

## **AGREEMENT**

**THIS AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **PENNROSE HOLDINGS, LLC**, a Pennsylvania limited liability company, whose address is 230 Wyoming Avenue, Kingston, PA 18704 (the “Contractor”), jointly “the Parties” and individually a “Party.”

**WHEREAS**, the City has launched a coordinated effort with the Colorado Department of Local Affairs, Colorado Housing and Finance Authority, Denver’s Road Home, and Denver Housing Authority with the goal of increasing supportive housing and supportive housing services for people formerly experiencing homelessness; and

**WHEREAS**, a purpose of this Agreement is for the City to provide funding to the Contractor so that the Contractor can provide supportive housing services to fifty-six (56) chronically homeless transition-aged youth at 2700 Wewatta Way, Denver, Colorado 80216.

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

- 1. COORDINATION AND LIAISON**: The Contractor shall fully coordinate all services under the Agreement with the Executive Director (“Director”) of the Department of Housing Stability (“Agency” or “HOST”), or the Director’s Designee.
- 2. SERVICES TO BE PERFORMED**: As the Director directs, the Contractor shall diligently undertake, perform, and complete all of the services and produce all the deliverables set forth in **Exhibit A, Scope of Work**, to the City’s satisfaction. The Contractor is ready, willing, and able to provide the services required by this Agreement. 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 Agreement will commence on January 1, 2024, and will expire, unless sooner terminated, on December 31, 2039 (the “Term”).
- 4. COMPENSATION AND PAYMENT**
  - 4.1. Budget**: The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred and paid under the Agreement payment not to exceed the budget amounts set forth and determined in accordance **Exhibit A and B**. For each calendar year

that this Agreement is in effect, Contractor must submit an annual budget in accordance with **Exhibit A and B**.

**4.2. Reimbursable Expenses:** There are no reimbursable expenses allowed under the Agreement. All of the Contractor's expenses are contained in **Exhibit A and B** or in any budget provided in accordance with those Exhibits.

**4.3. Annual Draw Request; Verification of Expenditures:** The Contractor shall submit to the City all draw requests on HOST approved forms and otherwise comply with the requirements set forth in **Exhibit A and B**. The City shall utilize the annual reports required pursuant to **Exhibit A and B** to verify that funds are used in accordance with the provisions of this Agreement.

**4.4. Maximum Contract Amount**

**4.4.1.** Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **One Million Two Hundred Sixty Thousand Dollars and NO/100 (\$1,260,000.00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at the Contractor's risk and without authorization under the Agreement.

**4.4.2.** 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 this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**5. 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.

**6. TERMINATION**

**6.1.** The City has the right to terminate the Agreement with cause upon written notice effective immediately, and without cause upon thirty (30) 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 Director.

**6.2.** 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, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

**6.3.** 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.

**6.4.** 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."

**7. EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of

information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. 20-276.

**8. 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.

**9. INSURANCE**

**9.1. General Conditions:** The Contractor agrees to secure, at or before the commencement date of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period. 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 require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. 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.

**9.2. Proof of Insurance:** The Contractor shall provide a copy of this Agreement to its insurance agent or broker. The Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. The Contractor must provide the City with a certificate of insurance, preferably an ACORD certificate, that demonstrates compliance with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of the Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**9.3. Additional Insureds:** For Commercial General Liability, Auto Liability, Professional Liability (if required), and Excess Liability/Umbrella (if required) the Contractor and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**9.4. Waiver of Subrogation:** For all coverages required under this Agreement, with exception of Professional Liability (if required), the Contractor's insurer shall waive subrogation rights against the City.

