

AGREEMENT

THIS AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City and County of Denver”), for itself and on behalf of the **Department of Public Health & Environment** (“DDPHE”, and, together with the City and County of Denver, the “City”), and **Caring for Denver Foundation**, a Colorado nonprofit corporation authorized to do business in the State of Colorado, whose address is 1515 Arapahoe Street, Tower 3, Suite 100, Denver, Colorado 80202 (hereinafter “CFD” and, together with the City, the “parties”).

RECITALS:

A. At a general municipal election on November 6, 2018, the City and County of Denver’s electors approved a sales and use tax increase of one-quarter of one percent (.0025%) (“Caring for Denver Tax” or “City Funds”), for the purpose of funding the Caring for Denver Fund (as that term is defined in the Ordinance) in order to increase mental health and substance use disorder prevention, treatment, recovery, and harm reduction services available in the City and County of Denver.

B. In accordance with Article XIV of Chapter 24, Denver Revised Municipal Code (the “Ordinance”), the Caring for Denver Tax shall supplement, rather than supplant, the total annual funding for mental health and substance use disorder services collected and administered by the City and County of Denver.

C. DDPHE is the expending authority under the Ordinance.

D. The Ordinance sets forth the requirements of the Caring for Denver Fund, including provisions for the governance and administration of the Caring for Denver Tax, and requires, among other things, that expenditures of the Caring for Denver Tax be made pursuant to an agreement between the City and County of Denver and a Colorado non-profit corporation.

E. The City will distribute to CFD receipts from the Caring for Denver Tax, on terms and conditions consistent with the Ordinance, subject to the conditions set forth in this Agreement.

F. CFD will accept such funds and agrees to use and apply the funds consistent with both the Ordinance and the conditions and restrictions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, the parties agree as follows:

1. CONTRACT DOCUMENTS & DEFINITIONS:

A. Order of Precedence. In the event of a conflict or inconsistency among the Ordinance, this Agreement and any exhibits or attachments, such conflict or inconsistency shall be resolved by reference to the Ordinance and documents in the following order of priority:

- i.** The Ordinance.
- ii.** The provisions of the main body of this Agreement.
- iii.** Exhibit A, Scope of Work.
- iv.** Exhibit B, Proof of Insurance.

B. Definitions. In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to exhibits referenced and attached hereto. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the use of a specific gender includes any other gender.

- (i) “Administrative Expenses” shall mean the following –

 - (a) salaries and office expenses related to any staff or employees of CFD;
 - (b) any expenses reimbursed to members of the Board;
 - (c) expenses related to conducting mental health and substance use disorder needs assessments for people in the City and County of Denver;
 - (d) expenses related to program evaluation, development and updating of the strategic plan of CFD, and annual report of CFD;
 - (e) routine business expenses of CFD such as insurance, accounting, an independent audit, and legal expenses; and
 - (f) any similar overhead expenses incurred by CFD.
- (ii) “Board” shall mean the board of directors of CFD as authorized under the Ordinance.
- (iii) “City Funds” shall mean the Caring for Denver Tax as authorized under the Ordinance.
- (iv) “City Law” shall include the Denver City Charter, Denver Revised Municipal Code, executive orders, rules, regulations, directives, policies and procedures prescribed by the City and County of Denver which govern the use or expenditure of City Funds, the Ordinance, or this Agreement.
- (v) “Developing” may include, but is not limited to, planning, design, purchase of real estate, renovation, and or capital construction related to the establishment or expansion of a facility that creates alternatives to jail for people with mental health and/or substance use disorder needs.
- (vi) “Federal Funds” means monies from the Federal Government available for funding mental health and substance use disorder services.
- (vii) “Federal Government” shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the use or expenditure of Federal Funds.

- (viii) “Federal Law” shall include any laws, rules, or regulations of the United States of America which govern the use of Federal Funds.
- (xi) “State Funds” means monies from the State of Colorado available for funding mental health and substance use disorder services.
- (xii) “State Law” includes any laws, rules, or regulations of the State of Colorado which govern the use or expenditure of State Funds.

2. CFD’S ADMINISTRATION OF THE CARING FOR DENVER FUND:

A. During the Term (as defined below), CFD shall administer the Caring for Denver Fund in a timely and competent manner for the benefit of the residents of the City and County of Denver, as described herein and in the Scope of Work, which is attached hereto and is herein incorporated by reference as **Exhibit A**.

B. CFD and all subcontractors, subconsultants, or other approved persons or entities engaged by CFD to perform services pursuant to this Agreement (collectively, the “CFD Staff”), shall comply with the requirements set forth in this Agreement and any and all applicable Federal, State, and City laws and regulations.

3. CITY LIAISON: The Executive Director of DDPHE (“Executive Director”) or his or her designee, shall be the City’s representative under this Agreement. All notices and reports required to be delivered to the City by CFD under this Agreement shall be concurrently delivered to the Executive Director.

4. TERM: The “Term” of this Agreement will commence on August 1, 2019 and terminate on December 31, 2023. Subject to the Executive Director’s prior written authorization, CFD shall complete any work in progress as of the effective date of termination or expiration and that term shall automatically extend until such work is completed or earlier terminated by the Executive Director.

5. CFD’S RESPONSIBILITIES: For the Term, in addition to any and all obligations required by law or stated elsewhere in this Agreement, or in any attachments hereto, CFD shall comply with the following requirements as conditions for the disbursement of the Caring for Denver Tax pursuant to the Ordinance and as required by the City:

A. Articles of Incorporation & Board of Directors. CFD shall be duly incorporated and in good standing under the Colorado Revised Nonprofit Corporation Act, §§ 7-121-101 *et seq.*, C.R.S. and CFD’s articles of incorporation shall provide for a thirteen-member Board. Six members of the Board shall be appointed by the mayor of the City and County of Denver; two members of the Board shall be appointed by the City and County of Denver’s district attorney; and five members of the Board shall be appointed by the president of Denver City Council as outlined in the Ordinance.

