

**Sample Contract**

**2022 Request for Proposals (20221013)**

**Workforce Center operations and activities pursuant to the Workforce Innovation and Opportunity Act (WIOA) of 2014**

**1. One-Stop Operator and WIOA Service Provider, adult training services, comprehensive career, business and training services to adults, dislocated workers and Out-of-School Youth under WIOA;**

**AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and \_\_\_\_\_, a non-profit corporation, [Note: Please delete if the second party is not a non-profit. Delete note from final draft.] with an address of \_\_\_\_\_, **Denver, CO** \_\_\_\_\_ (the "Contractor"), collectively "the parties".

**RECITALS**

**A.** On July 22, 2014, the United States Congress enacted the Workforce Innovation and Opportunity Act of 2014 ("WIOA") to provide, among other things, workforce investment activities through statewide and local workforce development systems, increase employment, retention, and earnings of participants, and increase attainment of occupational skills by participants. Through such activities, WIOA seeks to improve the quality of the workforce, reduce welfare dependence, increase economic self-sufficiency, meet the skill requirements of employers, and enhance the productivity and competitiveness of the productivity and competitiveness of the Nation.

**B.** The City and County of Denver has been designated by the Governor of the State of Colorado as a local workforce investment area in order to receive and allocate WIOA funding and to otherwise coordinate WIOA activities. In addition, a local workforce development board has been established to carry out any WIOA specified functions.

**C.** The City has been or will be designated by the State of Colorado as a sub-recipient of WIOA funds for the Denver local area pursuant to an agreement with the State of Colorado Department of Labor and Employment in order to implement and coordinate WIOA activities with the City's Local Board in accordance with WIOA.

**D.** WIOA requires, among other things, certain partnering and collaboration activities to align WIOA with other federally funded workforce programs including without limitation certain elements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") related to the Temporary Assistance for Needy Families program ("TANF") (PRWORA/TANF-CFDA# 93.558).

**E.** In 2020, the City, through a competitive process, designated the Contractor as the One Stop Operator to implement a comprehensive one-stop system for workforce investment activities in the City and County of Denver including providing services at certain City owned or operated facilities.

**F.** The Mayor and the Local Board have determined to extend the Contractor's designation as the One Stop Operator for the term of this Agreement to ensure the continued operation workforce services and related activities in accordance or consistent with WIOA.

**G.** This Agreement, and its Exhibits, sets forth the conditions upon which the One-Stop Delivery System will be implemented in accordance with applicable laws.

The Parties therefore agree as follows:

## **Section 1 Definitions**

**1. DEFINITIONS:** In addition to any other definitions contained elsewhere in this Agreement, the following definitions will apply to this Agreement and to exhibits referenced and attached hereto. Unless the context otherwise clearly indicates, words used in the singular include the plural, the plural includes the singular, and the neuter gender includes the masculine and the feminine.

- 1.1.** "Agency" shall include a successor City agency or office designated to serve as the successor agency, office, or division to DWS.
- 1.2.** "Arie P. Taylor Building" means the Arie P. Taylor Municipal Center located at 4685 Peoria Street, Denver, CO 80239.
- 1.3.** "Castro Building" means the Richard T. Castro Building located on the DHS Federal Property at 1200 Federal Blvd., Denver, CO 80204.
- 1.4.** "City Buildings" means the Arie P. Taylor Building and the Castro Building.
- 1.5.** "City Law" shall include the Denver Charter, Denver Revised Municipal Code, executive orders, rules, regulations, policies and procedures prescribed by the City which govern funds which are or may after become obligated under this Agreement. City Law may include, but is not limited to, City laws set forth in Section 15 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.
- 1.6.** "City's Office Furniture" means new or used office cubicles, desks, chairs, file and storage cabinets, furniture, movable fixtures and other related personal property as set forth in more detail on **Exhibit I**. "City's Office Furniture" excludes computers, laptops, tablets, electronic devices, fax machines, and other related equipment.

- 1.7. “Contractor Personal Property” means every kind of business personal property provided by the Contractor to provide the Services in the Licensed Premises including without limitation furniture and equipment that is moveable without damage to itself or the DHS Premises.
- 1.8. “Denver Properties Leasing Trust 2012C” means the owner and Landlord for the Arie P. Taylor Building.
- 1.9. “Denver Public Facilities Leasing Trust 2005A” means the owner and Landlord for the Castro Building.
- 1.10. “DHS” means the Denver Department of Human Services, a department of Denver.
- 1.11. “DHS Director” means the Executive Director of DHS.
- 1.12. “DHS Director of Facilities” means the DHS Director of Facilities who oversees and manages building management matters for the Castro Building.
- 1.13. “DHS Premises” means the Castro Building.
- 1.14. “DWS” means the Agency’s Division of Workforce Services.
- 1.15. “DWS Director” means the Director of the Division of Workforce Services and includes any person designated by the City to serve as the successor to the DWS Director under a successor agency, office, or division to DWS.
- 1.16. “Director of Real Estate” means the Director of Real Estate for the City who oversees matters related to the grant of the limited license for the Licensed Premises and the provision of City’s Office Furniture.
- 1.17. “Director of Facilities Management” means the Director of Facilities Management of the Department of General Services who oversees and manages building management matters for the Arie P. Taylor Building.
- 1.18. “DPLT 2012C Lease” means the Lease Purchase Agreement No. 2012C dated May 17, 2012 under which the City subleases from Denver Properties Leasing Trust 2012C certain real property and leasehold improvements including the Arie P. Taylor Building. (For cross-reference purposes, the DPLT 2012 Master Lease describes the Arie P. Taylor Building as the “Arie P. Taylor Building and Denver District 5 Police Station”).
- 1.19. “DPFLT 200A Lease” means the Lease Purchase Agreement No. 2005A dated August 9, 2005 under which the City subleases from the Denver Public Facilities Leasing Trust 2005A certain real property and leasehold improvements located in the southeast corner of Federal Boulevard and West Holden Place in Denver, Colorado (the “DHS Federal Property”) including the Castro Building. (For cross-reference purposes, the DPFLT 2005 Master

Lease describes the DHS Federal Property as the “Human Services Center Properties”).

- 1.20. “Federal Funds” means an award or appropriation of monies from the Federal Government for purposes of administering the Program.
- 1.21. “Federal Government” shall include representatives of the agency, department or office of the United States of America which is or may hereafter be empowered to promulgate, review or enforce rules governing the expenditure of Federal Funds which are or may hereafter become obligated under this Agreement.
- 1.22. “Federal Law” shall include any laws of the United States of America which govern funds which are or may after become obligated under this Agreement. Federal Law may include, but is not limited to, federal laws set forth in Section 15 of this Agreement, as well as any and all amendments thereto which may currently or hereafter be in effect.
- 1.23. “Licensed Premises” means the office space located in the DHS Premises and the Arie P. Taylor Building that has been or will be made available to the Contractor to provide the Services during the Term as more particularly described and depicted on **Exhibit G**. Each such space by itself and together with the others is a “Licensed Premises.”
- 1.24. “Local Board” has the meaning given to the term in 29 U.S.C. § 3102 Sec. (33).
- 1.25. “One-Stop Operator” has the meaning given to the term in 29 U.S.C. § 3102 Sec. (41).
- 1.26. “One-Stop Partner” has the meaning given to the term in 29 U.S.C. Sec. § 3102 Sec. (42).
- 1.27. “Program” means any and all authorized activities necessary to establish and implement a One-Stop Delivery System under the Workforce Innovation and Opportunity Act, (“WIOA”), Public Law 113-129 (July 22, 2014), 29 U.S.C. § 3101, *et seq.*, (WIOA Adult CFDA NO. 17.258, WIOA Dislocated Worker CFDA NO. 17.260, WIOA Youth 17.259), which supersedes the Workforce Investment Act 1998, Public Law 105-220, as codified at, 29 U.S.C. § 2801, *et seq.*, (“WIA”) and the “Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996” (the “Act”), Public Law 104-193, as codified at 42 U.S.C. § 601, *et seq.*, (TANF-CFDA No. 93.558), as supplemented by the Colorado Works Program Act of 1997, as amended, C.R.S. §§ 26-2-701, *et seq.*, (“CWPA”). **For purposes of implementing the Program, the Contractor is a Subrecipient.**
- 1.28. “State Government” includes representatives of the agency, department or office of the State of Colorado which is or may hereafter be empowered to promulgate, review or enforce rules governing the Program.