**9.5. Subcontractors and Subconsultants:** Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.

**9.6. Workers' Compensation/Employer's Liability Insurance:** The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**9.7. Commercial General Liability:** The Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

**9.8. Business Automobile Liability:** The Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**9.9. Cyber Liability:** The Contractor shall maintain Cyber Liability coverage with limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

**9.10. Additional Provisions**

**9.10.1.** For Commercial General Liability, the policy must provide the following:

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

**9.10.1.2.** Defense costs are outside the limits of liability;

**9.10.1.3.** A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

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

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

**9.10.2.1.** The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

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

**10. DEFENSE AND INDEMNIFICATION**

**10.1.** The Contractor agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for

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

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

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

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

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

**11. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to the Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

**12. 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.

**13. ASSIGNMENT; SUBCONTRACTING:**

13.1 Assignment. The Contractor shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the Director's prior written consent. Any assignment without such consent will be ineffective and void and will be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or to terminate the Agreement because of unauthorized assignment. In the event of any unauthorized assignment: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any assign.

13.2 Subcontracting. The Contractor may subcontract, either wholly or partially, any of the services set forth in Exhibit A, Scope of Work, to one or more qualified third parties without obtaining the consent of the City. Any subcontract entered into by the Contractor shall not relieve the Contractor from any of its obligations under this Agreement. The Contractor shall be responsible for each of its subcontractors complying with all obligations of the Contractor under this Agreement and shall remain responsible and liable for any work performed by a subcontractor as if the Contractor had provided the work itself. No contractual relationship shall be created between the City and any subcontractor.

14. **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.

15. **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.

16. **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.

17. **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.

**18. CONFLICT OF INTEREST**

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

**18.2.** The Contractor shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

**19. NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the City at the addresses below:

Executive Director  
Department of Housing Stability  
201 W. Colfax Ave., Dept. 615  
Denver, CO 80202

With a copy of any such notice to:

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

To the Contractor:

Pennrose Holdings, LLC  
Attn: 2700 Wewatta LLLP  
230 Wyoming Ave  
Kingston, PA 18704

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The Parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**20. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**

**20.1.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

**20.2.** The Contractor certifies that:

**20.2.1.** At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

**20.2.2.** It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**20.2.3.** It will 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 a worker without authorization to perform work under this Agreement.

**20.2.4.** It is prohibited from using 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.

**20.2.5.** If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or

subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

**20.2.6.** It will comply with a 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.

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

**21. DISPUTES:** All disputes between the City and the Contractor arising out of or regarding the 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 Director as defined in this Agreement.

**22. 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 (Denver District Court).

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

**24. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the performance of work under the Agreement, the Contractor may not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

**25. COMPLIANCE WITH ALL LAWS:** The 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:** The 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 the Contractor represents and warrants that he has been fully authorized by the Contractor to execute the Agreement on behalf of the Contractor and to validly and legally bind the 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 the 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 the Contractor intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, 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 Project. 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. The City and Contractor agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of Contractor made available, directly or indirectly, by Contractor to City as part of the Scope of Services, are the exclusive property of Contractor or the third parties from whom Contractor has secured the rights to use such product. The Contractor Materials, processes, methods and services shall at all times remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use the Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City.

**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 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 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. CONFIDENTIAL INFORMATION**

**32.1. City Information:** The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. “Proprietary Data” shall mean 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 the Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

### **32.2. Use and Protection of Proprietary Data or Confidential Information**

**32.2.1.** Except as expressly provided by the terms of this Agreement, the Contractor 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 data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Executive Director and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

**32.2.2.** The Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse engineer or decompile such

data, in whole or in part, unless authorized in writing by the Executive Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

**32.2.3.** The Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.

**32.3. Employees and Subcontractor:** The Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose Proprietary Data 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.

**32.4. Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and 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 or the accuracy and completeness of the Proprietary Data or confidential information. The Contractor is hereby advised to verify its work. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

**32.5. Contractor’s Confidential Information; Open Records:** If the City is furnished with proprietary data or confidential information that may be owned or controlled by Contractor (“Contractor’s Confidential Information”), the City will endeavor, to the extent provided by law,

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

### **33. PERSONAL INFORMATION AND DATA PROTECTION**

**33.1. Compliance with Data Protection Law:** The Contractor shall comply with all applicable international, federal, state, local laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Contractor under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data's classification relevant to the Contractor's performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*, C.R.S., IRS Publication 1075, the Health Information Portability and Accountability Act (HIPAA), the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all Criminal Justice Information, the Colorado Consumer Protection Act, and the Payment Card Industry Data Security Standard (PCI-DSS), (collectively, "Data Protection Laws"). If the Contractor becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Contractor shall promptly notify the City.