B. Power to Distribute City Funds through Grants. CFD shall operate as a spending agency, with the ability to commit City Funds pursuant to this Agreement. CFD shall have the ability to contract in its own name and shall not directly provide services related to mental health and substance use disorder services.

C. Open Meetings and Open Records. Meetings of the Board shall be treated as public meetings subject to the provisions of Chapter 2, Article III, D.R.M.C. Information shared at Board meetings and final grant awards shall be treated as public records and subject to the provisions of the Colorado Open Records Act, §§ 24-72-201, *et seq.*, C.R.S., as amended.

D. Strategic Plan. The Board shall develop a strategic plan to determine funding priorities as outlined in the Ordinance.

E. Limit on Administrative Expenses; Additional Funding. No more than 5% of the Caring for Denver Tax distributions received by CFD from the City and County of Denver shall be spent on Administrative Expenses in any calendar year. Pursuant to Section III of **Exhibit A**, of the 5%, the parties agree that \$125,000 shall be retained from the monthly distributions and used by the City to cover its initial administrative expenses (the “City Administrative Expenses”). The parties anticipate that the City Administrative Expenses will be used by the City, in part, to hire and compensate one full-time employee of the City (the “City Employee”) to perform administrative functions relating to the performance and monitoring of this Agreement (the “CFD Activities”). With the consent of CFD, which consent shall not be unreasonably withheld, the City Administrative Expenses may be increased to take into account increases in salary and benefits for the City Employee, which salary and benefits increases shall be consistent with those of other City employees. The City will conduct staffing analyses with respect to such City Employee at least once every six months during the Term. If, during any six-month period during the Term, the City Employee dedicates less than an average of 35 hours of service per week to the CFD Activities, then the parties shall agree to a reasonable reduction of the amount of City Administrative Expenses provided to the City pursuant to this Section 5.E. Nothing in this Agreement precludes CFD from seeking additional funding streams, such as gifts, grants, or donations, to pay for additional administrative expenses or programmatic expenditures. Such non-tax funds will not reduce the 5% of Caring for Denver Tax revenue that CFD may use for Administrative Expenses.

F. Public Reports. Commencing January 1, 2020, not less than once annually and no later than the end of the third month of the City and County of Denver’s fiscal year, CFD shall report to the mayor of the City and County of Denver, Denver City Council, the City and County of Denver Auditor, and the public the following information from the prior fiscal year:

- (i) audited financial statements for CFD, conducted by an independent auditor, including full reports on expenditures for the prior fiscal year and anticipated budgets and work plans for the ensuing fiscal year of how the funds were spent in the City;
- (ii) an annual report that sets forth, at minimum, a strategic plan progress evaluation, the grants made in each of the funding areas identified, the names of the grantees, the dollar amounts granted to each grantee, the boards of directors and officers of each grantee, and the purposes and proposed City impacts of those grants; and
- (iii) additional reports as reasonably requested by the mayor of the City and County of Denver, Denver City Council or City and County of Denver Auditor.

G. Conflicts of Interest. CFD shall share its policy on conflicts of interest with the City and the public. Persons affected by the conflict of interest policy are required to abide by the City and County of Denver’s conflict of interest standards as defined in D.R.M.C. § 2-61. No Board members shall personally benefit from any grant made by CFD for the provision of services in violation of applicable law. A person who is employed by or serves in a governmental department, division, or agency of the City and County of Denver that provides such services will not be deemed to have “personally benefited” if his or her agency receives monies from the Caring for Denver Fund.

H. Faith-based Organizations. CFD, in administering the Caring for Denver Fund, or in expending any distributions derived from the Caring for Denver Tax, shall not engage in inherently religious activities, such as worship, religious education or instruction, or proselytization, and shall include the foregoing restriction in all contracts using City Funds.

6. SPENDING LIMITATIONS & FUNDING:

A. Purpose of Caring for Denver Tax. The Caring for Denver Tax revenue in any year shall be awarded for the following purposes, for expenditure by qualifying grant recipients serving people in the City and County of Denver:

- (i) Mental health services and treatment for children and adults;
- (ii) suicide prevention programs;
- (iii) opioid and substance use disorder prevention, treatment and recovery programs; and/or
- (iv) housing and case management services to reduce homelessness, improve long-term recovery and reduce the costly use of jails and emergency rooms for those with mental health and substance use disorder needs.

B. Specific City Allocation. At least 10% of the Caring for Denver Tax revenue in any year shall be directed to the City, as decided by the Board, for the following purposes:

- (i) Funding for a facility and staffing to create alternatives to jail for people with mental health and/or substance use disorder needs;
- (ii) fully funding a co-responder program for mental health experts to ride along with Denver police; and
- (iii) training for first responders, including paramedics and fire response, on how to properly assess and handle people with mental health and/or substance use disorder needs.

For purposes of this Section 6.B., the term “fully funding” means such costs that are reasonably necessary to accomplish the objectives of the Ordinance and that are reasonable in light of expected outcomes of such funding and the City and County of Denver’s other sources of funding, and which amounts supplement, rather than supplant, the City and County of Denver’s other sources of funding.

C. Additional 10% City Allocation. In addition to the 10% specified in D.R.M.C. § 24-702(2), for the first two years after the Ordinance became effective, an additional 10% of Caring for Denver Tax revenue shall be directed to the City for Developing, as defined above. The 10% City Allocation described in this Section 6.C. will be deducted from the City's monthly distributions to CFD, as defined in Section 6.E. of this Agreement, on a monthly pro-rated basis in 2019 and 2020, following the Board's approval of the annual administrative budget, which will include the amount equivalent to 10% of the special revenue projection for the Developing, as defined above. The City will retain the approved amount and spend it directly according to the Ordinance. In addition, CFD shall allocate at least 10% back to the City through grant-making for the programs and initiatives described in Section 6.B. of this Agreement. All funds withheld or granted to the City shall be subject to true-up and reporting provisions.

D. Maximum Obligation of the City. The City shall have no obligation under this Agreement to make distributions to CFD which exceed the amount actually collected and paid into the Treasury of the City and County of Denver. The Executive Director shall request an appropriation for the purposes of this Agreement each year, aligned with the City's budget calendar, based upon the estimated receipts of the Caring for Denver Tax.

