

**THIRD AMENDMENT
To The
2020 Master Purchase Agreement
Between the City & County of Denver
and
United Healthcare Services, Inc. and
Unitedhealthcare Insurance Company**

THIS THIRD AMENDMENT TO THE AGREEMENT (“3rd Amendment”) is entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **UNITED HEALTHCARE SERVICES, INC.** and **UNITEDHEALTHCARE INSURANCE COMPANY**, whose shared address is 185 Asylum Street, Hartford, CT 06103-0450 (“**Insurance Company**”), who shall be individually referred to herein as a “Party” and jointly as the “Parties”.

RECITALS

WHEREAS, the Parties previously entered into an agreement effective January 1, 2020 (City Contract No. CSAHR-201952475-00), (The “**Original Agreement**”) for the Insurance Company to provide services described therein; and,

WHEREAS, the Parties previously amended the Original Agreement in writing dated January 14, 2021 (City Contract No. CSAHR-201952475-1); and,

WHEREAS, the Parties signed a second amendment to the Original Agreement in writing dated December 15, 2021 (City Contract No. CSAHR-201952475-2); and,

WHEREAS, the Parties desire amend the Original Agreement to add a new Exhibit A-5 to the Original Agreement (entitled “EAP Administrative Services Agreement”) to add a new EAP program, as set forth below.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in the Agreement and hereinafter set forth, the Parties agree as follows:

1. That the attached Exhibit 1, hereto, shall be added as a new “Exhibit A-5” to the Original Agreement;
2. Pursuant to paragraph 2 of the Original Agreement, the Executive Director has the signature authority recited therein to sign Exhibit 1 attached to this 3rd Amendment, to implement

an EAP insurance program and services as contemplated by the City.

3. This 3rd Amendment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

4. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

[SIGNATURE PAGES TO FOLLOW]

Contract Control Number: CSAHR-201952475-03
Contractor Name: UnitedHealthcare Insurance Company

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:

CSAHR-201952475-03
UnitedHealthcare Insurance Company

By:  F60FF0B17C204BE...

Michael Corcoran
Name: _____
(please print)
Assoc. Finance Director
Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT 1
To
THIRD AMENDMENT
To The
2020 Master Purchase Agreement
Between the City & County of Denver
and
United Healthcare Services, Inc. and
Unitedhealthcare Insurance Company

EAP ADMINISTRATIVE SERVICES AGREEMENT

EXHIBIT A-5
To
2020 Master Purchase Agreement
Between
City & County of Denver and
United Healthcare Services, Inc. and
Unitedhealthcare Insurance Company

EAP ADMINISTRATIVE SERVICES AGREEMENT

This EAP Administrative Services Agreement ("**EAP Agreement**") is attached as a new "Exhibit A-5" to that certain Master Purchase Agreement signed by and between the City & County of Denver ("**City**"), UnitedHealthcare Insurance Company and United HealthCare Services, Inc. (collectively "**United**") identified in the public record as Contract Control No. CSAHR-201952475-00, dated December 19, 2019 ("**2019 MPA**").

Optum agrees this EAP Agreement is subject to the terms of the 2019 MPA and Optum expressly agrees to maintain the minimum insurance as required under the 2019 MPA. If any conflict exists between the terms of this EAP Agreement and the 2019 MPA, the 2019 MPA shall control.

This EAP Agreement describes services that are to be provided to the City & County of Denver by United Behavioral Health ("**Optum**"), a California corporation (an entity related to UnitedHealthcare Insurance Company and United HealthCare Services, Inc., for EAP services to begin April 1, 2022 ("**Effective Date**").

This EAP Agreement covers the services Optum will provide to the City through this program, either directly or in conjunction with one of Optum's affiliates.

Section 1 – Definitions

When these terms are capitalized in this EAP Agreement they have the meanings set forth below. Defined terms may be used in the singular or plural.

Employee: A current or former employee of the City or an affiliated employer.

