SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the "City") and **RITE OF PASSAGE, INC.**, a Nevada corporation in good standing in the State of Colorado, whose address is 2560 Business Parkway, Suite A, Minden, NV 89423 (the "Contractor", and referred to jointly as the "parties").

1. The parties entered into an Agreement dated May 22, 2015 and amended the Agreement on August 3, 2015 (the "Agreement") to provide safe, secure and therapeutic out-of-home placement services for children/youth who have been subjected to abuse or neglect.

2. The parties wish to amend the Agreement to revise the general provisions and increase the maximum contract amount.

3. The Agreement is amended as follows:

a) All references to "…**Attachments A and A-1** …" in the existing Agreement shall be amended to read:

"… **Attachments A**, **A-1,** and **A-2**, as applicable…" The general provision marked as **Attachment A-2** is attached and incorporated by reference. **Attachment A-2** controls the general provisions.

b) Provision **12** of **Attachment A and A-1** shall be amended to read:

"**12. State Payment/No City Funds**: The Contractor shall be compensated only for the approved services actually provided to a given child/youth or family. It is understood and agreed that all payments or reimbursements to the Contractor shall be made through direct drawdown payment utilizing the State of Colorado Trails System and that no City funds have been or will be appropriated or encumbered to pay any payments or reimbursements to the Contractor, and that the City shall have no direct payment obligations whatsoever to the Contractor. In any event, any performance obligation of the City, whether direct or contingent, under this Agreement or any amendment, would extend only to funds appropriated by the Denver City Council, paid into the City Treasury, and encumbered for purposes of this Agreement. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Notwithstanding any other provision of the Agreement, and regardless of source, the maximum payment obligation will not exceed **Four Million Three Hundred Thousand Three Hundred Dollars and Zero Cents ($4,300,300.00)."**

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

Attachment List:
Attachment A-2 Provision for City and County of Denver Contractors

[SIGNATURE PAGES FOLLOW]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By_____

_____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By_____

By_____

By_____

Contract Control Number: SOCSV-201521670-02

Contractor Name: Rite of Passage, Inc.

By: _____

Name: S. JAMES BROMAN
(please print)

Title: PRESIDENT/CEO
(please print)

ATTEST: [if required]

By: _____

Name: Michelle McNeely
(please print)

Title: Business Manager
(please print)

ATTACHMENT A-2 (RCCF)
PROVISIONS FOR CITY AND COUNTY OF DENVER CONTRACTORS

GENERAL PROVISIONS

1. County. All references in the Agreement to County shall refer to the City and County of Denver, acting through the Denver Department of Human Services (DDHS) and its Executive Director.

2. Term and Termination. This Agreement shall be in force during the period set forth on page 2 of Denver's SS23A, subject to receipt of annual appropriations and funding being available. The County may remove any child/youth from the Contractor's facility at any time, including prior to the end of the term or fiscal year. The Contractor may seek approval in writing from the County to terminate the agreement prior to the end of the term or fiscal year.

3. This Agreement may be renewed or extended beyond the end date only by entering into a new written Agreement or Amendment, such as this Agreement signed by the authorized representatives of the parties and executed in the same manner as this Agreement. The City has the right to terminate this Agreement with cause, effective immediately. Except as otherwise provided above, either party shall have the right to terminate this contract by giving the other party thirty (30) days written notice. If notice is so given, this contract shall terminate on the expiration of the thirty (30) days or when the eligible child(ren)/youth can be placed elsewhere, as approved by the County.

4. The City may also terminate the Agreement effective immediately 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 Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.

5. Upon the effective date of any termination, the liability of the parties for further performance of the terms of this Agreement shall cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. Nothing herein shall be construed as giving the Contractor the right to perform services under the Agreement beyond the time when its services become unsatisfactory to the City.

6. If the Agreement is terminated without cause, the Contractor will be compensated only for work requested and satisfactorily performed. Upon termination of the Agreement by the City, with or without cause, the Contractor will not have any claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for work requested and satisfactorily performed under the terms of the Agreement.

7. If the Agreement is terminated, the City is entitled to and will take possession of all records of and property belonging to children/youth served under this Agreement as well as 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 such records, property, and 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 Contractor. These documents, property, 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".