The financial obligations of the City under this Agreement shall extend only to monies appropriated for the purpose of this Agreement by Denver City Council, paid into the City Treasury, and encumbered for the purposes of this Agreement. CFD acknowledges that (i) the City does not by this Agreement irrevocably pledge present cash reserves for distributions in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation against the City.

CFD will participate in the City's annual budget process through DDPHE as appropriate to estimate the following fiscal year's revenue and expenditures and agree upon an annual spending plan. The annual spending plan shall adhere to the spending limitations outlined in the Ordinance.

E. Distributions. Monthly distributions by the City to CFD under this Agreement shall be made, based upon estimated Caring for Denver Tax receipts, to the extent the same have been appropriated, paid into the City Treasury and encumbered as described above, at the rate of one-twelfth of the estimated annual total during each month of each calendar year, less one-twelfth of the amount of the City Administrative Expenses (which shall be retained and used by the City pursuant to Section 5.E.).

CFD will prepare and submit a monthly distribution request to be delivered to DDPHE by the fifteenth (15th) day of the month (or the next business day if such day falls on a non-business day) for which the invoice is being made. Payments will be made on a fixed schedule and in advance, with immediate pay terms, and in compliance with the City and County of Denver's prompt payment ordinance D.R.M.C. § 20-107, *et seq.*

- a. The distribution request amount will be one-twelfth of the total appropriation for the fiscal year (less one-twelfth of the amount of the City Administrative Expenses), until the payment is adjusted pursuant to Section 6.G., below.
- b. The first distribution request in 2019 may include multiple months, itemized on the invoice, to catch up to the current month for which the invoice is prepared.

- c. Invoice Template: CFD shall use the agreed-upon invoice template, which will include required invoice elements such as the City's identifying contract numbers, the month for which funding is requested, and remit to address and instructions. The invoice template will also include high-level financial summary data and a reference to the Ordinance.
- d. The distribution requests shall be addressed to: DDPHEAdmin@denvergov.org
- e. On a quarterly basis, specifically the requests for January, April, July, and October, shall be accompanied with a progress report detailing the progress made in the previous quarter on the strategic plan, the budget, administrative milestones met, and any requests for assistance from the City.

F. Budget/Carry Forward. CFD shall expend funds provided under this Agreement during the Term in accordance with the Ordinance and terms of this Agreement. In the event distributions of receipts of the Caring for Denver Tax received by CFD during a particular year are not expended, such unused amount may be carried forward by CFD and used for administrative or programmatic expenditures in a subsequent year or years, subject to the other limitations set forth in the Ordinance and this Agreement, including the 5% cap on administrative expenses. In the event less than 5% of Caring for Denver Tax revenue distributed to CFD during the year is used for administrative expenses in the year the distributions are received by CFD, such unused amount may be carried forward by CFD to a subsequent year or years and added to the funds which may then be used for administrative expenses not to exceed the 5% cap and for programmatic expenditures, at the sole discretion of CFD.

G. Reconciliation. At least annually during or about the second quarter of the following year upon close out of the City and County of Denver's fiscal year and completion of the applicable audit, the City will facilitate a reconciliation of projected revenue to actual revenue in the Caring for Denver Tax fund. If the actual revenue exceeds the appropriation, the City will make a payment for the variance to CFD. If the actual revenue is less than the appropriated and distributed payments, CFD shall reimburse the City for the variance pursuant to a repayment plan to be approved by the Executive Director and the City's Chief Financial Officer in their reasonable discretion. CFD shall prepare, and DDPHE shall approve, in its reasonable discretion, a revised spending plan according to the outcome of the reconciliation. CFD shall maintain reasonable reserves as determined by the Board.

7. STATUS OF CFD: The status of CFD shall be that of an independent, tax exempt, nonprofit corporation organized to institute and carry out a charitable program funded by the receipts of the Caring for Denver Tax for the benefit of residents of the City and County of Denver, for limited periods of time as described in Denver City Charter § 9.1.1.E.(x). CFD and its personnel shall not be considered employees or officers of the City and County of Denver under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever. CFD is responsible for the operational management, errors and omissions of its employees.

8. TERMINATION:

A. Each party has the right to terminate this Agreement with cause if the other party is in default of this Agreement and such default has not been cured within ninety (90) days after written notice from the non-defaulting party to the defaulting party of such default (or, if such default is not capable of being cured within ninety (90) days and the defaulting party is actively making reasonable, good faith efforts to cure such default, until such default is no longer capable of being cured).

B. Notwithstanding the preceding paragraph, the City may terminate this Agreement if CFD, 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 CFD's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

C. Upon termination of this Agreement pursuant to this Section 8, CFD shall have no claim against the City by reason of, or arising out of, incidental or relating to such termination, except for compensation for work performed by CFD pursuant to this Agreement prior to and upon such termination.

D. If this Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in CFD's possession, custody, or control by whatever method the City deems expedient. CFD shall deliver all documents in any form and all other items, materials and documents that are the property of the City to the City. CFD shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

9. EXAMINATION OF RECORDS:

A. Any authorized agent of the City and County of Denver, including the City Auditor or its representative, has the right to access and the right to examine any directly pertinent books, bank statements, records, returns, cost accounting records, files, audit and financial reports, contracts, subcontracts, and any other records or documents (whether prepared or maintained in hardcopy or electronic format) (the "CFD's Records") prepared or maintained by CFD involving matters or transactions in any way, directly or indirectly, related to the funding under this Agreement except those matters required to be kept confidential by law. Further, the City and County of Denver Auditor shall have the right at any time, and from time to time, to audit CFD's Records and CFD, upon request, shall make all such matters available for such examination. If CFD's Records exist in electronic form, CFD shall maintain a means of transferring said records to hardcopy form. Such right of access and examination shall continue until the later of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. This right of access also includes timely and reasonable access (not to exceed fourteen (14) days from the date of the City's request) to CFD's Records and CFD's personnel for the purpose of interview and discussion related to such documents.