**33.2. Safeguarding Protecting Information:** "Protected Information" means data, regardless of form, that has been designated as private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student records, education records, criminal justice information,



personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public pursuant to the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Contractor, the Contractor shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Contractor has been contracted to maintain, store, or process personal information on the City's behalf, the Contractor is a "Third-Party Service Provider" as defined by § 24-73-103(1)(i), C.R.S.

**33.3. Data Access and Integrity:** The Contractor shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards, guidelines, and Data Protection Laws applicable to the Contractor's performance hereunder to ensure the security and confidentiality of all data. The Contractor shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of any data; restrict access to data as necessary; and ensure the proper use of data. The Contractor shall not engage in "data mining" except as specifically and expressly required by law or authorized in writing by the City. All data and Protected Information shall be maintained and securely transferred in accordance with industry standards. Unless otherwise required by law, the City has exclusive ownership of all data it

discloses under the Agreement, and the Contractor shall have no right, title, or interest in data obtained in connection with the services provided herein.

**33.4. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, the Contractor shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the Contractor's data retention policies. Upon termination of the Agreement, the Contractor shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Contractor is required by law to retain data, including Protected Information. Upon the City's request, the Contractor shall confirm the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Contractor's exclusive custody, the City may request that the Contractor preserve such data outside of its usual record retention policies. The City will promptly coordinate with the Contractor regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Contractor shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Contractor shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable.

**33.5. Software and Computing System:** At its reasonable discretion, the City may prohibit the Contractor from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information, with Protected Information, received as a result of the Contractor's services under this Agreement. The Contractor shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Contractor shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Contractor shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, enhancements or updates consistent with evolving industry standards, and periodic penetration testing.

**33.6. Background Checks:** The Contractor will ensure that, prior to being granted access to Protected Information, the Contractor's agents, employees, subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary 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 Data Protection Laws, and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data.

**33.7. Subcontractors and Employees:** If the Contractor engages a subcontractor under this Agreement, the Contractor shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the services provided. The Contractor shall monitor the compliance with such obligations and remain responsible for its subcontractor's compliance with the obligations of this Agreement and for any of its subcontractors acts or omissions that cause the Contractor to breach any of its obligations under this Agreement. Unless the Contractor provides its own security protection for the information it discloses to a third party, the Contractor shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Contractor and any of its subcontractors, agents, assigns, employees, or volunteers. Upon request, the Contractor shall provide the City copies of its record retention, data privacy, and information security policies.

**33.8. Security Breach:** If the Contractor becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of Protected Information or data maintained or provided by the City ("Security Breach"), the Contractor shall notify the City in the most expedient time and without unreasonable delay. The Contractor shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and Data Protection Laws. The Contractor shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Contractor shall not be obligated to disclose confidential business information or trade secrets. The Contractor shall

indemnify, defend, and hold harmless the City 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 in connection with a Security Breach or lawful notices.

**33.9. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that the Contractor protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Contractor may reasonably decline the City's request to provide additional protections. If such a request requires the Contractor to take steps beyond those contained herein, the Contractor shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Contractor to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of the Agreement, and the Contractor shall continue to safeguard all data for so long as the data remains confidential or protected and in the Contractor's possession or control.

**34. CITY EXECUTION OF AGREEMENT:** The 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 Charter, approved by the City Council.