8. Prior Agreements; Modification of Attachment 1 (Scope of Work). This Agreement is in lieu of and supersedes all prior agreements between the parties and relating to the care and services here described. The parties may modify **Attachment 1** to increase or decrease the services contained therein or to adjust upward or downward specific line item expenses identified on **Attachment 1**; provided, however, that no modification to **Attachment 1** shall result in or be binding on the City if any proposed modification(s), individually or collectively, require(s) an expenditure of additional funds. The parties shall memorialize in writing any and all modifications to **Attachment 1** by revising and restating said **Attachment 1** and stating the date upon which the modified Attachment shall take effect. Any modification to **Attachment 1** shall not take effect unless and until it is approved in writing by both parties, approved as to form by the City Attorney's office, and placed on file by the Agency with the City Clerk.

9. Except for changes in rates due to annual state legislation, any modification that requires an increase in the funds to be expended shall be evidenced by a written Amendatory Agreement prepared and executed by both parties in the same manner as this Agreement.

10. Rate of Care. The Contractor agrees to provide the care and services which are described in this Agreement and its attachments, based on a child specific authorization, **Out-of-Home Placement Authorization and Terms (OOHPA)** form, attached and incorporated as **Attachment 2**, identifying individual service needs completed by DDHS for each child/youth being served by the Contractor.

11. RCCF Rates. RCCF rates will be determined based on the allowable rate schedules approved by the City for RCCF placements. These rates may be altered annually as legislated by the General Assembly with written notice to the Contractor. These altered rates shall automatically go into effect unless the Contractor notifies the City in writing within fourteen (14) days, in which case the contract may then be subject to re-negotiation or termination.

12. State Payment / No City Funds. The Contractor shall be compensated only for the approved services actually provided to a given child/youth or family. It is understood and agreed that all payments or reimbursements to the Contractor shall be made through direct drawdown payment utilizing the State of Colorado Trails System and that no City funds have been or will be appropriated or encumbered to pay any payments or reimbursements to the Contractor, and that the City shall have no direct payment obligations whatsoever to the Contractor. In any event, any performance obligation of the City, whether direct or contingent, under this Agreement or any amendment, would extend only to funds appropriated by the Denver City Council, paid into the City Treasury, and encumbered for purposes of this Agreement. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create

a multiple-fiscal year direct or indirect debt or financial obligation of the City. Notwithstanding any other provision of the Agreement, and regardless of source, the maximum payment obligation will not exceed **Four Million Three Hundred Thousand Three Hundred Dollars and Zero Cents ($4,300,300.00).**

13. Contractor will comply with any **child-specific out-of-home placement authorization (OOHPA)**, which must be completed for each child/youth served by the Contractor. The OOHPA will specify the rate of payment for each specific child/youth. It may be adjusted periodically consistent with the changing needs of the child/youth.

14. Adoption. If a foster child/youth is being adopted, payment to the RCCF will terminate on the date of the adoption.

15. Subject to the continuing availability of funds, child-specific out-of-home placement **authorizations may continue** for the duration of the placement provided that this Agreement is renewed for future fiscal years when the placement crosses fiscal years. The time period covered by the authorization will be included on the out-of-home placement authorization.

16. Budget Modifications. Budget line items may only be modified by the written approval of the Executive Director, if in the Executive Director's sole judgment such modification is reasonable and appropriate. However, such budget modifications will not alter the Maximum Contract Amount. Any modification to **Attachment 1** shall not take effect until approved in writing. Any modification to **Attachment 1** agreed to by the parties that requires an increase in the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by both parties in the same manner as this Agreement.

DESCRIPTION OF SERVICES TO BE PURCHASED

17. The total **rate of payment** for care and services under this Agreement shall not exceed: the established rate for the Psychiatric Residential Treatment Facility (PRTF); for RCCF placements, the established Fee-for-Service rate and the negotiated rate or the approved vendor rate; and, for Children's Habilitation Residential Program (CHRP) waiver placements, the approved CHRP waiver rate. The total rate of payment for care and services for other service types will be as negotiated between the County and the Contractor. Note the term "approved vendor rate" as used in this agreement indicates those negotiated or determined by DDHS and are not necessarily the approved vendor rate set by the state.

18. The **amount paid** for purchased care and services for less than a full month will be based upon the daily rate contained in **Attachment 1.** These rates may be altered annually as legislated by the General Assembly with written notice to the Contractor. These altered rates shall automatically go into effect unless the Contractor notifies the City in writing within fourteen (14) days, in which case the contract may then be subject to re-negotiation or termination.