B. In addition, CFD shall permit public inspection of records involving the grants provided under this Agreement or the expenditure of tax monies received from the City and County of Denver in accordance with the procedures set forth in §§ 24-72-203 and 24-72-205 of the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*

C. CFD shall prepare and submit to the Executive Director an annual financial audit prepared in accordance with generally accepted accounting principles. CFD will provide a copy of its annual audit within thirty (30) days after the date of completion.

D. Each service provider, subcontractor, subconsultant, or other person or entity engaged by CFD to provide services and supports under this Agreement will be subject to and will comply with City standards, policies and procedures for contract performance review and audits. CFD shall comply with all reasonable requests from the City to obtain information from and conduct reviews or financial audits of service providers, subcontractors, subconsultants, and other persons or entities supplying services under this Agreement. Upon written request and to the extent permitted by law, CFD shall provide copies of audits and performance reviews, if any, of service providers, subcontractors, subconsultants, and all other persons or entities supplying services and supports prepared by any entity, other than the City and County

of Denver Auditor or an internal DDPHE auditor, to the Executive Director within thirty (30) days of CFD's receipt.

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

10. PROCUREMENT: CFD shall spend funds provided under this Agreement in a way that serves the public interest, honors the public trust, and is consistent with **Exhibit A**. CFD shall use distributions received under this Agreement solely for the purposes of effectuating the purposes of the Caring for Denver Fund as set forth herein.

11. PERFORMANCE MONITORING/INSPECTION. CFD shall permit the Executive Director or authorized designees, to monitor all activities conducted by CFD pursuant to the terms of this Agreement and inspect any and all records, whether in hardcopy or electronic format, relating to any matter covered by this Agreement, except those matters required to be kept confidential by law. Such monitoring may consist of reviewing methods, procedures and practices, examining internal evaluation procedures, examining program data, on-site observation, on-site verification, attending all meetings, hearings, or proceedings held by CFD, its board of directors or advisors, or its employees or any other reasonable procedures relating to the performance of services under 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. Unless the City has reason to believe there are special circumstances requiring a different schedule or procedure, and the City shall have given written notice to CFD of such special circumstances, (i) the City shall not make such monitoring or inspection more often than annually, and (ii) such monitoring or inspection shall be conducted at a mutually agreeable time and so as to prevent unnecessary interference with the work of CFD. Attendance at public meetings shall not constitute monitoring or inspection for purposes of this section.

12. WHEN RIGHTS AND REMEDIES NOT WAIVED: In no event will any payment or other action by the City or CFD constitute or be construed to be a waiver by the City or CFD of any breach of covenant or default that may then exist on the part of the City or CFD. No payment, other action, or inaction by the City or CFD 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 this Agreement constitutes a waiver of any other breach.

13. INSURANCE:

A. General Conditions: CFD agrees to secure, as of the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. CFD shall keep the required insurance coverage in force at all times during the Term, during any warranty period, and for three (3) years after termination of this 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 are canceled or non-renewed before the

expiration date thereof. Such written notice shall be sent to the parties identified in Section 24 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, CFD shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in Section 24 of this Agreement 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 CFD. CFD 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 CFD. CFD 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: CFD shall provide a copy of this Agreement to its insurance agent or broker. CFD may not commence services or work relating to this Agreement prior to placement of coverage. CFD 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 CFD'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, CFD 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, CFD's insurer shall waive subrogation rights against the City.

E. Subcontractors and Subconsultants: Except for Commercial Crime coverage or as otherwise permitted in writing by DDPHE and the City's Risk Management Unit, all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of CFD. CFD 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. CFD agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: CFD 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. CFD expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of CFD'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, and that any such rejections previously effected, have been revoked as of the date CFD executes this Agreement.

G. Commercial General Liability: CFD 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 Liability: CFD 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 (Errors & Omissions): CFD shall maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. Policy shall include a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the City.

J. Commercial Crime (Fidelity): CFD shall maintain a Comprehensive Crime Liability with limits of \$1,000,000 for employee dishonesty, \$500,000 for theft, and \$250,000 for depositors' forgery. Coverage shall include theft of City's money, securities or valuable property by CFD's employees, including any extended definition of employee. The City and County of Denver shall be named as Loss Payee as its interest may appear.

K. Additional Provisions:

- (i) 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 are in excess of policy limits;
 - (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
 - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (ii) For claims-made coverage:
 - (a) The retroactive date must be on the contract date or the first date when any goods or services were provided to the City, whichever is earlier.
 - (b) CFD shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At its own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, CFD will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

14. DEFENSE AND INDEMNIFICATION

A. To the fullest extent permitted by law, CFD 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 related to the work performed under this Agreement that are attributable to the negligence or fault of CFD or CFD's agents, representatives, subcontractors, or suppliers ("Claims"), but, for the avoidance of doubt, CFD shall not be required to indemnify or otherwise be responsible for the acts or omissions of any recipients of grants from CFD or such recipients' respective agents, representatives, subcontractors, or suppliers. This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

B. CFD'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 CFD is not named as a Defendant.

C. CFD 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 CFD under the terms of this indemnification obligation. CFD 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.

15. NO WAIVER OF NONPROFIT STATUTE: Notwithstanding any other provision of this Agreement to the contrary, no term of condition of this Agreement shall be construed or interpreted as a waiver of any provision of the Colorado Revised Nonprofit Corporation Act, §§ 7-121-101 *et seq.*, C.R.S., as now or hereafter amended. It is acknowledged that §§ 7-123-105, C.R.S., provides for limitations on actions against nonprofit corporations. No provision of this Agreement, whether or not incorporated herein by reference, shall be construed or interpreted so as to diminish the limitations afforded CFD under the Colorado Revised Nonprofit Corporation Act, §§ 7-121-101 *et seq.*, C.R.S., with regard to any action civil action brought against it, it being the intent of the parties that CFD shall have the right to avail itself of the provisions of such statute to the fullest extent permitted thereunder.