- 1.29. "State Law" includes any laws of the State of Colorado which govern funds which are or may become obligated under this Agreement. State Law includes, but is not limited to, the state laws set forth in Section 15 of this Agreement, as well as amendments thereto which may currently or hereafter be in effect.
- 1.30. "Subcontractor" means an entity that furnishes to the Contractor services, materials, equipment, or supplies (other than standard office supplies or printing services) pursuant to this Agreement and excludes a One-Stop Partner.

## Section 2 Contract Documents

### 2. CONTRACT DOCUMENTS:

- 2.1. **Order of Preference.** This Agreement consists of Sections 1 through 19, which precede the signature pages, and the following exhibits which are incorporated herein and made a part hereof by reference:

- Exhibit A – Scope of Services
- Exhibit B – Budget Summary
- Exhibit C – Financial Administration (Terms and Conditions)
- Exhibit D – General Program (Terms and Conditions)
- Exhibit E – Certificate of Insurance
- Exhibit F – HIPPA/HITECH (Business Associate Terms)
- Exhibit G – Use of City Facilities (Terms and Conditions)
- Exhibit H – Background Check Policy
- Exhibit I – City's Office Furniture
- Exhibit J – Technology and Data (Terms and Conditions)

In the event of any conflicts between the provisions in this Agreement and the exhibits, the language of this Agreement controls. Notwithstanding the foregoing, in the event of any conflicts between the provisions of this Agreement and **Exhibit J**, the language of **Exhibit J** controls. In the event of any conflicts between **Exhibits A** through and including **J**, the order of precedence to determine which document shall control to resolve such conflict, is as follows, in descending order:

- Exhibit C (unless the City specifically notifies the Contractor in writing that a provision of Exhibit C prevails over this Agreement)
- Exhibit D (unless the City specifically notifies the Contractor in writing that a provision of Exhibit D prevails over this Agreement)
- Exhibit A – Scope of Services
- Exhibit B – Budget Summary
- Exhibit E – Certificate of Insurance
- Exhibit F – HIPPA/HITECH (Business Associate Terms)
- Exhibit G – Use of City Facilities (Terms and Conditions)

- Exhibit H – Background Check Policy
- Exhibit I – City’s Office Furniture
- Exhibit J – Technology and Data (Terms and Conditions)

**2.2. Modifications to Exhibits.** The Parties may modify an exhibit attached to this Agreement; provided, however, that no modification to an exhibit shall result in or be binding on the City if any proposed modification(s), individually or collectively, requires an upward adjustment to the Maximum Contract Amount. The Parties shall, in each instance, memorialize in writing any and all modifications to an exhibit by revising and restating that exhibit and referencing this City Contract Control number stated on the signature page below. A proposed modification to an exhibit will be effective only when it has been approved in writing by the Parties, approved as to form by the City Attorney’s office, and uploaded into the City electronic contract system by the Agency for access through the City Clerk. All such modifications shall contain the date upon which the modified exhibit or exhibits shall take effect. Any modification to an exhibit agreed to by the Parties that requires an increase to the Maximum Contract Amount shall be evidenced by a written Amendatory Agreement prepared and executed by the Parties in the same manner as this Agreement.

**Section 3  
Coordination of Services**

**3. COORDINATION AND LIAISON:** The Contractor will serve as the One-Stop Operator for the City and County of Denver during the Term. The Contractor will fully coordinate the Services with the City and the Local Board. The DWS Director, or the DWS Director’s designee, will serve as the liaison for City and Local Board for purposes of administering this Agreement on a day-to-day basis.

**Section 4  
Services**

**4. SERVICES:**

**4.1.** In addition to any and all obligations required by law or stated elsewhere in this Agreement, or on any exhibits, and subject to the terms and conditions of this Agreement and at the direction of the DWS Director, the Contractor shall diligently undertake, perform, and complete all of the services for the Program, achieve all of the performance measures, and produce all the deliverables set forth on **Exhibit A, the Contractor’s Work Statement** (the “Services”), to the City’s satisfaction.

- 4.2. If, at any time during the Term, the City receives additional funds for its One-Stop delivery system and desires to provide such funds to the Contractor, the Parties may supplement the Services by modifying **Exhibits A** and **B**, respectively and in each instance, in accordance with the limitations and procedures in Section 2.2 above; the terms contained in **Exhibit A** describing the nature and scope of such supplemental services; and, the line budget line items contained in **Exhibit B**. No such modification to **Exhibits A** or **B** for supplemental services will result in or be binding upon the City if it requires an increase to the Maximum Contract Amount. Any modification for supplemental services that requires an increase to the Maximum Contract Amount shall be evidenced by a written amendatory Agreement prepared and executed by the Parties in the same manner as this Agreement.
- 4.3. The Contractor is ready, willing, and able to provide the Services.
- 4.4. The Contractor shall faithfully perform the Services in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
- 4.5. Under this Agreement, the Contractor functions as a Sub-awardee.
- 4.6. Contractor is responsible for taking all actions reasonably necessary to ascertain the nature and location of the Services to be performed under this Agreement and to obtain sufficient knowledge of the general conditions that may affect the performance of the Services or the cost thereof. Any failure to take such actions or have such knowledge will not relieve Contractor from its responsibility to successfully performing the Services without additional cost to the City. No oral representation by any officer or employee of the City or the Local Board concerning the nature, location or general conditions relating to the Services at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City.
- 4.7. Contractor shall not establish practices that create disincentives to providing Services to individuals with barriers to employment who may require longer-term Services, such as intensive employment, training, and education services.

## **Section 5 Compensation**

### **5. COMPENSATION AND METHOD OF PAYMENT:**

- 5.1. **Budget:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered, performance measures achieved, and costs incurred under the Agreement in accordance with the budget contained

in **Exhibit B**. The Contractor certifies the budget line items in **Exhibit A** contains reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E.

5.2. **Reimbursable Expenses:** Except as set forth on **Exhibit B**, there are no reimbursable expenses allowed under the Agreement.

5.3. **Invoices:**

- a) Contractor shall provide the City with periodic invoices in a format and with a level of detail acceptable to the City in accordance with **Exhibit B**. Contractor's invoices must identify reasonable allowable direct costs and allocable indirect costs actually incurred in accordance with the budgeted categories and amounts contained in **Exhibit B**. The amounts invoiced by Contractor will be payable upon receipt and acceptance of designated work product as set forth herein and as fully documented by Contractor's periodic invoice. Funds payable by the City hereunder shall be distributed to the Contractor on a reimbursement basis only, for work performed during the prior month. Invoices submitted for services rendered that are submitted after such deadline are considered to be untimely, and must be submitted separately to be considered for payment. Payment for such late-submitted invoices shall be made only upon a showing of good cause for the late submission. Contractor's invoices will set forth the methodology used to determine costs for services invoiced. The City will have the right to dispute, and withhold payment for, any invoice that does not contain a sufficient statement of Contractor's methodology used to determine costs for services invoiced.
- b) Contractor must not allocate costs billed to this Agreement to another Federal award unless the City notifies the Contractor in writing that that the City has shifted costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of an applicable Federal award. 2 C.F.R. § 200.405(c).
- c) Each invoice requesting payment under this Agreement will contain the following certification, signed by an official who is authorized to legally bind the Contractor, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that this invoice is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award for the Program. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."



- d) Budget line items may only be modified by the written approval of the Director or the Director's designee if, in the sole judgment of the Director or the Director's designee, such modification is reasonable and appropriate. However, such budget modifications will not alter the Maximum Contract Amount. Any modification to **Exhibit A** or **Exhibit B** shall not take effect until approved in writing. Any modification to **Exhibits A** and/or **B**, respectively, 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.