19. The **services purchased** under this Agreement may include, but are not limited to basic 24-hour care and child maintenance (food, shelter, clothing, educational supplies, personal incidentals and allowance), administrative overhead, and case management. Behavioral health

services which may include but are not limited to individual, group and family therapy, in-home services and day treatment may be authorized and paid through the child's/youth's Medicaid eligibility. Behavioral health services may also be authorized and purchased directly by the City through the Core Service program. The amount paid for purchased care and services must be in writing and will be based upon the negotiated rate. The total rate of payment for care and services under this Agreement shall not exceed the established rate found in **Attachment 1** for contractors. These rates may be altered annually as legislated by the General Assembly with written notice to the Contractor. These altered rates shall automatically go into effect unless the Contractor notifies the City in writing within fourteen (14) days, in which case the contract may then be subject to re-negotiation or termination.

20. Transportation shall be furnished by City between the child's/youth's residence and Contractor's facility for the initial placement and return after the treatment plan is completed. (Emergency Placement is an exception and contractor will be responsible for transportation). During placement the Contractor shall provide or pay for reasonable fees associated with transportation as defined in **Attachment 1.**

LEGAL STATUS AND AUTHORIZATIONS

21. All children/youth initially entering out-of-home care within the zip codes designated below will be **medically screened** at Denver Human Services Family Crisis Center (FCC). The FCC is located at 2929 West 10th Avenue, Denver Colorado 80204 and the telephone number is 720.944.3748. Children/youth placed outside the zip code range shall also be required to have a medical screening at the FCC when the child/youth has been placed into care for suspected or confirmed abuse or neglect. This may only be waived with written permission from Utilization Management Administrator (UM Administrator) or designated DDHS Representatives.

22. All children/youth **entering any placement** within the zip codes designated below shall utilize Denver Health's Connections for Kids Clinic (CFKC) located in the Gipson Eastside Health Clinic for ordinary (non-emergent) medical care. Exceptions shall only be made when in the best interest of the child/youth (such as the child/youth having an ongoing relationship with a current medical practitioner) and require approval in writing by a UM Administrator.

23. The **Contractor's physical address** in which the child/youth is placed in accordance with their zip code determines the **use of Denver Health's CFKC** for ordinary (non-emergent) medical care. The CFKC at Gipson Eastside Health is located at 501 28th St., Denver, CO 80205. The numbers for appointments are: 720-944-6345, and 303-602-6333, #1, #2.

24. All Contractors with children/youth in placement in out-of-home care, placed by DDHS, shall comply with the following for children/youth placed in their care:

a. Cooperate with DDHS in scheduling medical and dental appointments in a timely manner.

b. Keep scheduled medical and dental appointments, and provide transportation to such appointments.

c. Take the original Medical Passport form to the medical/dental practitioner for each appointment.

d. Have the practitioner document the outcome of the appointment on the **DHS Health Visit Form (Attachment 6)** or otherwise receive written information about the visit on the contractor's letterhead.

e. Send a copy of the DHS Health Visit Form or other documentation as described above to Denver Department of Human Services, 1200 Federal Boulevard, 3rd Floor, Denver, Colorado 80204, ATTN: Medical Passport Office.

f. File the original with the child's/youth's Medical Passport which is kept by the Contractor.

g. Ensure that the child's/youth's Medical Passport form and supporting documentation shall be forwarded to the child's/youth's social case worker when the child/youth leaves the contractor's care.

25. The Contractor will comply with any and all applicable federal, state, or local laws, rules, regulations, or policies that mandate the **medical and dental care** of children/youth in out-of-home placement. The use of the designated medical and dental care clinics decreases the risk of fiscal sanctions to the City and ensures best practice and fiscal responsibility.

26. Failure to comply with the designated medical and dental clinic assignments and failing to meet regular medical and dental care requirements for children/youth in care may prompt a review of the RCCF's contractual agreement with DDHS.

