

## A G R E E M E N T

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

The parties agree as follows:

1. **COORDINATION AND LIAISON:** The Contractor shall fully coordinate all services under the Agreement with the Executive Director (“Executive Director”) of the Department of Human Services (“Agency”) or, the Executive Director’s Designee, including the director of the CPCC.

2. **SERVICES TO BE PERFORMED:**

a. As the Executive Director directs, the Contractor shall diligently undertake, perform, and provide the services as set forth in **Exhibit A, the Scope of Work and Budget**, to the City’s satisfaction.

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

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

3. **TERM:** The term of this Agreement shall commence on **January 1, 2018, and** expire, unless sooner terminated, on **December 31, 2018**. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.

4. **COMPENSATION AND PAYMENT:**

a. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement payment not to exceed the line budget amount contained set forth in **Exhibit A**.

b. **Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor’s expenses are contained in the budget in Exhibit A.

The City will not be obligated to pay the Contractor for any other fees, costs, expenses, or charges of any nature that may be incurred by the Contractor in performing services under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses. The City will not be responsible in any way for any loss or damage to persons or property caused by recipients of shelter services under this Agreement.

c. **Invoicing:** Contractor shall provide the City with a monthly invoice in a format and with a level of detail acceptable to the City. Invoices shall be accompanied by documentation of expenses for which reimbursement is sought as well as other supporting documentation required by the City. The City's Prompt Payment Ordinance, § § 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement. Funds will be disbursed in appropriate monthly increments, upon receipt and approval of Contractor's monthly invoices and any City required budget documents, reports or DHS issued housing vouchers. Contractor's invoice(s) will include any and all appropriate supporting documentation that may be pertinent in light of the nature of the services performed or expenses incurred under this Agreement. Contractor's Invoice(s) will reflect the total number of persons for whom shelter was provided during the period for which the payment is requested and will address all completed project outcomes. Contractor's invoices must identify costs and expenses actually incurred in accordance with the budget contained in Exhibit A. Budget line items may be modified by the written approval of the Executive Director as long as no budget line item modification causes the budget to exceed the Maximum Contract Amount. Funds payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only for work performed and expenses incurred during the prior month. Invoices submitted for payment must be received by the Agency on or before the twenty second (22nd) day of the month subsequent to the month for which reimbursement is being sought. 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. Timesheets must reflect the amount of time, in hours and tenths of hours, attributable to each activity performed under this Agreement. In the event that the Contractor allocates allowable costs to more than one grant, project, or contract, then timesheets must further identify the allocation of allowable costs for each grant, project or contract.

**d. Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **One Million Dollars and Zero Cents (\$1,000,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor's risk and without authorization under the Agreement.

(2) The City's payment obligation, whether direct or contingent, extends only to 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.

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

**5. REPORTS/CORRESPONDENCE:**

**a. Submission Deadlines for Reports:** The Contractor shall provide the Agency 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, the Contractor shall comply with any and all contract closeout procedures directed by the Executive 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.

**b. Correspondence:** All reports and other written correspondence concerning procedural or administrative contract matters (other than the notices required to be provided to the Executive Director and others as described below in **NOTICES**) shall be delivered electronically to [DHS\\_Contracting\\_Services@denvergov.org](mailto:DHS_Contracting_Services@denvergov.org), or by U.S. mail to:

Attn: Contracting Services  
Denver Department of Human Services  
1200 Federal Boulevard, 4<sup>th</sup> Floor  
Denver, Colorado 80204.

Invoices shall be delivered electronically to [DHS\\_Contractor\\_Invoices@denvergov.org](mailto:DHS_Contractor_Invoices@denvergov.org) or by US Mail to:

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

**6. PERFORMANCE MONITORING/INSPECTION:** The Contractor shall permit the Executive Director to monitor and review the Contractor's performance under this Agreement. The Contractor 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 in order to coordinate the performance of services by the Contractor in accordance with the terms of this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with the services to be provided under this Agreement.

**7. STATUS OF CONTRACTOR:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**8. TERMINATION:**

a. The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon twenty (20) days prior written notice to the Contractor. However, nothing gives the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the Executive Director.