**35. 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.

**36. 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.

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

**Exhibits:**

**Exhibit A - Scope of Work**

**Exhibit B - Financial Administration**

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**Contract Control Number:** HOST-202265483-00  
**Contractor Name:** PENNROSE HOLDINGS, LLC

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:**

HOST-202265483-00  
PENNROSE HOLDINGS, LLC

By: DocuSigned by:  
*Shannon Cox Baker*  
F3BB3AC356C7412...

Name: Shannon Cox Baker  
(please print)

Title: Regional Vice President, Mountain  
(please print)

ATTEST: [if required]

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

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

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

**EXHIBIT A – SCOPE OF WORK**

**DEPARTMENT OF HOUSING STABILITY**

**PENNROSE HOLDINGS, LLC**

**HOST-202265483**

**I. INTRODUCTION**

**Period of Performance Start and End Dates:** January 1, 2024 – December 31, 2039

**Project Description:**

The purpose of this contract is to establish an agreement and scope of services between the Department of Housing Stability (“HOST”) and Pennrose Holdings, LLC (the “Contractor”). This contract will provide for a Supportive Housing services reserve for 56 chronically homeless transition-aged youth in Denver at 2700 Wewatta.

<b>Funding Source:</b>	<b>2B Homelessness Resolution Fund &amp; Denver Human Services</b>
<b>Project Name:</b>	<b>2700 Wewatta</b>
<b>Contractor Address:</b>	<b>230 Wyoming Ave. Kingston, PA 18704</b>
<b>Organization Type:</b>	<b>Limited Liability Company</b>

**II. DEFINITION OF TERMS**

- a. *Bridge Units:* Bridge units are Supportive Housing Units that are targeted to persons experiencing homelessness whose annual income cannot be immediately documented due to timing or lack of documentation.
- b. *Current Participants:* Current Participants are individuals or households who are actively enrolled in the program on the last day of the reporting period.
- c. *Eligible Participants:* Eligible Participants means an individual or household that is (i) Extremely Low-Income and (ii)(a) experiencing homelessness or would be experiencing homelessness upon discharge/release from an institutional setting, and (b) the individual or a household member has disabling conditions, disabilities, or special needs. Eligible Participants may have multiple barriers to obtaining and maintaining housing, including chronic or persistent mental illness, alcohol and/or substance abuse, and/or health issues.
- d. *Exiting Participants:* Exiting Participants are individuals or households who exited the program during the reporting period.
- e. *Extremely Low-Income:* Extremely Low-Income means individuals or households that earn at or below 30% of Area Median Income (“AMI”) as defined by the U.S. Department of Housing and Urban Development (“HUD”).
- f. *Housing First:* Housing First is a homeless assistance approach that prioritizes providing non-time-limited housing to people experiencing homelessness, thus ending their



homelessness. It is guided by the belief that people need basic necessities, including food and housing, before attending to other goals of self-sufficiency, such as employment, budgeting, or substance abuse treatment.

- g. *Harm Reduction*: Harm Reduction is a set of practical approaches aimed to reduce the harm associated with substance use, rather than prevent substance use itself. Harm reduction approaches recognize that individuals can be at different stages of recovery and that effective interventions should be tailored to each individual's stage.
- h. *Measures*: Measures refers to the performance of the required outcomes as required by Section VI of this Agreement.
- i. *Permanent Housing*: Permanent Housing is defined as housing that offers a minimum of a 12-month lease.
- j. *Program Enrollment Period*: Program Enrollment Period is defined as the time between the household's program enrollment date and the last day of the reporting period or household's exit from the program, whichever occurs first
- k. *Supportive Housing ("SH")*: Supportive Housing is an evidence-based housing model with a primary focus on resident stability in housing. Supportive Housing is a subset of affordable housing that provides residents with non-time-limited affordable housing and the rights and responsibilities of tenancy using the Housing First model. In addition, Supportive Housing provides residents with access to an array of intensive Supportive Services, tailored to the prospective needs of the resident population.
- l. *Supportive Housing Units*: Dwelling units that provide Supportive Housing to Eligible Participants.
- m. *Supportive Services*: Supportive Services are services provided to tenants of Supportive Housing Units.
- n. *Trauma-Informed Care*: Trauma-informed care ("TIC") is an approach to behavioral health service delivery that incorporates an understanding of past trauma and the impact it can have across settings, services, and populations. A trauma-informed approach recognizes the widespread impact of trauma, understands potential paths for healing, incorporates knowledge of trauma into policies and practices, and seeks actively to prevent re-traumatization.