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

17. TAXES, CHARGES AND PENALTIES: The City is not liable for the payment of taxes, late charges or penalties of any nature, other than the payment to CFD of the Caring for Denver Tax as provided herein, 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.* CFD agrees to pay promptly all taxes, excises, license fees and permit fees of whatever nature applicable to its operations, and to obtain and maintain current all required licenses or permits, whether municipal, state or federal, required for the conduct of its charitable activities hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. CFD further agrees to furnish the City duplicate receipts or other satisfactory evidence, as requested, showing the prompt payment by CFD of all required fees for licenses and permits and all taxes.

18. ASSIGNMENT AND SUBCONTRACTING: CFD shall not voluntarily or involuntarily assign any of its rights or obligations to make grants or otherwise operate as a spending agency 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 will be cause for termination of this Agreement by the City. The Executive Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate this Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment in violation of this Section 18: (i) CFD shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any subcontractor, subconsultant or assign. Nothing herein shall be construed to limit or prohibit CFD from engaging consultants, independent contractors, suppliers, or other entities or third parties to assist CFD in the Scope of Work or providing on behalf of CFD services or material contemplated by the Scope of Work; provided, however, CFD shall remain fully responsible to the City for the performance by such third parties of any services or providing of such materials contemplated under the Scope of Work.

19. NO THIRD-PARTY BENEFICIARY: Enforcement of the terms of this Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this 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 CFD receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

20. NO AUTHORITY TO BIND CITY TO CONTRACTS: CFD 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 Denver City Charter and the Denver Revised Municipal Code.

21. AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS: This Agreement (including the schedules and exhibits attached hereto) is the complete integration of all understandings between the parties as the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect whatsoever, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms and conditions of this Agreement or any written amendment to this Agreement shall have any force or effect or bind the City.

22. SEVERABILITY: Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this 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.

23. CONFLICT OF INTEREST:

A. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein that would be in

violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9 and 1.2.12 and CFD further agrees not to hire or contract for services any official, officer, or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter §§ 1.2.8, 1.2.9 and 1.2.12.

B. CFD agrees that it will not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. CFD represents that it has disclosed and recorded in its Board minutes any and all current conflicts of interest. A conflict of interest shall include transactions, activities or conduct, other than enforcement of this Agreement, that would affect the judgment, actions or work of CFD by placing CFD's own interests, or the interests of any party with whom CFD has a contractual arrangement, in conflict with those of the City. The City, in its reasonable discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict reasonably exists after it has given CFD written notice which describes the conflict in reasonable detail. CFD shall have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is reasonably acceptable to the City.

C. The City acknowledges that various members of the Board may have professional or business positions which require them to deal with the City on matters unrelated to the Caring for Denver Fund, and the City confirms that such unrelated activity will not constitute a conflict contemplated under this Section 23. In addition, the City acknowledges and agrees that in discharging their fiduciary duties as a member of the Board, a member of the Board shall be free to take such action as the Board member determines is in the best interest of CFD or is necessary and reasonable in discharging such member's fiduciary duties as a Board member.

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

By CFD to: Executive Director
Denver Department of Public Health & Environment
101 W. Colfax Ave., 8th Floor
Denver, Colorado 80202
Email: Bob.McDonald@denvergov.org

With a copy to: City Attorney
1437 Bannock Street, Rm. 350
Denver, Colorado 80202
Email: adminteamhelpdesk@denvergov.org

And by the City to: Executive Director
Lorez Meinhold
1515 Arapahoe St, Tower 3, Suite 100
Denver CO 80202
Email: lmeinhold@keystone.org

With a copy to: Brownstein Hyatt Farber Schreck, LLP

410 Seventeenth Street, Suite 2200
Denver, CO 80202
Attn: Kevin A. Cudney
Email: KCudney@bhfs.com

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. Notices sent by electronic mail are effective on the date sent if either (i) confirmation of receipt is received, or (ii) such notice is promptly mailed by certified mail or United States mail (postage prepaid). 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.

25. DISPUTES: All disputes between the City and CFD arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the City representative identified in Section 3.

26. GOVERNING LAW, VENUE: Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Denver City Charter and Revised Municipal Code of the City and County of Denver and the ordinances, regulations and executive orders enacted and promulgated pursuant thereto. Such applicable laws, which may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement will be in the City and County of Denver, Colorado.

27. COMPLIANCE WITH ALL LAWS: CFD shall perform or cause to be performed all operations in full compliance with all applicable Federal, State and City laws, rules, ordinances, codes, regulations, executive orders, and policies whether or not specifically referenced herein.

28. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:

A. This Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”). Accordingly, the term “illegal alien” is utilized.

B. CFD certifies that:

- (i)** 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.
- (ii)** 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. CFD also agrees and represents that:

- (i) It shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- (ii) It shall not enter into a contract with a subcontractor or subconsultant that fails to certify to CFD that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- (iii) 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.
- (iv) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program, including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- (v) If it obtains actual knowledge that a subcontractor or subconsultant performing work under this Agreement knowingly employs or contracts with an illegal alien, it will notify such subcontractor or subconsultant and the City within three (3) days. CFD shall also terminate such subcontractor or subconsultant if within three (3) days after such notice the subcontractor or subconsultant does not stop employing or contracting with the illegal alien, unless during such three (3)-day period the subcontractor or subconsultant provides information to establish that the subcontractor or subconsultant has not knowingly employed or contracted with an illegal alien.
- (vi) 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 and County of Denver Auditor, under authority of D.R.M.C. § 20-90.3.

D. CFD is liable for any violations as provided in the Certification Ordinance. If CFD violates any provision of this Section 28 or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement in accordance with Section 8.A. If this Agreement is so terminated, CFD shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this Section 28 or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying CFD from submitting bids or proposals for future contracts with the City.

29. NO DISCRIMINATION IN ADMINISTRATION OR EMPLOYMENT:

A. In administering the Caring for Denver Fund or expending any moneys derived from the Caring for Denver Tax, CFD agrees not to discriminate against any person on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender expression or gender identity, marital status, or physical or mental disability.