27. For children/youth placed with contractors located in the following **zip codes**, the Contractor shall use **Denver Health's Connections for Kids Clinic** (CFKC):

Zip Code Range	**Zip Codes**
80002-80019	80002, 80006, 80007, 80010, 80011, 80012, 80013, 80014, 80015, 80016, 80017, 80018, 80019
80020-80047	80020, 80021, 80022, 80027, 80030, 80031, 80033, 80035, 80036, 80040, 80041, 80042, 80044, 80045, 80046, 80047
80110-80129	80110, 80111, 80112, 80113, 80120, 80121, 80122, 80123, 80124. 80126, 80127, 80128, 80129
80130-80210	80130, 80150, 80151, 80155, 80160, 80161, 80162, 80163, 80201, 80202, 80203, 80204, 80205, 80206, 80207, 80208, 80209, 80210
80211-80229	80211, 80212, 80214, 80215, 80216, 80217, 80218, 80219, 80220, 80221, 80222. 80223, 80224, 80225, 80226, 80227, 80228, 80229
80230-80250	80230, 80231, 80232, 80233, 80234, 80235, 80236, 80237, 80238, 80239, 80241, 80246, 80247, 80248, 80249, 80250,
80260-80640	80260, 80264, 80265, 80266, ,80290, 80293, 80294, 80295, 80299, 80401, 80402, 80403, 80439, 80465, 80601, 80602, 80614, 80640

Denver County follows the American Academy of Pediatrics Standards of care for children/youth in RCCF placements. The well care schedule for these children/youth is as follows and the form entitled **DHS Health Visit Form (Attachment 6**) shall be used.

Age 3-7 days: nurse visit for weight check needed
Age 2 weeks: physical by M.D. and second PKU test needed

Age 1-6 months: need to be seen monthly
1 month
2 months
3 months
4 months
5 months
6 months

Age 9 months to 2 years: need to be seen every 3 months
9 months
12 months
15 months
18 months
21 months
24 months

Age 2 years to 21 years: need to be seen every 6 months unless otherwise indicated by pediatrician.

REASONS FOR REFERRAL, TREATMENT PLAN, AND PROGRESS REPORTS

28. City and Contractor agree and understand that the reasons for referral, which necessitate purchasing services for children/youth, are specified in each child-specific authorization, **Out-of-Home Placement Authorization and Terms (OOHPA) form and Family Services Plan (FSP)** (**Attachments 2 and 5**) which will be enclosed in the Referral Packet that accompanies each child/youth. In addition, the Caseworker will involve Contractor in planning for the child/youth and give the Contractor a copy of the **Family Services Plan** at the time of placement or as soon as completed and when updated or revised. Any other relevant information concerning these children/youth that does not necessitate purchasing services is also included in the OOHPA.

29. If state rules have **more stringent requirements** than those contained herein, the state rules shall apply.

30. City and Contractor shall develop an **initial plan** that addresses the immediate and/or emergency needs of the child/youth within 72 hours of admission for children/youth in RCCFs except PRTFs. City and Contractor shall formulate an initial individual plan of care within 14 calendar days after admission for children/youth in RCCFs except PRTFs. The placement date is that date noted in the attached child-specific **Out-of-Home Placement Authorization, (OOHPA)** (**Attachment 2**), with this contract. The child's **Family Services Plan** (**Attachment 5**) may be utilized as an Individual Plan of Care for this purpose for facilities. Modifications to this plan shall be agreed to in writing on the plan or as a supplemental document.

31. City and Contractor shall formulate an **initial individual plan of care** for children/youth in PRTFs within 72 hours. For children/youth in PRTFs, a comprehensive individual plan of care must be completed by the multidisciplinary team within 14 calendar days from the placement date. The placement date will be the date noted in **Out-of-Home Placement Authorization and Terms, Attachment 2**. Modifications to **Attachment 2** shall be agreed to in writing on the plan or as a supplemental document.

32. The **individual plan of care** shall be goal oriented and time limited and shall:

a. Address all areas listed in Colorado Dept. of Human Services Rules and Regulations, Volume 7, Section 7.714.4, C, 2, (12 CCR 2509-8) together with clinical and other needs including anticipated psychological/behavioral changes and dates for accomplishing those changes as well as the child's/youth's presenting problems, physical health, emotional status, behavior, support system in the community, available resources, and discharge plan.

b. Include specific goals and measurable objectives, expected dates of achievement, specific discharge and transitional/after-care and follow up services criteria to be met for termination of treatment and involvement of the child's/youth's family or significant other persons in the treatment of the child/youth;

c. Specify the type, frequency, and duration of clinical therapy services, rehabilitation services, medication management, emergency services, initial assessment, documented treatment modifications, and other services determined to be necessary to meet the child's/youth's specific goals.