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

c. Upon termination of the Agreement, with or without cause, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement.

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

**9. EXAMINATION OF RECORDS:** 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 any pertinent books, documents, papers and records of the Consultant, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

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

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

**11. INSURANCE:**

**a. General Conditions:** Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement 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, Consultant shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Consultant. Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

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

a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

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

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

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

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

h. **Business Automobile Insurance:** Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned,

hired and non-owned vehicles used in performing services under this Agreement.

**i. Professional Liability:** Contractor 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.

**j. Additional Provisions:**

(1) For Commercial General Liability and Excess Liability, the policies must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs in excess of policy limits;

(c) A severability of interests, separation of insureds or cross liability provision;

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

(2) For claims-made coverage:

(a) 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.

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

**12. DEFENSE AND INDEMNIFICATION**

**a.** Contractor 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 Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

c. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

d. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

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

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

absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-Contractor, subcontractor or assign.

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

**16. NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**17. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**18. SEVERABILITY:** Except for the provisions of the Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the parties can be fulfilled.

**19. CONFLICT OF INTEREST:**

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

**b.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the

Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**20. NOTICES:** 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 Contractor at the address first above written, and if to the City at:

By Contractor to: Executive Director, Denver Department of Human Services  
City and County of Denver  
1200 Federal Boulevard  
Denver, Colorado 80204-3221

With a copy to: Supervisor  
Contracting Services  
Denver Department of Human Services  
1200 Federal Boulevard  
Denver, Colorado 80204-3221

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.

**21. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** 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”).

**b.** The Contractor certifies that:

(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.

(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.

c. The Contractor also agrees and represents that:

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

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

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor 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.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor 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.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

**23. GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.

**24. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

**25. COMPLIANCE WITH ALL LAWS:** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**26. LEGAL AUTHORITY:** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

**27. 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.

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

**29. INTELLECTUAL PROPERTY RIGHTS:** The City and Contractor 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 the Contractor 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. The Contractor shall disclose all such items to the City and shall assign such rights over to the City upon completion of the Agreement. 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. To the extent that the Materials are not a “work made for hire,” the Contractor (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.

**30. SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor’s obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**31. ADVERTISING AND PUBLIC DISCLOSURE:** The Contractor shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the Contractor’s advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

**32. 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.

**33. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.

**34. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:** The Contractor shall cooperate and comply with the provisions of Executive Order 94 and its Attachment A concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in contract personnel being barred from City facilities and from participating in City operations.

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

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**EXHIBIT A SCOPE OF WORK AND BUDGET**

**EXHIBIT B CERTIFICATE OF INSURANCE**

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





Contract Control Number: SOCSV-201840228-00

Contractor Name: MENTAL HEALTH CENTER OF DENVER

By: Kristi Mock for Carl Clark MD

Name: Carl Clark, MD  
(please print)  
Kristi Mock

Title: President & Chief Executive Officer  
(please print)  
VP + Chief Operating Officer

ATTEST: [if required]

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

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

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



**SCOPE OF WORK**  
**Mental Health Center of Denver**  
**Co-Responder Initiative**  
**SOCSV 2018-40228-00**

**I. Purpose of Agreement**

The purpose of the Denver Co-Responder Initiative is to facilitate the City's and the Contractor's efforts to work collaboratively and coordinate their crisis intervention efforts. The program is intended to provide short-term and pro-active care to ensure that appropriate interventions are made available for persons with behavioral health issues who have come to the attention of Denver law enforcement, corrections, and/or emergency responders, in order to improve the lives of the citizens of the City and County of Denver and streamline services and create system efficiencies.

