG PROVISIONS

- A. Illegal drugs, including controlled substances, are defined in Colorado Revised Statutes §12-22-303.

Page sixteen
Executive Order 94

B. "Subject to the effects of an illegal drug" is to be determined consistent with the confirmation test levels established by the DOT regulations, as may be amended from time to time:

Marijuana metabolites	-----	15 ng
Cocaine metabolite	-----	150 ng
Opiates:		
Morphine	-----	2,000 ng
Codeine	-----	2,000 ng
Phencyclidine	-----	25 ng
Amphetamines:		
Amphetamine	-----	500 ng
Methamphetamine	-----	500 ng

Drug testing shall be administered no later than thirty-two (32) hours after the accident. ***These DOT time frames shall also apply to testing under this Executive Order unless otherwise specified within this Order.***

TYPE OR PRINT

Name: _____
 LAST, FIRST MI

SSN: _____

**CERTIFICATE OF COMPLIANCE WITH DRUG-FREE
WORKPLACE ACT OF 1988**

(Public Law 100-690, Title V, Subtitle D)

I certify that I have received a copy of Executive Order 94, as amended, regarding the alcohol and other drugs policy for City and County of Denver employees.

I further certify that I will not unlawfully manufacture, distribute, dispense, possess or use a controlled substance in the workplace, and I will notify my employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

Employee's Signature

Date

CSA ORIGINAL: ATTACH TO APPOINTING PERSONNEL ACTION – MAKE COPY FOR AGENCY FILE