### III. ROLES & RESPONSIBILITIES FOR BOTH PARTIES

- A. Contractor will deliver Supportive Housing for 56 Eligible Participants.
- B. Contractor will provide Supportive Services to Eligible Participants to assist such individuals or households with maintaining housing.
- C. City will provide timely review and response to received reports, per Section VII.
- D. City will provide timely response to draws for funding, per Section VII.

### IV. SUPPORTIVE HOUSING REQUIREMENTS

- A. Supportive Housing Requirements: All 56 units in the subject property will be Supportive Housing Units. Furthermore, provision of Supportive Services is expected for all the 56 Supportive Housing Units. At all times, a minimum of 50% of all tenants residing in the SH units must be sourced through OneHome, the regional coordinated entry system maintained by City. Of the remaining units, 10 units will be referred through the Denver Chafee Program (Denver Human Services). Participants referred through the Denver Chafee Program are eligible for housing and services. Contractor

shall help facilitate the application process after a youth has been recommended by the Denver Chafee Independent Living Program Manager (ILPM). Contractor shall notify Denver Chafee ILPM within 30 days of vacancies for the 10 units direct sourced for Denver Chafee Program. Notification should be sent in writing to Denver Chafee ILPM at [denverilchafee@denvergov.org](mailto:denverilchafee@denvergov.org). This requirement will be measured both initially and cumulatively as vacancies at the property are filled.

**B. Contractor Requirements:**

- i. **Outcomes and HMIS Reporting:** Contractor must report all necessary data and information in the Homeless Management Information System (“HMIS”), managed by the Metro Denver Homeless Initiative (“MDHI”) to accurately calculate the Measures required by this Agreement.
- ii. **Commitment to Quality:** The Contractor is required to commit to the provision of high-quality Supportive Housing, as described in the [Corporation for Supportive Housing \(“CSH”\) Dimensions of Quality Supportive Housing Guidebook](#). The CSH Dimensions of Quality establish five key indicators of quality for Supportive Housing projects. All successful Supportive Housing projects include the following dimensions and are:

1. *Tenant-centered:* Tenants play an active role in planning the Supportive Housing project, and all partners share a common commitment to helping tenants thrive
2. *Accessible:* Housing is affordable, in a location that meets tenants’ needs, and accommodates persons with special needs
3. *Coordinated:* Roles, responsibilities and communication strategies are clearly established among the Supportive Housing partners, codified in written agreements and revisited regularly
4. *Integrated:* The project meets or exceeds community standards, and the partners actively engage in community dialogue
5. *Sustainable:* The project has funding that is adequate for its ongoing operations and allows it to target its intended tenants

- iii. **Supportive Services Standards:** Contractor must have a staff-to-client ratio of no less than one (1) staff person to every fifteen (15) SH units. Staff must have the relevant education and experience needed to implement Supportive Services, as determined by the State of Colorado Office of Homeless Initiatives (“OHI”). Supportive Services must be offered on a volunteer basis to tenants of Supportive Housing Units. In addition, services are expected to be implemented in a manner reliant on current best practice models, including Housing First, Harm Reduction and Trauma-Informed Care. Intensive case management services must be available to residents of Supportive Housing Units, including the following services:

1. **Access to a multidisciplinary treatment team, including:** Nursing care, case management, peer support, individual therapy and group therapy, and psychiatry/medication support.
2. **Housing stabilization:** Contractor must provide assistance in healing from trauma, addiction, mental health issues and homelessness through assessment, treatment planning, benefit acquisition, care coordination, and

crisis response. These interventions will support long-term housing stability.