B. In connection with the performance of operations under this Agreement, CFD 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, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender expression or gender identity, marital status, or physical or mental disability. CFD shall insert the foregoing provision in all of its contracts relating to the Scope of Work.

30. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: CFD 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.

31. INTELLECTUAL PROPERTY RIGHTS: The City and CFD intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, drawings, photographs, specifications, software, data, products, inventions, and any other work or recorded information created by CFD in the performance of its obligations under this Agreement and paid for by the City pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Materials are a "work made for hire," and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," CFD hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark, and other intellectual property rights in perpetuity.

32. CONFIDENTIAL INFORMATION; OPEN RECORDS:

A. Confidential Information: CFD acknowledges and accepts that, in the performance of all work under the terms of this Agreement, CFD will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City ("City Proprietary Data") or (2) confidential proprietary information owned by third parties ("Third Party Proprietary Data"). For purposes of this Agreement, City Proprietary Data and Third Party Proprietary Data shall be referred to collectively as "Confidential Information". "Confidential Information" shall include any materials or information which may be designated or marked "Proprietary" or "Confidential," or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance and provided or made available to CFD by the City. CFD agrees that disclosure of Confidential Information may be damaging to the City or third parties. CFD agrees that all Confidential Information provided or otherwise disclosed by the City to CFD or as otherwise acquired by CFD during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. CFD shall limit access to all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. CFD shall exercise the same standard of care to protect all Confidential Information as a reasonably prudent contractor or as CFD would to protect its own proprietary or confidential data. CFD acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time CFD's access to electronic Confidential Information to "read-only" access or "limited" access as such terms are designated by the Executive Director.

CFD agrees to comply with all applicable state and federal laws protecting the privacy or confidentiality of all information, including protected health information, or other protected information.

CFD shall submit to the Executive Director, within fifteen (15) days of the Executive Director's written request, copies of CFD's policies and procedures to maintain the confidentiality of protected health information to which CFD has access.

(1) **Use of Confidential Information:** Except as expressly provided by the terms of this Agreement, CFD agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. CFD further acknowledges that, by providing access to Confidential Information, the City is not granting to CFD any right or license to use such data except as provided in this Agreement. CFD further agrees not to reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Executive Director.

(2) **City Methods:** CFD agrees that any know-how, computer programs, or data processing techniques developed by CFD in the performance of its obligations under this Agreement or provided by the City in connection with this Agreement shall be deemed to be the intellectual property of the City, as defined in Section 33 of this Agreement, and all rights, including copyright, shall be reserved to the City. CFD agrees, with respect to Confidential Information, that: (a) CFD shall not copy (except as reasonably necessary to perform its obligations under this Agreement), recreate, reverse-engineer or decompile such Confidential Information, in whole or in part, unless authorized in writing by the Executive Director; (b) after termination of this Agreement and CFD's compliance with Section 33.I. and Section 33.K. of this Agreement, CFD shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such Confidential Information unless necessary to comply with applicable law or any other provision of this Agreement; (c) CFD shall, upon the expiration or earlier termination of this Agreement, destroy in accordance with Section 33.I. of this Agreement (and, in writing, certify destruction) or return all such Confidential Information to the City in accordance with Section 33.K. of this Agreement.

(3) **Employees and Subcontractors:** The requirements of this Section 32 shall be binding on CFD's employees, agents, officers and assigns. CFD warrants that all of its employees, agents, and officers who are designated to provide services under this Agreement ("CFD Staff") will be advised of this provision. All requirements and obligations of CFD under this Agreement shall survive the expiration or earlier termination of this Agreement.

(4) **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. CFD acknowledges and understands that Confidential Information may not be completely free of errors. CFD is hereby advised to verify its work. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs, including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, CFD agrees to contact the City immediately. This Section 32.A. shall survive the termination of this Agreement.

B. Open Records: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City shall advise CFD of

such request in order to give CFD the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and CFD agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. CFD further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of CFD's intervention to protect and assert its claim of privilege against disclosure under this Section 32, including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court. This Section 32.B. will survive the termination of this Agreement.

33. PERSONAL INFORMATION AND DATA PROTECTION:

A. "Data Protection Laws" means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information (as defined below in Section 33); and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements. Further, and not by way of limitation, CFD shall provide for the security of all City Data, and Personal Information if applicable, in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines, including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, (iv) the Colorado Consumer Protection Act, (v) the Children's Online Privacy Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), (vii) the Fair Credit Reporting Act (FCRA), and (viii) Colorado House Bill 18-1128.

B. "Personal Information" means all information that individually or in combination, does or can identify a specific individual or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number (full or partial), business contact information, date of birth, national or state identification numbers, bank account number, credit or debit card numbers, and any other unique identifier or one or more factors specific to the individual's physical, physiological, mental, economic, cultural, or social identity.

C. Compliance with Law and Regulation: CFD confirms and warrants that it materially complies with any and all applicable Data Protection Laws relating to the collection, use, disclosure, and other processing of Personal Information and that it will perform its obligations under this Agreement in material compliance with them. This Section 33.C. will survive the termination of this Agreement.

D. Software Programs; Security of Personal Information and access to Software Programs: CFD will use the software programs designated by the City to collect, use, process, store, or generate all data and information, without or without Personal Information, received as a result of the CFD's

services under this Agreement. CFD will fully comply with any and all requirements and conditions associated with the use of said software programs as provided by the City. In addition, CFD will establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, officers, agents, and subcontractors of CFD, if any, comply with all of the foregoing. CFD shall also provide for the security of all Personal Information in accordance with all policies promulgated by Denver Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines, including, without limitation: (i) the Children’s Online Privacy Protection Act (COPPA), and (ii) Colorado House Bill 18-1128. CFD shall submit to the Executive Director, within fifteen (15) days of the Executive Director’s written request, copies of CFD’s policies and procedures to maintain the confidentiality of Personal Information to which CFD has access.