**II. Services**

- A. The Office of Behavioral Health Strategies (OBHS) wishes to contract with Mental Health Center of Denver (MHCD) to co-manage the Denver Co-Responder program with Denver Police Department (DPD), specifically the Crisis Intervention Response Unit (CIRU), in coordination with other criminal justice agencies including but not limited to the Denver Sheriff Department, Denver District, and County Courts.
- B. The Denver Co-Responder program will provide the following services:
1. Reinforce, foster, and create effective, collaborative partnerships between police, other first responders, mental health practitioners, Sheriffs, and other community stakeholders.
  2. Direct customers to appropriate alternatives and resources to reduce hospitalization and/or jail time.
  3. Improve system response and create effective crisis intervention and solutions in order to reduce the need for repeated interventions.
  4. Provide training and education for officers and emergency responders to improve officer understanding of mental health, traumatic brain injury, and addiction issues.
  5. Provide clinically appropriate interventions.
  6. Improve information sharing as appropriate across system and service providers through formalized communication and processes.
  7. Expand specialized law enforcement and behavioral health strategies tailored to the needs of those with behavioral/mental health disorders.
  8. Evaluate program implementation and customer outcomes.
  9. Provide descriptive statistics on encounters as specified in this scope of work.
- C. The objective of the Co-Responder is to assist DPD in determining the best response to persons they encounter who are presenting with possible mental health, brain injury, developmental disability and/or other behaviors that require intervention, if a "law enforcement" based intervention is not immediately warranted. Co-Responders are to follow the lead from the police officer(s) once the scene is deemed safe and a criminal justice-based assessment has been completed. Co-Responders will conduct customer research to best provide a clinical assessment of the customer's needs and identify the most appropriate

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- response and/or setting for the customer. Co-Responders in collaboration with the police and/other responders, maximize probability that appropriate referrals are made, and services are rendered.
- D. Post initial response, Co-Responders will continue to provide clinically appropriate services. As required, Co-Responders will provide witness statements to the DPD relating to what they have seen, heard, or done at the scene to the extent consistent with law as well as their independent professional judgment and responsibilities.
- E. Funds provide for a full-time salaried, exempt status MHCD Program Manager and eleven (11) salaried, full-time equivalent MHCD Co-Responder staff who will work in collaboration and cooperation with DPD to provide a response to persons in crisis or in need of appropriate interventions in the community. The lead program manager and program related clinicians will be housed with the CIRU at no cost to this contract or the program.
- F. **Co-Responder Program Manager Position Summary**
1. The Program Manager is responsible for the overall program management and direction of the Co-Responder program. The Program Manager is responsible for program documentation development and completion; data collection and reporting according to licensure, state requirements and program metrics; trouble shooting and continuous process improvement; and, coordination and collaboration with DPD, Denver Sheriff Department, mobile crisis, OBHS, crisis services, MHCD Services, and all other parties involved in the Co- Responder initiative to ensure appropriate policy development and service implementation. The Program Manager pro-actively builds and maintains positive relationships with the business community, and other public and private entities.
  2. The Program Manager ensures Co-Responders have knowledge of customers' cultural, religious, ethnic, and social systems interactions, care planning, and education.
  3. The Program Manager performs 27-65 (M-1) evaluations; has a working knowledge of basic physical health issues and terminology; and has at least three years of experience working with persons with severe and persistent mental illness, homelessness and addiction.
  4. The Program Manager is an employee of and supervised by MHCD and has a dual reporting function with MHCD and CIRU. The Program Manager fulfills and meets the requirement and responsibilities of the Co-Responder Program Manager Job Description and can perform all the roles and responsibilities of the MHCD Co-Responders. The Program Manager requires a CO licensed LCSW, LPC with a CAC II, III or LAC. Spanish speaking preferred. Criminal background check is required. The Program Manager must be able to work cooperatively with uniform DPD officers and other criminal justice and

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emergency responders. DPD and Crime Prevention and Control Commission (CPC) will be consulted as part of the hiring process.