d. Specify that all RCCF and PRTF services are necessary to meet the needs of the child/youth and to treat the child's/youth's current diagnosis. Note: If a service is billed to Medicaid and rejected for payment initially or at a subsequent point in the future such as after an audit, the Contractor shall not seek reimbursement for the services from DDHS.

e. Identify the provision of, or the referral for, services other than RCCF services and shall document any court ordered treatment including identifying the entity responsible for providing the court ordered treatment.

f. Anticipate living arrangement for the child/youth at the date of discharge;

g. Anticipate educational arrangement for the child/youth at the time of discharge; which will include:

    i. IEPs (Individualized Educational Plans), for special education students.

    ii. Clock hours/transcripts for high school students.

    iii. Report cards/grades for elementary and middle school students.

    iv. And if available, academic information related to a student's current functioning (evaluations, testing, and screenings).

h. Anticipate date for discharge from treatment purchased for the child/youth.

i. Establish a permanency goal for the child/youth.

33. Monthly, RCCFs and other contractor types other than PRTF, shall conduct a review of each plan to evaluate whether the short-term and long-term goals have been achieved or not achieved. At no longer than three-month intervals after placement has commenced with the contractor, Contractor shall provide the City with written reports which address changes to the child's/youth's physical condition, psychological and social functioning, changes in the child's/youth's family situation, educational progress, significant incidents or disciplinary actions, and progress made to achieve goals specified in the treatment plan. The contractor shall provide a report for the aforementioned information at least seven days prior to discharge for planned discharges and within seven days of placement termination for non-planned discharges. Further, the Contractor agrees to sequence reports to be received by the City 15 calendar days prior to judicial or administrative hearings or reviews when provided with 30 calendar days advance notice of such dates by City.

ADDITIONAL REQUIREMENTS

34. The Contractor shall:

a. Accept **emergency placements** as mutually negotiated by DDHS staff and the Contractor. Contractor shall adhere to emergency protocol regarding case communication and follow-up. Emergency placement indicates that due to circumstances beyond the DDHS's control a child/youth needs placement, yet pre-placement admission requirements have not been completed. The acceptance of a child/youth in such an emergency status shall only be done if it is a part of the admission policy and procedures of the facility per State Department 7.709.27 Special Rules for Emergency Placement and Care of Children [Rev. eff. 11/1/08].

b. **Not assign** the obligations under this Agreement nor enter into any sub-contract without the express written approval of the Executive Director of DDHS or his/her appointed designee. Any attempt by the Contractor to assign its rights or obligations or subcontract performance obligations without the City's prior written consent will be void and, at the Executive Director's option, automatically terminate the Agreement. The Executive Director has sole and absolute discretion whether to consent to any assignment of rights or obligations and subcontracting of performance obligations under the Agreement. In the event of any subcontracting or assignment: (i) the Contractor shall remain responsible to the City; and (ii) it shall not create a contractual relationship between the City and sub-consultant or subcontractor or assignee.

c. Provide **insurance** as follows:

i. **General Conditions**: Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies are canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in 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. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Contractor. 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.

ii. **Proof of Insurance**: Contractor shall provide a copy of this Agreement to its insurance agent or broker. Contractor may not commence services or work relating to the Agreement prior to placement of coverages required under the Agreement. Contractor certifies that the **certificate of insurance** attached as **Attachment 12**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

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

iv. **Waiver of Subrogation**: For all coverages required under this Agreement, Contractor's insurer shall waive subrogation rights against the City.

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

Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

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

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

viii. **Business Automobile Liability**: 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.

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

x. **Additional Provisions**:

(1) For Commercial General Liability, the policy must provide the following:

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

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, or separation of insureds provision (no insured vs. insured exclusion);

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

(e) No exclusion for sexual abuse, molestation or sexual misconduct.

(2) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

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

d. Provide **defense and indemnification** as follows:

i. Contractor hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

iii. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses

incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

e. Maintain service program **records**, fiscal records, documentation and other records, which will sufficiently and properly reflect all direct and indirect costs of any nature incurred in the performance of this Agreement. The above shall be subject at all reasonable times to inspection, review or audit by Federal, Colorado Department of Human Services, Colorado Department of Health Care Policy & Financing, or City personnel, and other persons authorized in writing by the Executive Director of the Colorado Department of Human Services.