E. Confidentiality; No Ownership by CFD: Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated as the result of the services to be provided under this Agreement will be treated by CFD confidentially. CFD will have no right, title, or interest in any Personal Information or any other data obtained or supplied by CFD in connection with the services to be provided under this Agreement. The City shall own all information, and other work product, with or without Personal Information, developed by CFD in the performance of its obligations under this Agreement or obtained by CFD pursuant to this Agreement (“City Work Product”). CFD has an obligation to promptly give notice to the City if CFD’s security has been breached or if CFD is aware of any unauthorized disclosure of Personal Information. This Section 33.E. will survive the termination of this Agreement.

F. CFD Use of Personal Information and City Work Product: CFD will take all necessary precautions to safeguard the storage of Personal Information and City Work Product, including, without limitation: (i) keep and maintain Personal Information and City Work Product in strict confidence and in compliance with all applicable Data Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information or City Work Product solely and exclusively for the purpose of providing the services under this Agreement, such use and disclosure being in accordance with this Agreement, and applicable law; (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information or City Work Product for CFD’s own purposes or for the benefit of anyone other than the City without the prior written consent of the City and the person to whom the Personal Information pertains; and (iv) not engage in “data mining” of Personal Information or City Work Product except as specifically and expressly required by law or authorized in writing by the City. This Section 33.F. will survive the termination of this Agreement.

G. Employees and Subcontractors: CFD will ensure that, prior to being granted access to Personal Information or City Work Product, CFD Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees’ duties and the sensitivity of the data they will be handling. Only those CFD Staff who have a direct need for Personal Information, City Work Product, or Confidential Information shall have access to any information provided to CFD under this Agreement. Prior to allowing any CFD Staff to access or use any Personal Information,

City Work Product, or Confidential Information, CFD shall require any such CFD Staff to review and agree to the usage and access terms outlined in this Agreement. CFD will inform its CFD Staff of the obligations under this Agreement, and all requirements and obligations of CFD under this Agreement shall survive the expiration or earlier termination of this Agreement. CFD shall not disclose Personal Information, City Work Product, or Confidential Information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement. Unless CFD provides its own security protection for the information it discloses to a third-party service provider, CFD shall require the third-party service provider to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Personal Information, City Work Product, or Confidential Information disclosed and reasonably designed to protect Personal Information, City Work Product, or Confidential Information from unauthorized access, use, modification, disclosure, or destruction. This Section 33.G. will survive the termination of this Agreement.

H. Loss of Personal Information or City Work Product: In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Personal Information or City Work Product, CFD will, as applicable: (i) notify the affected individual and the City as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (ii) cooperate with the affected individual and the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the affected individual or the City; (iii) in the case of Personal Information and if required by applicable law, at the affected individual's sole election: (A) notify the affected individuals in accordance with any legally required notification period; or, (B) reimburse the affected individual for any costs in notifying the affected individuals; (iv) in the case of Personal Information and if required by applicable law, provide third-party credit and identity monitoring services to each of the affected individuals for the period required to comply with applicable law; (v) perform or take any other actions required to comply with applicable law as a result of the occurrence; (vi) indemnify, defend, and hold harmless the City and the affected individual for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the City or the affected individual in connection with the occurrence; (vii) be responsible for recovering lost data and information in the manner and on the schedule set forth by the City without charge to the affected individual, and (viii) provide to the City and the affected individual a detailed plan within ten (10) calendar days of the occurrence describing the measures CFD will undertake to prevent a future occurrence. Notification to affected individuals, as described above, will comply with applicable law, be written in plain terms in English and in any other language or languages specified by the affected individual, and contain, at a minimum: (i) name and contact information of CFD's representative; (ii) a description of the nature of the loss; (iii) a list of the types of data involved; (iv) the known or approximate date of the loss; (v) how such loss may affect the affected individual; (vi) what steps CFD has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; (vii) contact information for major credit card reporting agencies; and (viii) information regarding the credit and identity monitoring services to be provided by CFD. This Section will survive the termination of this Agreement.

I. Data Retention and Destruction: Using appropriate and reliable storage media, CFD will regularly backup all City Work Product and Personal Information used in connection with this Agreement and retain such backup copies consistent with CFD's data retention policies. Upon termination of this Agreement, at the City's election, CFD will either securely destroy or transmit to City the City Work Product in an industry standard format. Upon the City's request, CFD will supply City a certificate indicating the records disposed of, the date disposed of, and the method of disposition used. With respect to City Work Product controlled exclusively by CFD, CFD will immediately preserve the state of the

Personal Information or City Work Product at the time of the request and place a “hold” on Personal Information or City Work Product destruction or disposal under its usual records retention policies of records that include Personal Information or City Work Product, in response to an oral or written request from City indicating that those records may be relevant to litigation that City reasonably anticipates. Oral requests by City for a hold on record destruction will be reduced to writing and supplied to CFD for its records as soon as reasonably practicable under the circumstances. City will promptly coordinate with CFD regarding the preservation and disposition of these records. CFD shall continue to preserve the records until further notice by City. This Section 33.I. will survive the termination of this Agreement.

J. No Other Databases: Except as expressly approved in advance by the City, CFD will not establish or maintain a separate database containing Personal Information or City Work Product to provide the services under this Agreement. This Section 33.J. will survive the termination of this Agreement.

K. Data Transfer Upon Termination: Upon termination or expiration of this Agreement and at the City’s request, CFD will ensure that all Personal Information and City Work Product is securely transferred to City, or a party designated by City, within thirty (30) calendar days. CFD will ensure that the data will be provided in an industry standard format. CFD will provide City with no less than ninety (90) calendar days’ notice of impending cessation of its business or that of any CFD subcontractor and any contingency plans in the event of notice of such cessation. In connection with any cessation of CFD’s business with its customers, CFD shall implement its contingency and/or exit plans and take all reasonable actions to provide for an effective and efficient transition of service with minimal disruption to City. CFD will work closely with its successor to ensure a successful transition to the new service or equipment, with minimal downtime and effect on City, all such work to be coordinated and performed in advance of the formal, final transition date mutually agreed upon by CFD and City. This Section 33.K. will survive the termination of this Agreement.