5.4. **Maximum Contract Amount:**

- a) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed \_\_\_\_\_ and **00/100 Dollars (\$ .00)** (the "Maximum Contract Amount"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in **Exhibit A**. Any services performed beyond those in **Exhibit A** are performed at Contractor's risk and without authorization under the Agreement.
- b) The City's payment obligation, whether direct or contingent, extends only to Federal Funds received and budgeted for the Program, appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The City does not by the Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. The Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

- 5.5. **Recovery of Incorrect Payments:** The City has the right to recover from the Contractor any and all incorrect payments issued to the Contractor due to any omission, error, fraud, and/or defalcation including but not limited to applying a deduction from subsequent payments under this Agreement or other means of recovery by the City as a debt due to the City or otherwise as provided by law. If, as a result of any audit or Program review relating to the performance of the Contractor or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Contractor will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes shall be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible official conducting the audit or review. The foregoing in no way limits Contractor's obligation to reimburse the City for any costs or expenses paid under this

Agreement that have been determined to be unallowable or disallowed by the Federal Government, State Government, or the City in accordance with applicable Federal Laws, State Laws, or the Charter, ordinances, rules, regulations, policies, and Executive Orders of the City and County of Denver.

- 5.6. **Additional Program Conditions:** If additional conditions are lawfully imposed on the Program and the City by the federal, state, or local law, executive order, rules and regulations, or other written policy instrument, the Contractor will comply with all such additional conditions. If the Contractor is unable or unwilling to accept any such additional conditions concerning the administration of the Program, the City may withhold payment to the Contractor of any unearned funds. If the City withholds payment for this reason, the City shall advise the Contractor and specify the actions that must be taken as a condition precedent to the resumption of payments.
- 5.7. **Return of Unexpended Funds:** In the event the City determines that the Contractor possesses an unexpended balance of funds from any advance payments made to the Contractor, then all such unexpended advanced funds will be returned to the City within ten (10) days written notice to the Contractor. The City's acceptance of any such amounts shall not constitute a waiver of any claim that the City may otherwise have arising out of this Agreement.
- 5.8. **Federal Funds Contingency:** All payments under this Agreement, whether in whole or in part, are subject to and contingent upon the continuing availability of Federal Funds for the purposes of the Program. In the event that Federal Funds, or any part thereof, are not awarded to the City or are reduced or eliminated by the Federal Government or the State of Colorado, the City may reduce the total amount of compensation to be paid to the Contractor by revising **Exhibits A** and/or **B**, in accordance with Section 2.2 above, or it may terminate this Agreement.
- 5.9. **No Duplication of Funds for Same Services:** The monies provided for and received under this Agreement are the only and sole funds received by the Contractor from or through the City and County of Denver for payment of the Services provided under this Agreement. In the event the Contractor shall receive any other monies from or through the City or any other party in order to provide the Services, then the compensation received hereunder may be reduced by such amount or amounts at the sole option of the City. The Contractor shall report promptly, in writing to the DWS Director, all amounts received upon receipt.

## **Section 6 Term**

6. **TERM:** The Agreement will commence on \_\_\_\_\_, **2023**, (the "Commencement Date") and will expire on \_\_\_\_\_, **20**\_\_\_\_ (the "Expiration Date") (together, the "Term"). Subject to the DWS Director's prior written authorization, the Contractor

shall complete any work in progress as of the Expiration Date and the Term will extend until the work is satisfactorily completed or earlier terminated by the DWS Director.

## **Section 7 Center Locations/Licensed Premises**

### **7. CENTER LOCATIONS; LICENSE AND ACCEPTANCE OF PREMISES:**

- 7.1. The Local Board has determined the Licensed Premises will serve as the comprehensive center locations for the Services.
- 7.2. Subject to any required consent of or by the City, including, without limitation, its outside legal bond counsel, and subject to the terms and conditions of this Agreement and **Exhibit G**, the City grants to the Contractor a limited license and privilege to use the Licensed Premises during the Term. Any other consent, approval, construction, determination or agreement which may be required with respect to such limited license shall be made for the City by the DWS Director, unless another City official, including without limitation, the Director of Real Estate, the Director of Facilities Management, and the DHS Director of Facilities, is specifically given such authority by the Denver Charter, Revised Municipal Code, an Executive Order of the City and County of Denver, or otherwise by written designation of the Mayor for a particular provision of this Agreement and its Exhibits.
- 7.3. The license privileges under this Agreement are specific to Contractor and may not be transferred or assigned in any manner without the prior written approval of the City.
- 7.4. Contractor will not take any action or fail to take any action that cause the City breach or be in default under the DPFLT 2005A Lease or the DPLTC 2012C Lease. Contractor by its signature below acknowledges receipt of a copy of the DPFLT 2005A Lease and the DPLT 2012C Lease from the DWS Director. The Denver Properties Leasing Trust 2012C requires that the use of the Arie P. Taylor Building remain used as office space for providing government related services and that a copy of this limited License be provided to the 2012C Trustee. The Denver Public Facilities Leasing Trust 2005A requires approval of Special Counsel and requires a copy of this limited License be provided to the 2005A Trustee.
- 7.5. Contractor accepts the Licensed Premises in an "AS IS"/"WHERE IS" condition, with all faults and defects. The City does not make, and hereby expressly disclaims, any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the

condition of or any other matter or circumstance affecting the Licensed Premises.

- 7.6. The Licensed Premises shall, upon the Commencement Date, be vacant except for the City's Office Furniture.

### **Section 8 One-Stop Partners**

8. **ACCESS TO SERVICES; CO-LOCATION:** To the extent required or permitted by WIOA, the Contractor may, upon prior written approval of the DWS Director in each case, authorize a One-Stop Partner, who has executed an agreement (also referred to in WIOA as a "Memorandum of Understanding", 29 U.S.C. §§ 3151(b) & (c)) with the City and the Local Board, to co-locate or otherwise provide access to the programs and activities carried out by the One-Stop Partner in the Licensed Premises. Contractor will monitor the activities of each such One-Stop Partner concerning the use of the Licensed Premises to ensure the One-Stop Partner fully complies with applicable terms and conditions of **Exhibit H** or any other requirements concerning the use of the Licenses Premises as specified in writing by the DWS Director.

### **Section 9 Opportunities for Employment with Contractor**

9. **EMPLOYMENT WITH FUNDS:** In connection with the performance of work under this Agreement, the Contractor shall submit pertinent job availability information on each job or position created with the use of the funds provided hereunder to the City's Office of Denver Economic Development & Opportunity in the workforce job system, [www.connectingcolorado.com](http://www.connectingcolorado.com) or other system as may be required. In addition, the Contractor has agreed to consider Agency employees who have applied for employment with Contractor for jobs or positions created with the use of the funds provided hereunder.

### **Section 10 Background Checks**

10. **REQUIRED BACKGROUND CHECKS:** Contractor acknowledges that as the designated One Stop Operator it, and its officers and employees, are in a position of public trust in the performance of this Agreement and must operate in a manner that maintains the highest standards of honesty, integrity and public confidence.
  - 10.1. **Hiring and Employment Decisions; Volunteers:** In order to prevent unknowingly employing someone or retaining a volunteer who may present a high risk for impropriety, misconduct, malfeasance, or criminal conduct, the Contractor, its officers, employees, and Subcontractors, will complete comprehensive criminal background checks on all people working or

volunteering for the Contractor in accordance with all applicable laws, rules, regulations, grant awards, funding agreements, manuals, policies, procedures, informational memoranda, Program guidance, instructions, directives, or other written documentation issued by the Federal Government, State Government, or the City and provided to the Contractor. The background check policy enacted by the Contractor in accordance with herein is attached hereto and incorporated herein as **Exhibit H**; such policy, and any revisions thereto, shall, respectively, be reviewed and approved by the Agency, in the sole discretion of the Agency, prior to the execution of this Agreement and prior to enacting any proposed revisions to said policy after execution of this Agreement. Additional types of background checks may be required and/or permitted depending on the type of position and nature of the duties performed. These additional background checks may include: Employment History Verifications, Drug Testing, Education /Degree Verification, Motor Vehicle Record (MVR), Commercial Driver's License (CDL), Professional License and Certification, Finger Printing, Child Abuse/Neglect Registry, Medicare/Medicaid Fraud Database, Polygraph Examination (DOS), Credit History, and NCIC or CCID Clearance.