f. Where applicable under state regulations, create and maintain a **personnel file** for each House Parent or personnel. The file shall include identifying information, references, statement from physician or qualified nurse practitioner, name and telephone number of person to contact in emergency, and verification of education and experience. The personnel file for the primary caregiver shall include a statement from a psychiatrist, a certified psychologist or a Licensed Social Worker II. The personnel records shall be maintained pursuant to the personnel policy and procedures. If personnel records are at the Contractor's office, there shall be maintained at the facility the address, local phone number and name, address, and phone number of persons to call in an emergency to access personnel files. Colorado Dept. of Human Services Rules and Regulations, Volume 7, Section 7.709.26 Required Records.

g. As applicable, require **compliance** with all State rules and regulations and incorporate the same into any policy manual authored by the Contractor.

h. **Provide** at no additional cost to the County, the initial home study, the SAFE study update, annual certification updates and related materials when requested by the City for the purpose of adoption within two weeks of receipt of the request.

i. **Bill the City** for services rendered, using the Trails System Report Provider Roster, attached herein and incorporated as **Attachment 7**. This form is to be mailed and postmarked to DDHS no sooner than the first day of the month

following the time of care and mailed and postmarked no later than the fifth day of the month following the time of care.

j. **Billings** for PRTFs shall be made to the MMIS (Medicaid Management Information System) only. Billings for RCCF and CHRP shall be made to either the MMIS System or the City. Billings for RCCFs and other contractor types shall be made to the City only. Contractor will not be paid when billing is not received by the City within 90 calendar days of out-of-home services being rendered.

k. Contractors submitting billings through the MMIS shall be solely responsible for ensuring **compliance** with Medicaid and Colorado Department of Health Care Policy and Financing laws, rules, and regulations in relation to their Medicaid billings.

l. **Pay** the foster parent the amount identified by the County as the child maintenance or room and board. **Attend and participate** in Administrative Reviews for children/youth in placement with the Contractor p**ursuant to two (2) wee**ks written notice by the City. The Contractor shall encourage children/youth over the age of twelve to attend their Administrative Reviews. Participation may be in person or by teleconference.

m. **Obtain** the City's written permission prior to changing the child's/youth's placement from one RCCF facility to another. RCCFs and Group Homes and Centers are responsible for notifying a DDHS Utilization Management representative when they are giving notice that a child/youth needs to be moved from one of their facilities/homes. Whenever possible, a 30-day notice is requested and the 30 days begin when the notification is received by UM.

n. **Develop guidelines** for monthly child maintenance expenditures and insure that said funds are expended for the maintenance of the child/youth. Expenditures shall include but may not be limited to food, shelter, clothing, school supplies, recreation and other leisure time equipment, toiletries, and allowance. A copy of these guidelines shall be provided to the City.

o. **Monitor** child maintenance expenditures on an exception basis when the City, child/youth, or oth**ers express concer**ns that child maintenance funds are not being used to adequately support the child/youth.

p. **Complete an inventory** of clothing and other possessions at a child's/youth's entry into and exit from an RCCF placement and ensure that, a comparable amount of clothes and other possessions leaves with the child/youth upon discharge.

q. **Attend and participate** (through Contractor's case manager or other designated representative) in Value of Individual & Community Engagement Services (VOICES) meetings as requested regarding placement decisions, administration, changes and discharge.

r. **Comply with all requirements** of DDHS Child Welfare Division's policies.

35. No Employment of Illegal Aliens to Perform Work Under the Agreement:

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

b. The Contractor certifies that:

i. At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

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

c. The Contractor also agrees and represents that:

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

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

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

iv. It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Contractor to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

v. If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

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

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

36. Living Wage: This provision applies to any Contractor that employs any person as a child care worker at any public building owned by the City.

a. Pursuant to § 20-80, D.R.M.C., the Contractor shall pay every Covered Worker, as defined in § 20-80(a) D.R.M.C., employed by the Contractor directly upon the site of the work under this Agreement, the full amounts accrued at the time of payment, computed at wage rates not less than that specified in § 20-80(c), D.R.M.C., regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such workers. The Contractor shall post in a prominent place which is easily accessible to the Covered Workers that scale of wages to be paid to such workers.

b. The Contractor shall furnish to the City Auditor or authorized representative, upon the Auditor's request, a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Contractor or any subcontractor. All such payroll records shall include information showing the number of hours worked by each Covered Workers, the hourly pay of such worker, any deductions made from pay, and the net amount of pay received by such Covered Worker. The payroll record shall be accompanied by a sworn statement of the Contractor that the copy is a true and correct copy of the payroll records of all Covered Workers working under this Agreement, either for the Contractor or a subcontractor, that payments were made to the Covered Workers as set forth in such records, that no deductions were made other than those set forth in such records, and that all Covered Workers employed on work under this Agreement, whether by the Contractor or any subcontractor, were paid the living wages as set forth in this Agreement.