3. **Linkage to community supports:** Contractor must work to develop community supports through engagement, socialization, life skills, peer activities, and vocational programming.

## V. USE OF FUNDS

The City has encumbered One Million Two Hundred Sixty Thousand Dollars and no/100 (\$1,260,000.00) to be spent on Supportive Services associated with this project. The use of the funds as detailed in an annual report will be reviewed to verify that the funds are used for eligible costs as defined in 24 C.F.R. Sec. 578.53 and will be reviewed for consistency with the approved budget. The total Amount will be set-aside in a City reserve fund. Annual draws of up to 1/15 of the total amount funded will be allowed every calendar year. Any amount not drawn in a given calendar year will remain in the reserve. The Contractor can draw up to \$84,000 in year one and \$84,000 in each subsequent year. If the Contractor draws no funds in any given year, the Contractor can draw up to \$168,000 in the subsequent year. If an emergency develops where the Contractor loses a funding source, the Contractor can request special approval from the Executive Director of HOST to prospectively draw up to an amount that does not exceed three years of funding, so long as the total drawn amount does not exceed \$1,260,000. In such a case, the Contractor must demonstrate a need and that a funding source was lost for reasons other than non-compliance with the terms and requirements of the funding source. Draws are not funded in arrears; Contractor may draw in advance of expenses.

Supportive Housing must continue to be delivered and annual reports must be submitted during the entire term of this Agreement, even if no funds are drawn during a calendar year or if all funds are drawn prior to the end of the term of the Agreement. Failure to comply with either requirement shall be a material breach of this Agreement.

## VI. PROCESS AND OUTCOME MEASURES

Contractor will pull its own reports as needed from HMIS in order to compile and send the following required outcomes outlined in A, B, C, D, and E below to HOST in a single packet. If any of the outcomes are not met, HOST reserves the right to withhold approval of future proposed budget and draws until corrective actions are planned and executed to the satisfaction of HOST. Reports for January 1<sup>st</sup> through December 31<sup>st</sup> of the prior year will be due on January 31<sup>st</sup>.

### A. Income Acquisition Benchmarks:

#### 1. For Current Participants.

- a. 80% of Current Participants must increase or maintain income (earned and unearned) and non-cash benefits. Income includes, but is not limited to, mainstream financial benefits (i.e., SSI, SSDI, TANF, AND), income from employment, and non-cash benefits such as SNAP. This will be measured as the percentage of households who increase or maintain total income from program entry to most recent assessment.
  - i. Data source: HMIS
  - ii. The following Measures are associated with this benchmark:

1. Number and percentage of Current Participants who increased or maintained total income from program entry to most recent assessment.
2. Average and median income at program entry and at most recent assessment for all Current Participants.
3. Number and percentage of Current Participants who had each benefit or income type as defined in HMIS at program entry compared to at the most recent assessment.

2. **For Exiting Participants.**

- a. 80% of Exiting Participants must have increased or maintained income (earned and unearned) and non-cash benefits. Income includes, but is not limited to, mainstream financial benefits (i.e., SSI, SSDI, TANF, AND), income from employment, and non-cash benefits such as SNAP. This will be measured as the percentage of Exiting Participants who increase total income from program entry to program exit.
  - i. Data source: HMIS
  - ii. The following Measures are associated with this benchmark:
    1. Number and percentage of Exiting Participants who increased total income from program entry to program exit.
    2. Number and percentage of Exiting Participants who had a reduction in total income from program entry to program exit.
    3. Average and median income for all Exiting Participants at program entry and program exit.
    4. Number and percentage of Exiting Participants who had each benefit or income type at program entry compared to program exit.

**B. Program Retention and Housing Attainment Benchmarks:**

1. **For Current Participants.**

- a. Data source: HMIS
- b. The following Measures are associated with this benchmark:
  - i. Average and median length of Program Enrollment Period, measured in terms of days.
  - ii. Number and percentage of Current Participants enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months.