## **Section 11 Enforcement/Termination**

**11. ENFORCEMENT REMEDIES/TERMINATION OF AGREEMENT:** The City has the following rights of enforcement and termination:

**11.1. Enforcement Remedies:** If the Contractor materially fails to comply with the terms of this Agreement; the terms of any other agreement between the City and the Contractor; or any Federal Law, State Law or City Law in performing under this Agreement, and fails to cure any such noncompliance within ten (10) days (or such longer period as the City may allow in its own discretion) after receipt from the City of a notice specifying the noncompliance, or if Contractor experiences financial difficulties as evidenced by its admitting in writing its inability to pay debts generally as they become due; making an assignment of all or a substantial part of its property for the benefit of its creditors; an order from a court of competent jurisdiction that Contractor is bankrupt or should have a general assignment for the benefit of its creditors; by its seeking or consenting to or acquiescing in the appointment of a receiving or trustee for all or a substantial part of its property or of its interest in this Agreement or if a receiver should be otherwise appointed by order of the Court on account of Contractor's insolvency which order has not been vacated, set aside or stayed within thirty (30) days from the date of entry appointing a receiver or trustee for all or a substantial part of its property the City may take one or more of the following enforcement actions:

- a) Withhold any or all payments to the Contractor, in whole or in part, until the necessary Services, deliverables, or corrections in performance are satisfactorily completed during the authorized period to cure default;

- b) Deny any and all requests for payment and/or demand reimbursement from Contractor of any and all payments previously made to Contractor for those Services or deliverables that have not been satisfactorily performed and which, due to circumstances caused by or within the control of the Contractor, cannot be performed or if performed would be of no value to the Program. Denial of requests for payment and demands for reimbursement shall be reasonably related to the amount of work or deliverables lost to the City;
- c) Disallow or deny all or part of the cost of the activity or action not in compliance;
- d) Suspend or terminate this Agreement, or any portion or portions thereof, effective immediately or (or such longer period as the City may allow in its own discretion) upon written notice to Contractor;
- e) Deny in whole or in part any application or proposal from Contractor for funding of the Program for a subsequent program year regardless of source of funds;
- f) Reduce any application or proposal from Contractor for refunding for the Program for a subsequent program year by any percentage or amount that is less than the total amount of compensation provided in this Agreement regardless of source of funds;
- g) Refuse to award Contractor, in whole or in part, any and all additional funds for expanded or additional services under the Program;
- h) Deny or modify any future awards, grants, or contracts of any nature by the City regardless of funding source for Contractor; or
- i) Modify, suspend, remove, or terminate the Services, in whole or in part. If the Services, or any portion thereof, are modified, suspended, removed, or terminated, the Contractor shall cooperate with the City in the transfer of the Services as reasonably designated by the City; or
- j) Take other remedies that may be legally available.

**11.2. Termination due to Changes in Program – PROWRA:** If the Colorado Works Program Memorandum of Understanding executed by the City and the State of Colorado or any subsequent such Memorandum of Understanding is terminated for any reason, the total amount of compensation to be paid to the Contractor under this Agreement shall be reduced effective as of the date of termination of such Memorandum of Understanding and the Parties will revise **Exhibits A and B**, in accordance with Section 2.2 above accordingly.

- 11.3. Termination due to Criminal Offenses:** The City may terminate the Agreement if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with Contractor's business. Termination for the reasons stated in this paragraph is effective upon receipt of notice.
- 11.4. Termination for Convenience:** The City has the right to terminate the Agreement without cause upon twenty (20) days prior written notice to the Contractor. However, nothing in this Section shall be construed as giving the Contractor the right to perform Services under this Agreement beyond the time when such Services become unsatisfactory to the DWS Director.
- 11.5. Termination for Delinquent Loans, Contract Obligations, and Taxes:** Further, the City may also suspend or terminate this Contract, in whole or in part, if Contractor becomes delinquent on any obligation to the City inclusive of any loan, contractual, and tax obligation as due, or with any rule, regulations, or provisions referred to herein; and the City may declare the Contractor ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Contractor is non-compliant with any applicable rules, laws, regulations, or Contract terms, the City may withhold up to one hundred (100) percent of said Contract funds until such time as the Contractor is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.
- 11.6. Termination due to Impossibility:** Notwithstanding anything contained herein to the contrary, the City and the Contractor may terminate this Agreement upon a joint determination of the impossibility of the Contractor to perform its obligations hereunder in conformance with any continuing and effective public health orders issued by the State of Colorado or the City (collectively and as may be adopted, amended, revised, or supplemented, "Public Health Orders"). Notwithstanding the foregoing, such right of termination shall only be exercised after the Contractor has, to the reasonable satisfaction of the City, exhausted all other alternative methods of performance to comply with such Public Health Orders while performing all obligations hereunder. Such alternative methods of performance shall include, without limitation: 1) temporarily suspending performance of applicable portions or all of the Services with no monetary penalties imposed by the City due to such suspension; 2) engaging in approved social distancing requirements as described in the Public Health Orders; and/or 3) performing all or a portion of the Services remotely or electronically where feasible. All determinations of impossibility shall be reasonably determined jointly by the City and the Contractor upon consultation in good faith and, if so determined, shall also specify an effective date of termination of this Agreement to occur no later than twenty (20) days from the date of such determination.

Nothing contained herein shall be construed as prohibiting or limiting the right of the City to otherwise terminate this Agreement in conformance with the terms and conditions of this Agreement. If this Agreement is terminated in accordance with this clause, the City shall be liable only for payment under the provisions of this Agreement for Services satisfactorily rendered by the Contractor before the effective date of termination.

- 11.7. **Termination by Contractor:** Contractor may terminate this Agreement, upon written notice to the DWS Director if the City materially breaches this Agreement and fails to cure such breach within ninety (90) days (or within such longer period as agreed upon by the Parties in writing) following receipt of written notice thereof from the Contractor.
- 11.8. **Payment upon Termination:** Upon termination of the Agreement, upon any ground, the Contractor shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation that has not been disallowed by the City for work duly requested and satisfactorily performed or Services satisfactorily provided as described in the Agreement.
- 11.9. **Return of Materials and Equipment:** If the Agreement is terminated, the City is entitled to and will take possession of all materials, equipment, tools and facilities it owns that are in the Contractor's possession, custody, or control by whatever method the City deems expedient. The Contractor shall deliver all documents in any form that were prepared under the Agreement and all other items, materials and documents that have been paid for by the City to the City. These documents and materials are the property of the City. The Contractor shall mark all copies of work product that are incomplete at the time of termination "DRAFT-INCOMPLETE."

## **Section 12**

### **Examination of Records/Audits**

#### **12. EXAMINATION OF RECORDS:**

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



States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with Denver Revised Municipal Code Section 20-276.

- 12.2. The Contractor acknowledges that it is subject to any and all applicable regulations or guidance of the United States Office of Management and Budget including, but not limited to, all applicable laws, rules, regulations, policy statements, and guidance issued by the Federal Government (including the United States Office of Management and Budget), regarding audit requirements and access to records requirements. Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" and applicable federal regulations.
- 12.3. In addition to the requirements contained in **Exhibit C** concerning Audits, Contractor's auditor will provide an accounting certification that the audit was conducted in accordance with applicable standards set forth in the U.S. Office of Management and Budget ("OMB") circulars. All accounting practices will be in conformance with generally accepted accounting principles (GAAP). Contractor will complete and deliver a copy of its audit report as directed by the DWS Director. Contractor's agreements with Subcontractors will contain a clause stating that the Subcontractor is subject to the Audit Requirements of this Agreement or as may be imposed by applicable Federal, State and City Law. Final financial settlement under this Agreement will be contingent upon receipt and acceptance of Contractor's audit.
- 12.4. If, as a result of any audit relating to the fiscal performance of Contractor or Subcontractor under this Agreement, the City receives notice of any irregularities or deficiencies in said audits, then the City will notify the Contractor of such irregularities or deficiencies. The Contractor will correct all identified irregularities or deficiencies within the time frames designated in the City's written notice. If the identified irregularities or deficiencies cannot be corrected by the date designated by the City, then Contractor will so notify the City in writing and will identify a date that Contractor expects to correct the irregularities or deficiencies; provided, however, that if Contractor's notice is dated within thirty (30) calendar days prior to the Expiration Date or effective date of earlier termination, then Contractor's corrections will be made and submitted to the City on or before the fifth (5<sup>th</sup>) working day from the Expiration Date or effective date of earlier termination. If corrections are not made by such date, then the final resolution of identified deficiencies or disputes will be deemed to be resolved in the City's favor unless the Contractor obtains a resolution in its favor from the responsible federal official.