**G. Co-Responder Position Summary**

1. Provides field based behavioral health evaluations/problem identification, crisis interventions, system navigation and short-term, pro-active case management services to customers as needed or assigned. Develops short-term case-plan, interventions and connections to appropriate treatment with follow-up at disposition times.
  2. Initiates follow through for benefit enrollment, as appropriate as well as MHCD referral for enrollment when appropriate.
  3. Coordinates access to medication/primary physical needs of customers with psychiatrists, nurses, and other health sources as available. Maintains accurate and timely clinical records and enters data and completes reports consistent with MHCD standards.
  4. Knowledge of crisis intervention and trauma. Ability to provide brief therapy processes. Experience in working with severe and persistently mentally ill and customers with high levels of substance abuse and homelessness. Knowledge of community resources. Ability to place a customer on a 27-65 (M-I) hold.
  5. Knowledge of customers' cultural, religious, ethnic, and social systems interactions, care planning and education. A working knowledge of basic physical health terminology and resources. Skill in providing care appropriate to the age of the customers served. Skill in establishing a treatment alliance and engaging the customer in goal setting and prioritizing. Ability to create a short-term crisis treatment and/or outcome plan. Ability to communicate effectively and work cooperatively with internal and external customers.
  6. Routinely consults, negotiates, and coordinates with internal and external resources to ensure collaborative efforts to maximize customer outcomes. Demonstrates leadership in facilitating multi-disciplinary communications and care meetings (i.e. care conference & rounds) and utilizes information to assess and reassess care needs.
  7. Responders are staff of MHCD but will work in conjunction with DPD's CIRU unit. Co-Responders are required to be CO licensed LCSW, LPC with a CAC II or III or LAC. Co-Responders are required to have at least three years of experience. Spanish speaking preferred. Co-Responders must be able to work cooperatively with uniform DPD officers, Sheriffs and other criminal justice and emergency responders. Criminal background check is required. DPD and CPC will be consulted as part of the hiring process.
- H. The Denver Co-Responder program staff will be required to be flexible in scheduling as the work requires non-traditional hours. Staff will work in various Police Districts according to DPD requests. MHCD will develop and present staffing and coverage pattern for coordination with DPD.

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**I. Additional MHCD Contractor responsibilities:**

1. Ensure funds are only used to perform the work of Denver's Co-Responder Program.
2. Ensure and provide appropriate documentation, tracking, and billing of programs expenses, including all staff time cards reflecting actual time spent for the purpose of this contract.
3. Work with OBHS, CPCC and other Co-Responders to ensure appropriate data is collected and tracked.
4. Document, track, analyze and report all appropriate data points according to the evaluation section and other measures as agreed upon as the program advances including but not limited to: client demographic data, assessment/screening data, benefits data, provider data, housing data, treatment data and hospital data when it is possible to gather this information in the midst of a crisis.
5. Provide quarterly and final program report on client and program data collected as described above.
6. Ensure appropriate documentation of services provided and case history according to OBHS.
7. MHCD ensures supervision of staff and implementation of Co-Responder model as designed.
8. Track, report and charge all eligible services to applicable benefit plans and third-party payers as the primary payers. Only invoice OBHS for approved budgeted non-covered costs. Report total costs and amounts paid by other third-party payers including insurance and Medicaid as well as the amount billed to OBHS.
9. MHCD sub- capitation arrangement with Colorado Access, the Behavioral Health Organization for Denver Medicaid recipients is noted; parties, including MHCD, Colorado Access, and OBHS will work together to discuss reimbursement rates. Reimbursement may not be provided if it is impossible for MHCD to collect required information for reimbursement according to third-party payer/Medicaid policies.

**III. Process and Outcome Measures**

**A. Process Measures**

1. Identify referral source to the CIRU unit
2. Track Crisis Interventions which include transporting individuals to the hospital and/or jail.
3. Process Measures are associated with activities. They are often a number or sum of people or services to be counted during the contract term.
4. Track the number of outreach contacts
5. Track the number of repeats by an individual
6. Track the types of referrals (solutions)
7. Track if customer followed through with referrals (solutions)

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8. Track clinical interventions

**B. Outcome Measures**

1. Improve system response
2. Create effective crisis intervention and solutions to reduce repeats

**IV. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area and Contracting Services and Financial Services Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

**B. Reporting**

The following reports shall be developed and delivered to the City as stated in this section.