2. **For Exiting Participants.**

- a. 70% of Exiting Participants must exit the program into a Permanent Housing outcome.
  - i. Data source: HMIS
  - ii. The following Measures are associated with this benchmark:
    1. Number and percent of Exiting Participants by Destination at Exit. Destinations at Exit are defined as: Permanent Housing, other stable housing outcomes, and outcomes to other locations (e.g., nightly shelter, street, jail, or unknown destinations).
- b. Length of stay for Exiting Participants

- i. Data source: HMIS
- c. The following Measures are associated with this benchmark:
  1. Average and median length of Program Enrollment Period, measured in terms of days.
  2. Number and percentage of Exiting Participants that were enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months.

**C. Households Served and Household Characteristics**

1. Households served:
  - a. Data source: HMIS
  - b. The following Measures must be submitted:
    - i. Number of households served each reporting period.
    - ii. Number of Exiting Participants within the reporting period.
    - iii. AMIs of each assisted household.
2. Household characteristics:
  - a. Data source: HMIS
  - b. The following Measures must be submitted:
    - i. Number and percent of heads of household by race, ethnicity, and income level at entry (if reported in HMIS for program type).

**D. Data quality**

1. In order to determine the accuracy and comprehensiveness of the reporting on the above outcome measures, HOST will also collect from HMIS a Data Quality Report on the program for each reporting period, per Section VII.
  - a. Data source: HMIS

**E. Program Narrative Reports**

1. For each reporting period, the Contractor will provide a narrative update outside of HMIS on program successes and challenges. This narrative will include information on the extent to which participating households are connected to health and treatment services.

**Use of Homeless Management Information System and Reporting**

It is the Department of Housing Stability’s policy, in alignment with adopted plans, to require the use of the HMIS and OneHome for all federally and locally funded programs addressing the needs of residents experiencing homelessness.

The Contractor agrees to fully comply with the rules and regulations required by the HUD which govern the HMIS.<sup>1</sup>

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<sup>1</sup> <https://www.hudexchange.info/programs/hmis/hmis-data-and-technical-standards/>

The Contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the MDHI Continuum of Care. These are outlined in the COHMIS Policies and Procedures,<sup>2</sup> and the COHMIS Security, Privacy and Data Quality Plan.<sup>3</sup>

MDHI is the implementing organization for the HMIS. The HMIS software is called Clarity.

Contractor's aggregate HMIS performance data for projects may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI will monitor HMIS related compliance and performance on an annual basis through a site visit. HOST will monitor program performance and contract compliance on an annual basis.

Technical assistance and training resources for HMIS are available to the Contractor via the COHMIS Helpdesk.<sup>4</sup>

HMIS data will be used to monitor performance under this contract. HMIS outcome reports may be sent to HOST directly from MDHI. Contractor will also have access to all outcome reports generated for this contract. HOST may request aggregate data from MDHI for City related reporting needs.

## VII. REPORTING & REQUESTS

The following reports shall be developed and delivered to the City as follows:

- Reports for January 1<sup>st</sup> through December 31<sup>st</sup> of the prior year will be due on January 31<sup>st</sup>. The reports must be in a form approved by HOST and must include a report evidencing expenses for which HOST funds were used, and information related to the Measures in Section VI above. HOST will have three weeks to review these reports and approve or seek other clarification or further action.
- Contractor must submit budgets for the calendar year by January 31<sup>st</sup>, including anticipated sources of funds from other funders. HOST will have 30 days from the date of receipt to review this budget and approve or seek amendments.
- Upon approval, Contractor may submit draw requests for budgeted expenses during a calendar year prospectively any time after March 15<sup>th</sup>.