## Section 13 Insurance

### 13. **INSURANCE:**

- 13.1. **General Conditions:** The 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. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, including any extension thereof, and during any warranty period. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the 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. The 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.
- 13.2. **Proof of Insurance:** Contractor may not commence services or work relating to this Agreement prior to placement of coverages required under this Agreement. Contractor certifies that the certificate of insurance attached as **Exhibit E**, preferably an ACORD form, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. 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.
- 13.3. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella (if required), Contractor and subcontractor's

insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

- 13.4. **Waiver of Subrogation:** For all coverages required under this Agreement, with the exception of Professional Liability, Contractor's insurer shall waive subrogation rights against the City.
- 13.5. **Subcontractors and Subconsultants:** Contractor shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by the Contractor and appropriate to their respective primary business risks considering the nature and scope of services provided.
- 13.6. **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.
- 13.7. **Commercial General Liability:** Contractor shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate. Policy shall not contain an exclusion for sexual abuse, molestation or misconduct.
- 13.8. **Business Automobile Liability:** Contractor shall maintain Business Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.
- 13.9. **Cyber Liability:** Contractor shall maintain Cyber Liability coverage with minimum limits of \$1,000,000 per occurrence and \$1,000,000 policy aggregate covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. If Claims Made, the policy shall be kept in force, or a Tail policy placed, for three (3) years.

## Section 14

### Defense and Indemnification

#### 14. **DEFENSE AND INDEMNIFICATION:**

- 14.1. The 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 the Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.
- 14.2. The Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. The Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.
- 14.3. 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.
- 14.4. 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.
- 14.5. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

## **Section 15 Compliance with Laws**

15. **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall perform or cause to be performed all Services in strict compliance with all applicable laws, rules, regulations, and codes of the United States, State of Colorado, and with the Charter, ordinances, regulations, policies, and Executive Orders of the City and County of Denver, as amended from time to time, whether or not specifically referenced herein. Any references to specific Federal, State, or local laws or other 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. Contractor shall ensure that any and all Subcontractors also comply with applicable laws. In particular, and not by way of limitation, the Services shall be performed in strict compliance with all laws, executive orders, ordinances, rules, regulations, policies and procedures prescribed by the City, the State of Colorado, and the United States Government, and the following additional requirements:

- 15.1. **WIOA:** The Workforce Innovation and Opportunity Act, (“WIOA”), Public Law 113-129 (enacted July 22, 2014 and effective July 1, 2015), 29 U.S.C. 3101, *et seq.*, which supersedes the Workforce Investment Act (WIA) and amends the Adult Education and Family Literacy Act; the Wagner-Peyser Act of 1933, as amended; and the Rehabilitation Act of 1973;
- 15.2. **WIOA Program Laws/Rules:** Any and all applicable Federal, State, or City rules and regulations relevant to the administration of the WIOA program including but not limited to, 20 C.F.R. Parts 603, 651, 652, 660, 675, 676, 677, 678, 679, 681, and 683; 29 CFR Parts 31, 32, 33, 35, 38, 95, 96, 97, and 99; and 34 C.F.R. Parts 361, 363, 367, 369, 370, 397, 461, 462, and 463;
- 15.3. **WIOA Guidance:** The WIOA Final Rule dated August 19, 2016, available at <https://www.govinfo.gov/content/pkg/FR-2016-08-19/pdf/2016-15975.pdf>, and United States Department of Labor-Employment and Training Administration (USDOL-ETA) Training and Employment Guidance Letters (TEGLs) issued under the authority of the Workforce Innovation and Opportunity Act of 2014 (WIOA) for the Adult, Youth, Dislocated Worker, Wagner Peyser Employment Service, and other core partner programs concerning guidance on operations, services, and program requirements. <http://wdr.doleta.gov/directives/>;
- 15.4. **USDOL Requirements:** United States Department of Labor (USDOL), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Chapter II, Part 2900 *et al.*, December 19, 2014. [http://www.ecfr.gov/cgi-bin/text-idx?SID=809536d27633efa05b7350a37ed3f2d5&mc=true&tpl=/ecfrbrowse/Title02/2cfr2900\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=809536d27633efa05b7350a37ed3f2d5&mc=true&tpl=/ecfrbrowse/Title02/2cfr2900_main_02.tpl);
- 15.5. **OMB:** All applicable circulars of the U.S. Office of Management and Budget (“OMB”) including without limitation United States Department of Labor (USDOL), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Parts 200 *et al.*, and Parts 2900 *et al.*;
- 15.6. **Deficit Reduction Act:** The Deficit Reduction Act of 2005, 109 Public Law 171;

- 15.7. **COLORADO EMPLOYMENT FIRST**: Colorado Revised Statutes (C.R.S.) § 8-77-109, Establishment of the Employment Support Fund (ESF) for use by the Colorado Department of Labor and Employment - Division of Employment and Training and C.R.S. §§ 8-83-101, *et seq.*, Workforce Development Part 1 Division of Employment and Training; and C.R.S. § 8-83-104, State Employment Service;
- 15.8. **TANF/PRWORA**: The Temporary Assistance for Needy Families (TANF) program, a program created by the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 U.S.C. 601, *et seq.*, (PRWORA/TANF-CFDA# 93.558), as may be amended from time to time;
- 15.9. **COLORADO WORKS**: The Colorado Works Program Act of 1997, as amended, C.R.S. §§ 26-2-701, *et seq.*, (“CWPA”);
- 15.10. **COLORADO WORKS MOU**: The applicable terms and conditions of the Colorado Works Program Act Memorandum of Understanding, or any subsequent Memorandum of Understanding between the City and the State of Colorado, and as the same may be executed or amended from time to time;
- 15.11. **TANF Program Laws/Rules**: Any and all Federal, State, or City rules and regulations promulgated pursuant to PRORWA/TANF and the Colorado Works Program Act including but not limited to 45 C.F.R. 260, 45 C.F.R. 261, 9 C.C.R. 2503-6 (Volume 3), and 11 C.C.R. 2508-01 (Volume 5);
- 15.12. **Other Guidance, instructions, directives**: All manuals, policies, procedures, informational memoranda, guidance, instructions, directives, or other written documentation issued by the federal government, State of Colorado, or the City and provided to the Contractor concerning Contractor’s performance under this Agreement;
- 15.13. **Exhibits**: The terms and conditions contained in **Exhibits C** and **D**, respectively, and all other Exhibits to this Agreement unless the City notifies the Contractor in writing that a specific requirement does not apply to the performance of services under this Agreement;
- 15.14. **Federal or State Grants**: Any and all grant awards, contracts, or other agreements governing this Agreement;
- 15.15. **Requests for Proposals**: Any and all requests for proposals, or portions thereof, issued by the City in connection with the Services to be provided under this Agreement, as designated by the DWS Director;
- 15.16. **Pass-Through of City Obligations Pursuant to The Applicant Verification Statute**:
- a) This Agreement is subject to C.R.S. §§ 24-76.5-103, 24-76.5-101(3), all applicable federal laws, and any state or federal rules adopted pursuant

thereto, as now existing or as hereafter amended. Compliance by the Contractor is expressly made a contractual condition of this Agreement.