Report # and Name	Description	Frequency	Reports to be sent to:
1. OBHS Quarterly Progress Reports	OBHS Quarterly Progress Reports (see Exhibit B) will be submitted to OBHS Deputy Director or designee no later than the last day of the first month following the respective quarter. <b>(Note:</b> Include current and historical data	Quarterly	OBHS@denvergov.org

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	from previous quarters in order to provide trend information by reporting area) 1. Client demographic data 2. Assessment/screening data 3. Benefits data 4. Provider data 5. Housing data 6. Treatment data and 7. Hospital data when available 8. Process Measures listed in Section III. A. 1-8		
5. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within 45 days after Term End.	OBHS@denvergov.org

**V. Budget**

**A. Revenue Sources:**

OBHS, CPCC, Medicaid, Medicare, Veterans Administration, and other third-party benefit plans and/or programs are revenue sources. Funds provided by OBHS/CPCC are intended to cover non-Medicaid covered costs associated with the program. Other benefit plans and programs should cover all or a portion of the costs. OBHS/CPCC is the payer of last resort.

**B. Billing:**

Many of the Co-Responder staff services are eligible for Medicaid, Medicare or other third-party benefit plans. However; some services will not be billable to Medicaid, Medicare or other third-party benefit plans if they are non-covered services. MHCD agrees to bill Medicaid, Medicare and other third-party payers for all eligible services provided. This contract provides for a portion of staff related costs and for non-covered, non-reimbursable services. All invoices will report total costs, amounts billed and paid by insurance, Medicaid, Medicare and/or other third-party payers, and amounts billed to OBHS. MHCD will submit receipts and/or appropriate documentation for budget approved expenses. Payment will be based on monthly invoice and appropriate backup documentation.

1. MHCD, OBHS and Co-Access members agree to meet periodically to review billing.

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- C. Invoices and reports shall be completed and submitted on or before the 30<sup>th</sup> of each month following the month services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, if requested.
- D. Invoices shall be submitted to: DHS\_Contractor\_Invoices@denvergov.org or by US Mail to:  
 Attn: Financial Services  
 Denver Human Services  
 1200 Federal Boulevard  
 Denver, Colorado 80204
- E. Budget

<b>Contractor Name:</b>	<b>Mental Health Center of Denver</b>	
<b>Contract Number:</b>	<b>SOCSV 2018-40228-00</b>	
<b>Contract Term:</b>	<b>January 1, 2018 - December 31, 2018</b>	
<b>Program Name:</b>	<b>Co-Responder Initiative</b>	
<b>Budget Item</b>	<b>CPCC Amount</b>	<b>Narrative</b>
<b>Staffing Costs</b>		
<b>Co-Responder Program Manager</b>	\$72,093.00	One Full-time Co-Responder Program Manager. Salary for bi-lingual licensed Co-Responder Program manager to be reimbursed with documented timesheets and/or payroll register.
<b>Community Co-Responders</b>	\$620,433.00	11 Full-time salaried Co-Responder staff who works directly with Denver Police, fire, sheriff and other first responders as necessary. Annual Salary not to exceed: \$56,403 and reimbursement will be provided by documented timesheet and/or payroll register.
<b>Fringe Benefits</b>	\$173,132.00	Fringe Benefits will be based on 25% (.25) of Co-Responder Program Manager's and Community Co-Responders' salaries. Reimbursement provided by documented timesheets or payroll register to include fringe information.
<b>Staffing Costs Subtotal</b>	<b>\$865,658.00</b>	
<b>Supplies, Operating &amp; Equipment</b>		
<b>Staff Mileage</b>	\$15,696.00	Mileage is not to exceed the Federally approved IRS rate at the time the expense