c. Increases in living wages pursuant to § 20-80, D.R.M.C., effective after the date of this Agreement shall not be mandatory on either the Contractor or the subcontractors if the term of this Agreement is less than one year. Increases in the living wages pursuant to § 20-80, D.R.M.C., shall be mandatory for the Contractor and the Contractor's subcontractors if the term of this Agreement is longer than one year, effective on the anniversary date of this Agreement. In no event shall any increases in living wages over the amount stated in this Agreement result in any increased liability on the part of the City, and the possibility and risk of any such increase is assumed by the Contractor. Decreases in living wages after the date of this Agreement shall not be permitted.

d. If any worker to whom the living wages are to be paid, employed by the Contractor or any subcontractor to perform work hereunder, has been or is being paid a rate of wages less than that required by this section, the Executive Director may, at the Executive Director's option, by written notice to the Contractor, withhold further payment to the Contractor or suspend or terminate the Contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages. In the event of termination, the Contractor shall be liable to the City for any excess costs occasioned to the City thereby.

OTHER PROVISIONS

37. The Parties to this Agreement intend that the relationship between them, contemplated by this Agreement is that of **independent contractor**. No agent, employee, or servant of Contractor shall be deemed to be an employee, agent, or servant of the City. Contractor will be solely and entirely responsible for its acts and those of its agents, employees, servants and subcontractors during the performance of this Agreement.

38. Contractor will be paid in accordance with the **Absence from Placement Payment Guidelines and Out-of-Home Placement Payment Policy & Procedures, Attachments 3 and 4, respectively.**

39. Cost Principles and Other Requirements. Contractor shall comply with cost principles and other requirements set forth in State Department rules in Staff Manual Volume VII, section 7.710.22 and any federal requirements, including OMB Circulars, if applicable.

40. Examination Of Records: The Contractor agrees that any duly authorized representative of the City (including the City Auditor's Office) shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, schedules, papers, charts, computer products, software and records of the Contractor, including all cost accounting records, involving matters or transactions in any way, directly or indirectly, related to this Agreement.

41. No Discrimination In Employment: In connection with the performance of work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

42. 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 protections provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq*.

43. 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, including to land, facilities, improvements, or equipment.

44. Notices: Notices must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid. Notices hand delivered or sent by overnight courier are effective upon delivery; notices sent by certified mail are effective upon receipt; and notices sent by mail are effective upon deposit with the US Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered; however, these substitutions will not become effective until actual receipt of written notification.

45. Conflict Of Interest:

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

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

46. Governing Law, Venue: The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted or promulgated pursuant to the Charter and Code. The Charter, Revised Municipal Code and Executive Orders of the City and County of Denver are expressly incorporated into the Agreement. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado Second Judicial District.

47. No Third Party Beneficiary: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor, and nothing contained in this Agreement

shall give or allow any such claim or right of action by any other or third person on such Agreements, including but not limited to subcontractors, subcontractors and suppliers. It is the express intention of the City and the Contractor that any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

48. Compliance With Applicable Laws: By its signature below, the Contractor assures and certifies that it will comply with all applicable Federal, State and City laws, ordinances, codes, regulations, rules, executive orders, and policies whether or not specifically referenced herein. Any references to specific state or federal requirements incorporated into this Agreement are not intended to constitute an exhaustive list of Federal, State, and City requirements applicable to this Agreement. Applicable statutes, regulations and other documents pertaining to administration or enforcement of the services referenced in this Agreement and all other applicable provisions of federal, state or local law are deemed to be incorporated herein by reference. Compliance with all such statutes, regulations and other documents is the responsibility of the Contractor. In particular, and not by way of limitation, the services shall be performed in full compliance with following federal requirements:

a. **Grievance Policy:** If required by applicable law, the Parties desire to ensure that clients are being adequately informed over pending actions concerning their continued participation in the program or activity provided by the Contractor. Also, clients must be allowed adequate opportunity to communicate dissatisfaction with the facilities or services offered by the Contractor. In order to satisfy this requirement, the Contractor agrees to provide a written "Grievance Policy" as a mechanism to provide opportunities for grantees and clients to meaningfully communicate problems, dissatisfaction, and concerns and to establish procedures for resolution of grievances. The policy must be communicated to clients upon their initial receipt of services. The Contractor agrees that a formal "Grievance Policy" will be adopted by its governing body and upon request made available to the Executive Director.