Employee Assistance Program or EAP: Services designed to assist the City's Employees, their dependents, and the City in finding solutions for personal and workplace problems.

ERISA: Employee Retirement Income Security Act of 1974, as amended from time to time, including all rules and regulations promulgated thereunder.

Network: The group of Network Providers who entered into, or are governed by, contractual arrangements with Optum to provide Services to Plan Participants.

Network Provider: The physician, or medical professional or facility which participates in a Network and accepts negotiated fees for providing health care services. A provider is only a Network Provider if they are participating in a Network at the time services are rendered to the Plan Participant.

Participant: Employee beneficiary or dependent who is covered by the Plan.

PHI: Any information Optum receives or provides on behalf of the Plan which is considered Protected Health Information as the term is defined in the privacy regulations of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, "HIPAA") and American Recovery and Reinvestment Act ("ARRA"), as each is amended from time to time.

Plan: The provisions of the plan of benefits to which this EAP Agreement applies, as described in the Summary Plan Description.

Plan Administrator: The current or succeeding person, committee, partnership, or other entity designated by the terms of the instrument under which the Plan is operated as defined by ERISA and who is responsible for the Plan's operation.

Plan Document(s): The documents provided to Participants that are required by ERISA and are prepared or provided by the Plan Administrator that describe either: the Services covered by this EAP Agreement; eligibility requirements for participation and benefits offered under the Plan; or any other similar information. Examples of Plan Documents include but are not limited to the following: Summary Plan Description, evidence or certificate of coverage, description of Services or a trust agreement.

Services: Collectively, the products and services Optum provides and performs pursuant to this EAP Agreement as set forth in Exhibit A attached hereto.

Summary Plan Description or SPD: The document(s) ERISA requires provided to Plan Participants describing the terms and conditions of coverage offered under the Plan.

Section 2 – Benefit Plan

2.1 Responsibility for the Plan and Plan Assets. Optum is not the Plan Administrator of the Plan. Any references in this EAP Agreement, or elsewhere, to Optum “administering the Plan” are descriptive only and do not confer upon Optum anything beyond certain agreed upon claim administration duties. Except to the extent this EAP Agreement specifically requires Optum to have the fiduciary responsibility for a Plan administrative function, City has the sole responsibility for all obligations of the Plan, the Plan Sponsor, and the Plan Administrator under ERISA and any other applicable laws and regulations, including but not limited to benefit design and preparation, distribution of Plan Documents, content and regulatory compliance of the Plan Documents.

2.2 Plan Consistent with the EAP Agreement. The City represents that Plan Documents are consistent with this EAP Agreement. City will provide Optum with copies of Plan Documents or any communications describing Plan Documents prior to distributing these materials to Participants, Employees or third parties. City will amend Plan Documents or communications related thereto if Optum reasonably determines that references to Optum are not accurate, or a Plan provision is not consistent with this EAP Agreement or the Services. City shall be responsible for printing, maintaining a supply of and distributing to Participants, within a reasonable period of time before coverage begins, the Plan Documents and all other information and forms necessary for Participants' enrollment and continued eligibility for Services under the Plan.

2.3 Plan Changes. City will provide Optum with notice of any changes to the Plan and/or Plan Documents within a reasonable period of time prior to the effective date of the change to allow Optum to determine if the change will impact the Services. Any change by City that impacts the Services must be mutually agreed to in writing prior to implementation of such change. Optum will notify City if: (i) the change increases Optum's cost of providing Services which would result in an increase in fees; or (ii) if in Optum's reasonable discretion it is unable to implement or administer the change. If the parties cannot agree to a new fee within thirty (30) days of the notice of the new fee, or if Optum notifies City that Optum is unable to reasonably implement or administer the change, Optum shall have no obligation to implement or administer the change, and City may terminate this EAP Agreement upon sixty (60) days written notice.