Draw requests shall be submitted to HOST at [hostap@denvergov.org](mailto:hostap@denvergov.org) or by US Mail to:

Attn: Department of Housing Stability  
Fiscal Management Unit  
201 W. Colfax Ave.  
Denver CO 80202

Reports and budgets shall be submitted to HOST at [Housingdevelopment@denvergov.org](mailto:Housingdevelopment@denvergov.org)

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<sup>2</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>3</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>4</sup> <https://cohmis.zendesk.com>

## EXHIBIT B

### FINANCIAL ADMINISTRATION:

#### **1.1 Compensation and Methods of Payment**

- 1.1.1 Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item payments. The Contractor must submit an annual draw request to HOST on or after March 15<sup>th</sup> for anticipated expenses.
- 1.1.3 The Contractor shall be paid in advance for services provided under this Agreement according to the approved line-item disbursement budget (see Exhibit A Statement of Work for instructions).

#### **1.2 Draw Requirements**

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, when applicable, it is required that all draw requests be submitted annually to HOST in order to be paid. Expenses will not be disbursed until the funds under this contract have been Encumbered. Encumbered means that funds have been recorded in the City's financial system.
- 1.2.2 Only allowable costs determined in accordance with 24 C.F.R Section 578.53 applicable to the Contractor or their subcontractors will be disbursed.
- 1.2.3 The disbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on an annual basis. The annual report should include:
  - a. Amount of the request in total and by line item;
  - b. Period of services for current disbursement;
  - c. Remaining budget in total and by line item;
  - d. Authorization for disbursement by the contract signatory (i.e., executive director or assistant director), as detailed in a Board Resolution.
- 1.2.4 If another person has been authorized by the Contractor to request disbursement for services provided by this contract, then the authorization should be forwarded in writing to HOST prior to the draw request.
- 1.2.5 The standardized HOST "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for disbursement. This Form should be requested from HOST when needed.

### **1.3 Payroll**

- 1.3.1 A summary sheet should be included to detail the gross salary of each employee, amount of the salary to be disbursed, the name of the employee, and the position of the employee. If the expense for the employee is disbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 Annual reports must include timesheets for expenses incurred associated with HOST funds. The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If an electronic time system is used, signatures are not required. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of disbursement requested must be calculated and documented in the annual disbursement request.
- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

### **1.4 Fringe Benefits**

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary -less pre-tax deductions, if applicable, paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

### **1.5 General Disbursement Requirements**

- 1.5.1 Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on an annual disbursement basis.
- 1.5.2 Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be



stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.

- 1.5.3 Cell Phone: If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required before the next annual budget may be submitted.
- 1.5.4 Administration and Overhead Cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by HOST.
- 1.5.5 Service Period and Closeout: All disbursed expenses must be incurred during the time period within the contract.

## **2.1 Program Income**

- 2.1.1 For contracts subject to Federal Agreements, program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE ANNUAL REPORT.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS PRE-APPROVED IN WRITING BY HOST, INCLUDING those needed for immediate cash needs).

## **3.1 Financial Management Systems**

**The Contractor must maintain financial systems that meet the following standards:**

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.

- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 For contracts subject to Federal Agreements, applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all reports. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Draw Process.

#### **4.1 Audit Requirements**

- 4.1.1 For contracts subject to Federal Agreements, if the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the annual audit report must be submitted to the HOST Financial Manager before January 31st after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contractor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act

Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

### **5.1 Budget Modification Requests**

- 5.1.1 HOST may, at its option, restrict the transfer of funds among cost categories, programs, functions or activities at its discretion as deemed appropriate by program staff, HOST executive management or its designee.
- 5.1.2 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require notification to HOST program staff and upon approval may be submitted with the next annual draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by HOST program staff. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

### **6.1 Procurement**

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

## **7.1 Bonding**

- 7.1.1 HOST may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

## **8.1 Records Retention**

- 8.1.1 The Contractor must retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

## **9.1 Contract Close-Out**

- 9.1.1 All Contractors are responsible for completing required HOST contract close-out forms and submitting these forms to their appropriate HOST Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by HOST in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by HOST within thirty (30) days after to end of contract.
- 9.1.3 HOST will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, HOST reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

## **10.1 Collection of amounts due**

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, HOST may 1) Make an administrative offset against other requests for disbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.