b. **Political Activity:** Without limiting the foregoing, the Contractor agrees that political activities are prohibited under this Agreement, and agrees that no funds paid to it by the City hereunder will be used to provide transportation for any persons to polling places or to provide any other services in connection with elections.

c. **Debarment:** If required by applicable federal law, the Contractor is subject to the prohibitions on contracting with a debarred organization set out in U.S. Executive Order 12549, Debarment and Suspension implemented at 45 C.F.R. Part 76. By its signature below, the Contractor assures and certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. The Contractor shall provide immediate written notice to the Executive Director if at any time it learns that its certification to enter into this Agreement was erroneous when submitted or has become erroneous by reason of

changed circumstances. If the Contractor is unable to certify to any of the statements in the certification contained in this subsection, the Contractor shall provide a written explanation to the City within thirty (30) calendar days of the date of execution of this Agreement. Furthermore, if the Contractor is unable to certify to any of the statements in the certification contained in this subsection, the City may pursue any and all available remedies available to the City, including but not limited to terminating this Agreement immediately, upon written notice to the Contractor. The Contractor shall include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction" as such clause is set forth at 45 C.F.R. Part 76, in all covered transactions associated with this Agreement. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Order 12549 and its implementing regulations. The Contractor is responsible for determining the method and frequency of its determination of compliance with Executive Orders 12549 and 12689 and its implementing regulations.

d. **No Discrimination in Program Participation:** In accordance with 42 U.S.C. §9918(c), "Nondiscrimination provisions," no person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Agreement. Any prohibition against discrimination on the basis of age under applicable laws or with respect to an otherwise qualified individual with a disability as provided in §504 of the Rehabilitation Act of 1973 (29 USC §794) or Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et. seq.*), shall also apply to such program or activity. Violations shall be subject to the penalties set forth in subsections (b) and (c) of 42 U.S.C. §9906, and the Contractor agrees to indemnify and hold the City harmless from any claims or demands which may arise under this Article.

49. Use Possession or Sale of Alcohol or Drugs: The Contractor, its officers, agents and employees shall cooperate and comply with the provisions of Executive Order 94 and 94A thereto 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 the City barring the Contractor's personnel from City facilities or participating in City operations.

50. Proprietary Data or Confidential Information; Open Records:

a. **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 confidential information may be damaging to the City or third parties. The Contractor agrees that all Proprietary Data or confidential 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 confidential 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.

b. **Use of Proprietary Data or Confidential Information:** 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 the Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing this Proprietary Data of 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 Proprietary Data or confidential information without written authorization from the Director.

c. 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 Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (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.

51. Employees and Subcontractors: 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.

52. Disclaimer: Notwithstanding any other provision of this Agreement, any Proprietary Data and confidential information provided by the City under this Agreement is provided to the Contractor 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.

53. Contractor's Information: The parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of its documents which it marked as proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

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

55. 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 D.R.M.C.

56. 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 thereof 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.

57. 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 the Agreement or any provisions thereof were prepared by a particular party.

58. 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.

59. 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 its advertising or public relations materials without first obtaining the written approval of the Executive Director. Any oral presentation or written materials related to services performed under the Agreement will be limited to services that have been accepted by the City. The Contractor shall notify the Executive Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to officials of the City, including the Mayor, the Executive Director, City Council or the Auditor.

60. City Execution of Agreement: The Agreement will not be effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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

BUSINESS ASSOCIATE TERMS - HIPAA/HITECH

1. GENERAL PROVISIONS AND RECITALS

1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.

1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which

may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.

1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.

1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

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

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

a. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule;
b. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule; and
c. a disclosure of PHI where CONTRACTOR or CITY has a good

faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
b. The unauthorized person who used the PHI or to whom the disclosure was made;
c. Whether the PHI was actually acquired or viewed; and
d. The extent to which the risk to the PHI has been mitigated.

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

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

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.l03 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

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

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with

the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.

5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.l The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.

5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the

Breach to CITY.

5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.

5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

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

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

6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

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

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

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible.

Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 These obligations shall survive the termination of the Agreement.