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		occurred. Reimbursement at documented receipts for actual costs.
Parking	\$2,585.00	Parking reimbursement for program related meetings and/or activities to be reimbursed at documented receipts for actual costs.
Lap top Computers	\$4,800.00	Up to 8 lap top computers @ \$600.00. Reimbursed at documented receipts for actual costs.
Wi-fi hotspot	\$8,640.00	Wi-fi hotspot device. Reimbursement at documented receipts for actual costs.
Office Supplies	\$3,600.00	General office supplies include, but is not limited to printer paper, pens, paper clips, binders, binder dividers, highlighters, note pads, toner, white out, staff business cards, program material etc. Reimbursement at documented receipts for actual costs.
Co-Responder Attire	\$3,000.00	Co-Responder required attire includes but is not limited to logo t-shirts, lanyards for identification and outerwear. Reimbursement at documented receipts for actual costs.
Staff cell phones	\$5,112.00	Co-Responder and Program Manager cell phone monthly stipend for communication with clients, treatments resources, the court and police. Reimbursement at documented receipts for actual costs.
<b>Subtotal Supplies, Operating &amp; Equipment</b>	<b>\$43,433.00</b>	
<b>Subtotal Budget Costs</b>	<b>\$909,091.00</b>	
<b>INDIRECT Costs</b>	<b>\$90,909.00</b>	<b>Indirect Cost Rate at 10%</b>
<b>TOTAL Costs</b>	<b>\$1,000,000.00</b>	

**VI. 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

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160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

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

**2. DEFINITIONS.**

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

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

- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
  - b. The unauthorized person who used the PHI or to whom the disclosure was made;
  - c. Whether the PHI was actually acquired or viewed; and
  - d. The extent to which the risk to the PHI has been mitigated.
- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

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

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use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

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

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the

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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.**

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- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and

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- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

**6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.



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

**7. OBLIGATIONS OF CITY.**

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

**8. BUSINESS ASSOCIATE TERMINATION.**

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

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provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

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

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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

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

**9 SUBSTANCE ABUSE (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.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/8/2017

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

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

<b>PRODUCER</b> One, Inc. DBA CONFLUENCE 1600 Emerson St.  Denver CO 80218		<b>CONTACT NAME:</b> Gary Friedman, CPCU, MSIS, RPLU, ARM, AAI <b>PHONE (A/C, No, Ext):</b> (303) 825-7212 <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> gfriedman@confluenceinsurance.com	
<b>INSURED</b>  Mental Health Center of Denver  4141 E Dickenson Place Denver CO 80222		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> ACE AMERICAN INSURANCE COMPANY	
		<b>INSURER B:</b> PINNACOL ASSURANCE	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

### COVERAGES

### CERTIFICATE NUMBER:

### REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Abuse & Molestation \$1,000,000 per occurrence/aggregate  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y		OGLG25503958	7/1/17	7/1/18	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$ 50,000	
	MED EXP (Any one person)						\$ 10,000	
	PERSONAL & ADV INJURY						\$ 1,000,000	
							GENERAL AGGREGATE	\$ 3,000,000
							PRODUCTS - COMP/OP AGG	\$ 3,000,000
								\$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y		H08612778	7/1/17	7/1/18	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	BODILY INJURY (Per person)						\$	
	BODILY INJURY (Per accident)						\$	
	PROPERTY DAMAGE (Per accident)						\$	
								\$
A	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			X00G25498343009	7/1/17	7/1/18	EACH OCCURRENCE	\$ 4,000,000
							AGGREGATE	\$ 4,000,000
								\$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		4045260	7/1/17	7/1/18	<input checked="" type="checkbox"/> PER STATUTE	<input type="checkbox"/> OTHER
	E.L. EACH ACCIDENT						\$ 500,000	
	E.L. DISEASE - EA EMPLOYEE						\$ 500,000	
	E.L. DISEASE - POLICY LIMIT						\$ 500,000	
A	PROFESSIONAL LIABILITY OCCURRENCE FORM			G25498380009	7/1/17	7/1/18	EACH OCCURRENCE	\$5,000,000
							AGGREGATE	\$7,000,000

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

As required by written contract, the City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers are included as Additional Insured as respects the Commercial General Liability and Business Auto.

### CERTIFICATE HOLDER

City and County of Denver Denver Department of Human Services

1200 Federal Blvd

Denver CO 80204

### CANCELLATION

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

### AUTHORIZED REPRESENTATIVE

*Gary A. Friedman*