- b) The Contractor shall verify the lawful presence in the United States, of each natural person eighteen (18) years of age or older (the "Applicant"), who applies for Federal, State or Local Public Benefits ("Benefits") conferred pursuant to this Agreement, as such Benefits are required under applicable Federal and/or State Law. The Contractor shall require the Applicant and its agents to comply with the verification of lawful immigrant presence in the United States. The Contractor shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request;

**15.17. Grievance Policy:** 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 the City and its 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 submitted to the DWS Director for approval at the DWS Director's discretion on or before the commencement of the term of this Agreement. Failure to provide an acceptable Grievance Policy shall constitute a material breach of this Agreement;

**15.18. Debarment:** The Contractor is subject to the prohibitions on contracting with a debarred organization pursuant to U.S. Executive Orders 12549 and 12689, Debarment and Suspension, and implementing federal regulations codified at 2 C.F.R. Part 180 and 2 C.F.R. Part 376. By its signature below, the Contractor assures and certifies that neither it nor its principals are 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 DWS 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 paragraph, 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 paragraph, 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" 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 Orders 12549 and 12689 and their implementing regulations;

**15.19. Prohibited Transactions:**

- a) **Interest of Contractor:** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed;
  - b) **Members of Congress:** No member of or delegate to the Congress of the United States of America shall be admitted to any share or part hereof or to any benefit to arise from this Agreement;
  - c) **Employees:** No officer or employee of either the City or the Contractor shall derive any unlawful personal gain, either by salary, fee payment or personal allowance, from his or her association with the other Party to this Agreement. Any contractual provision that contravenes the provisions of this Section shall be null and void. This Section shall not prohibit an officer or administrator of one Party to this Agreement from being reimbursed by the other Party for actual, out-of-pocket expenses incurred on behalf of the other Party;
  - d) **No 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;
- 15.20. **Byrd Anti-Lobbying:** If the Maximum Contract Amount exceeds \$100,000, the Contractor must complete and submit to the Agency a required certification form provided by the Agency certifying that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award;
- 15.21. **Mandatory Disclosures:** Contractor must disclose, in a timely manner, in writing to the Agency all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the work to be performed



under this Agreement. Failure to make required disclosures can result in the Agency taking any of the remedies described in 2 C.F.R. § 200.338;

- 15.22. The Deficit Reduction Act of 2005:** 109 P.L. 171;
- 15.23. FFATA:** The Federal Funding Accountability and Transparency Act of 2006, FFATA, and implementing rules and regulations;
- 15.24. The Clean Air and Federal Water Pollution Control Act:** 42 U.S.C. 7606 (Section 306) and 33 U.S.C. 1368 (Section 508), Executive Order 11738, and other applicable Environmental Protection Agency (EPA) regulations. Contractor understands that all violations shall be reported to the Federal awarding agency, the Regional Office of the EPA, and the City;
- 15.25. The Energy Policy and Conservation Act:** (Pub. L. 94-163, 89 Stat. 871) concerning energy efficiency and conservation plans:
- 15.26. Non-Discrimination and Equal Employment Opportunity (Federal requirements):**
- a) In carrying out its obligations under the Agreement, Contractor and its officers, employees, members, and subcontractors hereby affirm current and ongoing compliance with Section 188 of the Workforce Innovation and Opportunity Act, 29 CFR Part 38, Titles VI and VII of the Civil Rights Act of 1964, The Americans With Disabilities Act of 1990, Sections 504 and 508 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, Title II Subpart A of the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act, the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA), and all other nondiscrimination and equal employment opportunity statutes, laws, and regulations, as may be amended from time to time. Contractor agrees not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and participants only, citizenship status, or race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status. Contractor will ensure that all qualified applicants are hired, and all employees are considered for promotion, demotion, transfer; recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, selection for training (including apprenticeship), or any other employment-related opportunities, without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran

status. Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph.

- b) Contractor agrees to post notices affirming compliance with all applicable Federal and State non-discrimination laws in conspicuous places accessible to all employees and applicants for employment. Contractor will affirm that all qualified applicants will receive consideration for employment without regard to race, religion, national origin, ancestry, color, gender, gender identity, sexual orientation, age, disability, political affiliation or belief, or veteran status in all solicitations or advertisements for employees placed by or on behalf of Contractor.
- c) Contractor will incorporate the foregoing requirements of this section in all of its subcontracts.
- d) Contractor agrees to collect and maintain data necessary to show compliance with the nondiscrimination provisions of this section.

**15.27. No Discrimination in WIOA Programs and Activities (federal requirements):** The Contractor will comply with any and all applicable federal, state, and local laws that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, and political affiliation and belief, and, for beneficiaries, applicants, and participants only, citizenship and participation in any WIOA Title I-financially assisted program or activity. In particular, and not by way of limitation, Contractor will comply with Section 188 of the Workforce Innovation and Opportunity Act, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity. Further, Contractor will comply with 29 CFR Part 38, Title VI of the Civil Rights Act of 1964 (Title VI), Sections 504 and 508 of the Rehabilitation Act of 1973 (Section 504 and Section 508), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), the Equal Pay Act (EPA), and all other nondiscrimination statutes, laws, and regulations, as may be amended from time to time. Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this subarticle. Contractor acknowledges that Title VI prohibits national origin

discrimination affecting persons with limited English proficiency (LEP). Contractor hereby warrants and assures that LEP persons will have meaningful access to all services provided under this Agreement. To the extent Contractor provides assistance to LEP individuals through the use of an oral or written translator or interpretation services, in compliance with this requirement, LEP persons shall not be required to pay for such assistance.

**15.28.** The Contractor will comply with applicable Federal, State, and local laws, rules, regulations, and executive orders that prohibit discrimination in programs, and activities funded by this Agreement, including, without limitation, discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth and related medical conditions, transgender status, and gender identity) national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in a WIOA Title I financially assisted program or activity (Section 188 of WIOA, 29 U.S.C. 3248; 29 C.F.R. Part 38). Contractor's compliance will include performing any additional obligations to comply with Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 (ADA), Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the antidiscrimination provision of the Immigration Reform and Control Act of 1986 (IRCA), and the Equal Pay Act (EPA). Violations may be subject to any penalties set forth in said applicable laws and the Contractor agrees to indemnify and hold the City harmless from any and all claims, losses, or demands that arise under this paragraph. Contractor acknowledges that Title VI prohibits national origin discrimination affecting persons with limited English proficiency (LEP). Contractor hereby warrants and assures that LEP persons will have meaningful access to all services provided under this Agreement. Contractor shall not charge or require LEP persons to pay for such assistance. Further, Contractor acknowledges the City's Office of Human Rights and Community Partnerships, Office of Sign Language Services (OSLS) oversees access for deaf and hard of hearing people to City programs and services. The Contractor will comply with any and all requirements and procedures of the OSLS, as amended from time to time, concerning the provision of sign language interpreter services for all services provided by the Contractor under this Agreement;

**15.29. No Discrimination in Employment (City Executive Order No. 8):** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.