2.4 Affiliated Employers. City represents that together, City and any of City's affiliates covered under the Plan make up a single “controlled group” as defined by ERISA. Upon request by Optum, City agrees to provide Optum with a list of City's affiliates covered under the Plan.

Section 3 – City Responsibilities

3.1 Reliance on Data. Optum is not liable for any acts or omissions it makes in reliance on the direction or consent from an authorized representative of City. Optum is not responsible or liable for any acts or omissions made in reliance on erroneous data provided by City or agents, or the failure of City to perform its obligations under this EAP Agreement. City understands that Optum cannot timely or accurately perform its duties under this EAP Agreement without complete, accurate, and timely information. City understands that an additional fee may be required if Optum is required to take corrective action as a result of such incomplete, inaccurate, or untimely information.

3.2 Authorizations, Data Integrity, and Disclosures. City is responsible for obtaining, prior to furnishing any data or information to Optum (either directly or through a third party), any necessary permissions, consents, or releases, including entering into business associate agreements if required by applicable federal, state or local laws and/or regulations, to allow City to deliver data to Optum and Optum to use and disclose such data as set forth under this EAP Agreement or required by law. Optum shall not be responsible or liable for (a) errors in data or data entry done by City or City's designated data sources, or (b) errors in services, programs, hardware, data files, or output Optum provides to or maintains for City pursuant to this EAP Agreement, if the Optum errors resulted from errors in City's or City's data sources' input data, or from City's failure to comply with this EAP Agreement. During and after the Term of this EAP Agreement, Optum may use, reproduce, transfer and combine data and any derivatives of that data for preparing commercially available normative and benchmark data and databases, and for internal and external research and analysis purposes, so long as such data has all PHI removed. Optum shall not retain or use PHI in any way beyond the term of this EAP Agreement.

3.3 Notices to Participants. In the event this EAP Agreement terminates, City will notify all Participants that the Services Optum is providing under this EAP Agreement are discontinued.

3.4 Providing Funds for Benefits. Optum is solely responsible for providing funds for all EAP benefits payable to Network Providers.

Section 4 – Services

4.1 Administrative Services. Optum will provide the administrative services described in Exhibit A.

4.2 Network Access, Management and Administration. To the extent applicable to the Services, Optum will provide City and Participants with access to Networks and Network Providers, as well as related administrative services including physician (and other health care professional) relations, clinical profiling, contracting and credentialing, and network analysis and system development. The make-up of the Network can change at any time. Notice will be given in advance or as soon as reasonably possible. Optum does not employ Network Providers and they are not agents or partners of Optum. Network Providers participate in Networks only as independent contractors. Network Providers and the Participants are solely responsible for any health care services rendered to Participants. Optum is not responsible for the medical outcomes or the quality or competence of any Network Provider rendering health care services, health care services provided through an Optum affiliate network, or payment for services rendered by a Network Provider through other network.

4.3 City Reporting Services. Optum will provide standard summaries of program activities to City as part of the Services. Optum reserves the right, from time to time, to change the content, format and/or type of its reports. Ad-hoc and non-standard reporting shall be mutually agreed upon by the parties and may be subject to additional fees.

Section 5 – Service Fees

5.1 Service Fees. City will pay Optum fees for the Services as set forth in Exhibit A of this EAP Agreement. In addition to the Service fees specified in Exhibit A, City must also pay Optum any additional fee that is authorized by a provision elsewhere in this EAP Agreement or is otherwise agreed to by the parties in writing. If City delegates payment of Services fees to a broker or agent, it remains City's obligation to pay Optum, and payment to a broker or agent will not relieve City of that obligation in the event a broker or agent fails to pay Optum or a payment is untimely.

5.2 Changes in Service Fees. Optum will provide City with at least ninety (90) days prior written notice of revised Service fees. Service fee changes will be effective at the end of the notice period. If applicable, Optum will provide City with a notice reflecting the revised Service fees that will replace the existing **Exhibit A**. If City objects to a change in Service fees, City may terminate this EAP Agreement by providing written notice to Optum within ninety (90) days after City receives written notice of the new fees. City must still pay any amounts due for the periods during which the EAP Agreement is in effect.