34. LEGAL AUTHORITY:

A. CFD 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 this Agreement.

B. The person or persons signing and executing this Agreement on behalf of CFD represents and warrants that he, she or they have been fully authorized by CFD to execute this Agreement on behalf of CFD and to validly and legally bind CFD to all the terms, performances and provisions herein set forth.

35. NO CONSTRUCTION AGAINST DRAFTING PARTY: Each of the parties acknowledge that each of their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of this Agreement were prepared by a particular party.

36. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, CFD’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.

37. ASSIGNMENT; INUREMENT: Subject to Section 18, this Agreement shall not be assigned, in whole or in part, by any party to this Agreement without the prior written consent of the other party to this Agreement. The rights and obligations of the parties to this Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and permitted assigns, provided any assignments are consented to in accordance with the terms of this Agreement.

38. TIME IS OF THE ESSENCE: The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

39. PARAGRAPH HEADINGS: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

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

41. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Each party consents to the use of electronic signatures by the other party. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City and CFD in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this 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 this 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 LIST

Exhibit A – Scope of Work

Exhibit B – Certificate of Insurance

Contract Control Number: ENVHL-201951262-00
Contractor Name: CARING FOR DENVER FOUNDATION

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-201951262-00
CARING FOR DENVER FOUNDATION

By:  _____
DocuSigned by:
Lorez Meinhold
12F97FF6E86044F...

Name: Lorez Meinhold
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A: SCOPE OF WORK

I. CFD Responsibilities

In addition to the obligations established in the Ordinance, and agreed to in this Agreement, CFD shall meet the following administrative milestones:

- A. CFD shall develop a preliminary draft strategic plan to determine funding priorities and submit to the Board and DDPHE by no later than December 31, 2019. The strategic plan shall be updated no less than every three (3) years and shall include public input into the use of the Caring for Denver Fund.
- B. CFD shall create a policy that addresses use of fund balance.
- C. CFD shall create a policy that addresses conflicts of interest in accordance with D.R.M.C. § 2-61 and Section 5.G. of this Agreement.
- D. CFD shall create a policy for grant-making that aligns with City Fiscal Accountability Rules and City procurement ordinances and executive orders.
- E. CFD shall appoint an individual to act as the liaison among the City, CFD, and all other City agencies party to the distribution of the Caring for Denver Tax. The Liaison shall attempt to facilitate resolution of all routine matters and concerns related to the Caring for Denver Tax.

II. City Responsibilities

The City, through DDPHE, shall:

- A. Review CFD's draft strategic plan in conjunction with the Board and provide comment.
- B. Review CFD's annual draft reports in conjunction with the Board and provide comments prior to release to the Mayor, City Council, the Auditor, and its publication on CFD's website.
- C. Review monthly invoices for payments out of the Caring for Denver Fund and authorize payments in accordance with all applicable City fiscal rules and ordinances.

D. Facilitate revenue-to-budget reconciliation process between the City's Department of Finance and CFD at least annually.

E. Appoint an individual to act as the liaison among the City, CFD, and all other City agencies party to the distribution of the Caring for Denver Tax. The Liaison shall attempt to facilitate resolution of all routine matters and concerns related to the Caring for Denver Tax.

III. Administrative Expenses Allocation

Subject to Section 5.E. of the Agreement, \$125,000 of the Caring for Denver Tax shall go to the City for administrative expenses. This amount will cover the costs needed to administer and monitor this Agreement, to conduct compliance activities, draft future contracts and scope of work, and coordinate all City-related activities.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/14/2019

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).

| PRODUCER IMA Select LLC 1705 17th Street Suite 100 Denver CO 80202 | CONTACT NAME: PHONE (A/C, No, Ext): 303-615-7723 FAX (A/C, No): 303-534-0600 E-MAIL ADDRESS: katie.sunwold@imacorp.com | | | | | | | | | | | | | | |
|--|---|-------------------------------|--------|--|-------|--|-------|-------------|--|-------------|--|-------------|--|-------------|--|
| INSURED Caring for Denver Foundation 1515 Arapahoe St., Tower 3, Suite 100 Denver CO 80202 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : Philadelphia Indemnity Insurance Co.</td> <td style="text-align: center;">18058</td> </tr> <tr> <td>INSURER B : Property and Casualty Ins Co of Hartford</td> <td style="text-align: center;">34690</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A : Philadelphia Indemnity Insurance Co. | 18058 | INSURER B : Property and Casualty Ins Co of Hartford | 34690 | INSURER C : | | INSURER D : | | INSURER E : | | INSURER F : | |
| INSURER(S) AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | | | |
| INSURER A : Philadelphia Indemnity Insurance Co. | 18058 | | | | | | | | | | | | | | |
| INSURER B : Property and Casualty Ins Co of Hartford | 34690 | | | | | | | | | | | | | | |
| INSURER C : | | | | | | | | | | | | | | | |
| INSURER D : | | | | | | | | | | | | | | | |
| INSURER E : | | | | | | | | | | | | | | | |
| INSURER F : | | | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER: 893762931** **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"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | | | PHPK2020141 | 8/1/2019 | 7/23/2020 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| A | <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" 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 | | | PHPK2020141 | 8/1/2019 | 7/23/2020 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | PHUB688483 | 8/1/2019 | 7/23/2020 | EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ |
| B | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | | | 37WECAD7AYP | 8/1/2019 | 7/23/2020 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| A | Professional Liability | | | PHPK2020141 | 8/1/2019 | 7/23/2020 | Aggregate Limit 2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 City and County of Denver, its elected and appointed officials, employees and volunteers are included as Additional Insured on the General Liability and Automobile Liability policies, if required by written contract or agreement subject to the policy terms and conditions.

A Waiver of Subrogation is provided in favor of City and County of Denver, its elected and appointed officials, employees and volunteers on the General Liability, Automobile Liability, Workers Compensation, and Umbrella/Excess Liability policies if required by written contract or agreement, subject to the policy terms and conditions.

CERTIFICATE HOLDER

CANCELLATION

| | |
|---|---|
| City and County of Denver 201 W. Colfax Ave. Dept. 1207 Denver CO 80202 | 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 |
|---|---|