**15.30. No Employment of a Worker Without Authorization to Perform Work Under the Agreement:**

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

**b)** The Contractor certifies that:

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

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

**(3)** It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

**(4)** It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

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

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

**c)** 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.

## **Section 16 Intellectual Property**

### **16. INTELLECTUAL PROPERTY RIGHTS:**

**16.1. Ownership:** Except where the City has agreed in writing to accept a license or where expressly prohibited by federal law, the City and the Contractor intend that all work product created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively, "Work Product"), shall belong to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, et seq., the Work Product is a "work made for hire" and all ownership of copyright in the Work Product shall vest in the City at the time the Work Product are created. To the extent that the Work Product is not a "work made for hire," the Contractor (by this Agreement) sells, assigns and transfers all right, title and interest in and to the Work Product to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such rights in perpetuity. The City and Contractor agree that all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, URLs, domain names, music, sketches, web pages, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information of Contractor made available, directly or indirectly, by Contractor to City as part of the Scope of Services, are the exclusive property of Contractor or the third parties from whom Contractor has secured the rights to use such product (collectively, "Contractor Materials"). The Contractor Materials, processes, methods and services shall at all times remain the property of the Contractor; however, the Contractor hereby grants to the City a nonexclusive, royalty free, perpetual and irrevocable license to use the Contractor Materials. The Contractor shall mark or identify all such Contractor Materials to the City

### **16.2. Copyrightable Intellectual Property:**

- a)** The City and Contractor intend that Intellectual Property includes without limitation any and all records, case files, databases, materials, information, text, logos, websites, mobile applications, domain names, templates, forms, documents, videos, podcasts, newsletters, e-mail blasts, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, multimedia or audiovisual materials, negatives, specifications, software, data, products, ideas, inventions, templates, know-how, studies, reports, and any other work or recorded information created, purchased, licensed, used, or supplied by the Contractor, or any of its

Subcontractors or other third party contractors, in connection with the services provided under this Agreement, in preliminary or final forms, in paper or electronic format, and on any media whatsoever (collectively, "Materials"). The Contractor shall not use, willingly allow another to use, or cause any Materials to be used for any purpose other than for the performance of the Contractor's duties and obligations under this Contract without the prior, express written consent of the City. To the extent permitted by the U.S. Copyright Act, 17 U.S.C. § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all rights, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

- b) Contractor shall not create, purchase, license, supply or use any logos, software programs, software as a service, websites, mobile applications, domain names, social media accounts, or third party software, social media, applications or websites in connection with the Services or any other affiliated services supplied by the Contractor unless the program, product or service, in each case, is specifically identified as an expense on **Exhibit B** or Contractor has obtained the DWS Director's prior written permission to create, purchase, license, supply or use the program, product or service and otherwise complied with all requirements of the City concerning said matter. The Contractor shall maintain and keep current an inventory, in such format as designated by the DWS Director, of all such approved Materials. Contractor will submit a copy of the most current version of the Materials inventory with Contractor's periodic request for payment. The City will have final decision-making authority to determine and/or edit the final content, design, layout, format, and "look and feel" of any such Materials. The Contractor will ensure that all Materials, or any portion or version thereof, do not, directly or indirectly, in whole or in part, infringe upon any third party's copyright, trademark, patent, or other intellectual property rights, title or interests.

- 16.3. Patentable Intellectual Property:** The City and Contractor intend that Intellectual Property includes any and all software that is excluded from copyright materials as well as any improvement, invention, discovery, know-how, business method, or other invention which is or may be patentable or otherwise protectable under the laws of the United States (whether or not produced in the United States) conceived or first actually reduced to practice in the performance of work under this contract by the Contractor, or any of its third party contractors, in connection with the services provided under the Agreement. The Contractor shall immediately notify the DWS Director in

writing of any such patentable Intellectual Property and provide the DWS Director with a complete written report describing in detail each specific software, know-how, method, invention, improvement or discovery.

- 16.4. Third Party Products, Materials and Processes:** Contractor represents and warrants that the Services, and any other affiliated services supplied by Contractor in connection with this Agreement, will not infringe upon or violate the City's Intellectual Property, any other rights held by the City to any intellectual property, or the intellectual property or proprietary rights of any third party. If the Contractor employs any third-party product, design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the third party patentee or copyright owner. The Contractor shall defend, indemnify, and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of services. Where the Services, or any other affiliated services provided by Contractor, contain false, offensive, or disparaging content or portray the City, its appointed and elected officials, agents and employees, or any third party in a disparaging way, either as solely determined by the City or the third party, as appropriate, Contractor will immediately remove the false, offensive, or disparaging content. If Contractor fails to do so, the City will have the right, at the City's sole election, to immediately enforce any remedies available to it under this Agreement or applicable laws. The requirements and obligations contained in the preceding sentences of this Section 16.4 will not apply to a specific third-party patented device, material or processes that the DWS Director has directed, in writing, the Contractor to use.
- 16.5. Federal License:** Contractor acknowledges that pursuant to Federal Law, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 16.6. Restrictions on Other City Intellectual Property:** The Contractor will not use, reproduce, transmit, copy, distribute, alter, modify, register, or incorporate any registered or unregistered trademark or servicemark, logo, seal, flag, official insignia, name, icon, copyright, patent, or domain name of the Agency or the City without, in each case, the prior written permission of the DWS Director and the City's Director of Marketing, or their designated representatives. Upon receipt of such permission, the Contractor shall fully coordinate all logo use with the City's Director of Marketing or, if and as directed, with a designated employee of the Agency.

- 16.7. Contractor's Pre-existing Intellectual Property:** Notwithstanding the language in Section 16.1, as between the Parties, Contractor shall retain all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights in any and all pre-existing tools, routines, programs, designs, technology, ideas know-how, processes, formulas, techniques, improvements, inventions and works of authorship which were made, developed, conceived or reduced to practice by Contractor prior to the commencement of work under this Agreement and which have general applicability apart from the Services and any derivative works thereof (collectively, the "Contractor's Pre-existing Intellectual Property"). Contractor will within thirty (30) days from the Commencement Date, disclose to the DWS Director in writing all such Contractor's Pre-existing Intellectual Property including without limitation pre-existing Contractor owned source code or object code. Contractor hereby grants the City perpetual, non-exclusive, non-transferable license to use all Contractor's Pre-existing Intellectual Property that is incorporated into the Services.

**Section 17**  
**Data; Personal Information; Protection**

**17. PERSONAL INFORMATION; DATA PROTECTION; PROTECTED HEALTH INFORMATION:**

- 17.1. "Data Protection Laws"** means (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements relating in any way to the privacy, confidentiality or security of Personal Information (as defined below in Section 17.2); and (ii) all applicable laws and regulations relating to electronic and non-electronic marketing and advertising; laws regulating unsolicited email communications; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Information; laws imposing licensing requirements; laws and other legislative acts that establish procedures for the evaluation of compliance; and all other similar applicable requirements. Further, and not by way of limitation, Contractor shall provide for the security of all City Data, and Personal Information if applicable, in accordance with all policies promulgated by City Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the most recently promulgated IRS Publication 1075 for all Tax Information, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJJ, (iv) the Colorado Consumer Protection Act, (v) the Children's Online Privacy



Protection Act (COPPA), (vi) the Family Education Rights and Privacy Act (FERPA), and (vii) Colorado House Bill 18-1128.

- 17.2. **“Personal Information”** means all information that individually or in combination, does or can identify a specific individual by or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number (full or partial), business contact information, date of birth, national or state identification numbers, and any other unique identifier or one or more factors specific to the individual’s physical, physiological, mental, economic, cultural, or social identity.
- 17.3. **Compliance with Law and Regulations:** Contractor confirms and warrants that it complies with any and all applicable Data Protection Laws relating to the collection, use, disclosure, and other processing of Personal Information and that it will perform its obligations under this Agreement in compliance with them and the terms and conditions contained in **Exhibit K**. This section will survive the termination of this Agreement.
- 17.4. **Software Programs:** Contractor will use the software programs designated or otherwise approved by the City to collect, use, process, store, or generate all data and information, without or without Personal Information, in connection with the Services, or any other affiliated services provided by Contractor. Contractor will fully comply with any and all requirements and conditions associated with the use of such software programs as designated from time to time by the City, the State Government, or the Federal Government including without limitation the terms and conditions contained in **Exhibit K**.
- 17.5. **Security of Personal Information and Access to Software Programs:** In addition, Contractor will establish and maintain data privacy and information security policies and procedures, including physical, technical, administrative, and organizational safeguards, in order to: (i) ensure the security and confidentiality of Personal Information; (ii) protect against any anticipated threats or hazards to the security or integrity of Personal Information; (iii) protect against unauthorized disclosure, access to, or use of Personal Information; (iv) ensure the proper use of Personal Information; and (v) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. Contractor shall also provide for the security of all Personal Information in accordance with all policies promulgated by City Technology Services, as amended, and all applicable laws, rules, policies, publications, and guidelines including, without limitation: (i) the Children’s Online Privacy Protection Act (COPPA), and (ii) Colorado House Bill 18-1128. The Contractor shall submit to the DWS Director, within fifteen (15) days of the DWS Director’s written request, copies of the Contractor’s policies and

procedures to maintain the confidentiality of Personal Information to which the Contractor has access.