5.3 Payments. City will remit Service fees to Optum on or before the twentieth (20th) calendar day of the current month of Services. City shall use the “self-bill template” provided during implementation to calculate Service fees owed Optum based on the number of eligible Employees as of the first day of the current month of Services. With each payment of Service fees, City shall provide the self-bill template and such other HIPAA compliant remittance detail that includes counts of all applicable Employees and any adjustments made to the Service fees, together with any supporting documentation of the adjustments involving the current month and/or up to the previous two months of Services provided.

5.4 Penalties. If monthly Service fees are not paid within ten (10) days after their due date (“**Grace Period**”), City will pay Optum interest on the fees owed at the interest rate of one percent (1%) for each thirty (30) day period or portion thereof for any outstanding balance. Optum billed customers will be charged accrued interest in their next month’s bill. Self-billing customers must pay accrued interest for a late payment with their next monthly payment. If a self-billing City fails to pay accrued interest for a late payment, Optum reserves the right to revoke permission to self-bill or terminate the EAP Agreement. Optum’s decision to provide City with a Grace Period will be based on Optum’s assessment of City’s financial condition, as of the Effective Date, and City’s compliance with material financial obligations. If Optum determines, based on reasonable information and belief, that City’s financial condition has deteriorated, or City fails to comply with the material financial obligations specified in this EAP Agreement, Optum may remove the Grace Period upon notice to City and either charge interest on payments not received after the due date or terminate the EAP Agreement.

5.5 Reconciliation. Optum may periodically reconcile the total amounts City has paid Optum with the total amounts City owes Optum. If the reconciliation indicates that Optum owes City money, City’s next payment will be credited. If the reconciliation indicates that City owes Optum money, Optum will invoice City for the amount due. All adjustments to over and under payments, except when arising from misrepresentation or fraud by the other party, must be reconciled no later than 180 days after the month in question and any reconciliation greater than 180 days shall be deemed waived. Any such variances occurring during the last four months of the Term will be reconciled within 180 days after the EAP Agreement's termination.

Section 6 – Term of the EAP Agreement

6.1 Term. This EAP Agreement will commence on the Effective Date and continue unless and until this EAP Agreement, or the 2019 MPA is terminated. The Initial Term and each subsequent Renewal Term are controlled by the 2019 MPA term and shall be referred to herein as (the “**Term**”).

6.2 Services End. EAP Services under this EAP Agreement end on the date this EAP Agreement or the 2019 MPA terminates regardless of the number of unused visits.

Section 7 – Termination

7.1 Termination Events. Either party may terminate this EAP Agreement with sixty (60) days written notice. If the 2019 MPA terminates, then this EAP Agreement shall also terminate.

7.2 Termination Transition Services. Upon written notice of Termination, City and Optum may negotiate a written transition plan to be performed prior to Termination.

Section 8 – Records, Information, Audits

8.1 Records. Optum will keep records relating to the Services provided under this EAP Agreement (“**Records**”) for the later of Optum’s record retention policy or requirements under applicable law.

8.2 Access to Information.

8.2.1 City Access. If City needs Records in order to administer the Plan, the parties shall work to provide reasonable access to the needed records. Before Optum provides any Records, including PHI, to that entity, the parties must sign a mutually agreed-upon confidentiality agreement, and the parties must agree as to what information is minimally necessary to accomplish the Plan administrative service.

8.2.2 Government Access. The federal, state and local government and accrediting agencies including, but not limited to, the National Committee for Quality Assurance (the “NCQA”) or to The American Accreditation HealthCare Commission/URAC, and any of their authorized representatives, shall have access to Optum Records and City authorizes Optum to release to these agencies all non-PHI Records within its possession.

8.3 Audits. Optum expressly agrees that Paragraph 10 of the 2019 MPA shall control the examination of records.

8.4 Confidential Information. Confidential Information terms shall be controlled by the terms of the 2019 MPA and applicable exhibits thereto (such as Exhibit D Business Associate Agreement).

8.5 PHI. The parties agree will comply with all applicable requirements set forth in HIPAA and ARRA. The parties’ obligations with respect to the use and disclosure of PHI are outlined in the Business Associate Agreement (“**BAA**”) attached as “Exhibit D” to the 2019 MPA. Optum agrees to abide by all the terms and conditions of the BAA that are applicable to United.

Section 9 – [Intentionally Left Blank]

Section 10 – [Intentionally Left Blank]

Section 11 – Service Specific Terms

11.1 EAP Services in California. This EAP Agreement does not cover any Participant within California and City represents there are no Participants in California. Before any Services can be provided in California this EAP Agreement must be amended.

Section 12 – Miscellaneous

12.1 Subcontractors. Optum can use subcontractors, including affiliates, to perform Services under this EAP Agreement. Optum will be responsible for their services to the same extent that Optum would have been had Optum performed the Services without the use of an affiliate or subcontractor.

12.2 Assignment. Neither party may assign any of its rights or obligations under this EAP Agreement without the written consent of the other party.

12.4 Amendment. The EAP Agreement (including its Exhibits) may be amended only by both parties agreeing to the amendment in writing, executed by a duly authorized person of each party.

12.5 Regulatory Filing. In the event that City is required to file this EAP Agreement with federal, state and local governmental authorities, City shall be responsible for filing the EAP Agreement with such authorities as required by any applicable law or regulation. If, following any such filing, the governmental authority requests changes to this EAP Agreement, Optum and City shall jointly discuss City’s response to the governmental authority. In the event any federal, state or local governmental authority requires a change to this EAP Agreement that either Optum or City deems to be material, either party may request renegotiation of the affected provisions of this EAP Agreement.

12.6 Independent Medical Judgment. City and Optum both acknowledge and agree that Participants' treating physician(s) and other health care providers, including but not limited to Network Providers, shall be solely responsible to provide treatment and/or services to Participants and to make all decisions related to patient care and shall exercise their independent medical judgment as to all such matters. Nothing in this EAP Agreement shall be deemed to create any rights of Optum, City, or any other person or entity to intervene in any manner with or otherwise interfere with the independent medical judgment of Participants' health care providers with regard to treatment or utilization issues, nor shall it render Optum, City, or any other person or entity responsible for the method or means by which any health care provider renders treatment or service to a Participant.

12.7 No Incentive Payments. Optum receives no incentive payment based on reduction of services or the charges thereof, reduction of length of stay, or utilization of alternative treatment settings to reduce amounts of necessary or appropriate medical care.

12.8 Improvements and Modification of Services. Optum reserves the right to upgrade, improve, modify or discontinue any Services provided or made available to City under this EAP Agreement.

ACCEPTED AND AGREED:

United Behavioral Health
425 Market Street, 14th Floor
San Francisco, CA 94105-2426

City and County of Denver

Signature: _____
Print Name: _____
Title: _____
Date: _____

Signature: _____
Print Name: _____
Title: _____
Date: _____

EXHIBIT A
to
EAP AGREEMENT

SERVICES AND FEES

The following are the administrative services Optum has agreed to provide to City at the rates set forth herein.

Product	Components	Rate Type	Rate Period	\$ Fee
Onsite EAP Consultant	Denver, CO (40 hrs/wk) (Effective 4/4/22)	Fee	Per Month	\$13,420.00
Onsite EAP Consultant	Denver, CO (40 hrs/wk) (Effective 4/18/22)	Fee	Per Month	\$13,420.00

Onsite EAP Rate increases be 3% per year in Year 2 and Year 3.

These rates are based on a population of 14,000. If the population changes by more than 10%, then Optum reserves the right to revise the rates.