- 17.6. Confidentiality; No Ownership by Contractor:** Unless otherwise permitted expressly by applicable law, all Personal Information collected, used, processed, stored, or generated in connection with the Services will be treated by Contractor as highly confidential information. Contractor will have no right, title, or interest in any Personal Information or any other data obtained or supplied by Contractor in connection with the Services. Contractor has an obligation to immediately alert the City if Contractor's security has been breached or if Contractor is aware of any unauthorized disclosure of Personal Information. This Section will survive the termination of this Agreement.
- 17.7. Contractor Use of Personal Information:** Contractor will: (i) keep and maintain Personal Information in strict confidence and in compliance with all applicable Data Protection Laws, and such other applicable laws, using such degree of care as is appropriate and consistent with its obligations as described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (ii) use and disclose Personal Information solely and exclusively for the purpose of providing the services hereunder, such use and disclosure being in accordance with this Agreement, and applicable law; (iii) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Contractor's own purposes or for the benefit of anyone other than the City, the State Government, or the Federal Government without the prior written consent of the City and the person to whom the Personal Information pertains; and (iv) not engage in "data mining" of Personal Information except as specifically and expressly required by law or authorized in writing by the City. This Section will survive the termination of this Agreement.
- 17.8. Protected Health Information:** The Contractor will comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all protected health information and all requirements contained in **Exhibit F**. Contractor shall submit to the DWS Director, within fifteen (15) days of the DWS Director's written request thereof, copies of Contractor's policies and procedures to maintain the confidentiality of protected health information to which the Contractor has access.
- 17.9. Employees and Subcontractors:** Contractor will ensure that, prior to being granted access to Personal Information, Contractor staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the data they will be handling. Only those Contractor staff who have a direct need for Personal Information or

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

## **Section 18**

### **City Confidential Information/Open Records**

#### **18. CONFIDENTIAL INFORMATION; OPEN RECORDS:**

**18.1. City Information:** The Contractor acknowledges and accepts that, in performance of all work under the terms of this Agreement, the Contractor may have access to Proprietary Data or confidential information that may be owned or controlled by the City, and that the disclosure of such Proprietary Data or information may be damaging to the City or third parties. The Contractor agrees that all Proprietary Data, confidential information or any other data or information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such Proprietary Data and information as a reasonably prudent contractor would to protect its own proprietary or confidential data. "Proprietary Data" shall mean any materials or information which may be designated or marked "Proprietary" or "Confidential," or which would not be documents subject to disclosure pursuant to the Colorado Open Records Act or City ordinance and provided or made available to the Contractor by the City. Such Proprietary Data may be in hardcopy, printed, digital or electronic format.

#### **18.2. Use and Protection of Proprietary Data and Confidential Information:**

- a) Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license,

sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any data, including Proprietary Data or confidential information or any part thereof to any other person, party or entity in any form of media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing data, Proprietary Data or confidential information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to disclose or distribute to any other party, in whole or in part, the data, Proprietary Data or confidential information without written authorization from the Executive Director and will immediately notify the City if any information of the City is requested from the Contractor from a third party.

- b) The Contractor agrees, with respect to the Proprietary Data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse engineer or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; and (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.
- c) The Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted data received from, or on behalf of City. It is the responsibility of the Contractor to ensure that all possible measures have been taken to secure the computers or any other storage devices used for City data. This includes industry accepted firewalls, up-to-date anti-virus software, controlled access to the physical location of the hardware itself.
- d) **Employees and Subcontractors:** Contractor will inform its employees and officers of the obligations under this Agreement, and all requirements and obligations of Contractor under this Agreement will survive the expiration or earlier termination of this Agreement. Contractor will not disclose proprietary information 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.
- e) **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Proprietary Data and confidential information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness,

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

- f) **Contractor's Confidential Information; Open Records:** If the City is furnished with proprietary data or confidential information that may be owned or controlled by Contractor ("Contractor's Confidential Information"), the City will endeavor, to the extent provided by law, to comply with the requirements provided by Contractor concerning Contractor's Confidential Information. However, Contractor understands that all the material provided or produced by Contractor under this Agreement may be subject to the Colorado Open Records Act., §§ 24-72-201, *et seq.*, C.R.S. In the event of a request to the City for disclosure of such information, the City will advise Contractor of such request in order to give Contractor the opportunity to object to the disclosure of any of its Contractor Confidential Information and take necessary legal recourse. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and Contractor agrees to intervene in such lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. Contractor further agrees to defend, indemnify, save, and hold harmless the City from any Claims arising out of Contractor's intervention to protect and assert its claim of privilege against disclosure under this Section 18.2(e) including, without limitation, prompt reimbursement to the City of all reasonable attorneys' fees, costs, and damages that the City may incur directly or may be ordered to pay by such court.

## **Section 19 Additional Provisions**

### **19. ADDITIONAL PROVISIONS:**

- 19.1. **Reasonableness of Consent or Approval:** Whenever under this Agreement the term "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.
- 19.2. **Force Majeure:** Performance of this Agreement may be delayed and/or suspended by any act of God, war, civil disorder, terrorist acts, employment strike, hazardous or harmful condition, or other cause beyond the control of

either party (“Force Majeure Event”). Contractor shall use any means available to provide City with notice of any Force Majeure Event, and at its earliest possible opportunity. Neither Party shall be held liable for any default, damages and/or breach of agreement should the performance of this Agreement be delayed and/or suspended due to any Force Majeure Event. In the event performance of this Agreement is delayed and/or suspended due to Force Majeure Event, performance shall resume only upon the mutual assent of the Parties that the Force Majeure Event has subsided. Should the performance of the Agreement be suspended or delayed as the result of a Force Majeure Event, the Parties hereby agree that this Agreement shall be extended by the amount of time the performance is suspended or delayed. Events necessitating the issuance of Public Health Orders, as described in Section 11.6, above, shall be treated by the Parties in conformance with the terms and conditions of Section 11.6 and not as a Force Majeure.

- 19.3. Status of Contractor:** The Contractor is an independent contractor retained to perform professional or technical services for limited periods of time. Neither the Contractor nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.
- 19.4. 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 full authorization 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.
- 19.5. 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. Further, without limiting the generality of this provision, the Contractor’s obligations in the following provisions 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: Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19.1, 19.2, and 19.6-19.27.

- 19.6. **Notices:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to the Contractor at the address first written above, and if concerning the Services to the City at:

Director of Workforce Services or Designee  
Office of Denver Economic Development & Opportunity  
City and County of Denver  
201 West Colfax Avenue, Dept. 1011  
Denver, CO 80202

With a copy of any such notice to:

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

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

- 19.7. **Disputes:** All disputes between the City and the Contractor arising out of or regarding this Agreement will be resolved by administrative hearing pursuant to the procedure established by Denver Revised Municipal Code, § 56-106(b)-(f). For the purposes of that procedure, the City official rendering a final determination shall be the DWS Director as defined in this Agreement.
- 19.8. **Governing Law; Venue:** The Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into the Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to the Agreement will be in the District Court of the State of Colorado, Second Judicial District.
- 19.9. **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.

- 19.10. When Rights and Remedies Not Waived:** In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Contractor. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.
- 19.11. Taxes, Late Charges, and Permits:** 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.
- 19.12. Assignment, Delegation and Subcontracting:** The Contractor shall not voluntarily or involuntarily assign any of its rights or delegate any of its obligations under the Agreement or subcontract performance obligations without obtaining the DWS Director's prior written consent. Any assignment, delegation or subcontracting without such consent will be ineffective and void, and, in addition to those found Section 11, shall be cause for termination of this Agreement by the City. The DWS Director has sole and absolute discretion whether to consent to any assignment, delegation or subcontracting, or to terminate the Agreement because of unauthorized assignment, delegation or subcontracting. In the event of any subcontracting or unauthorized assignment or delegation: (i) the Contractor shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.
- Services subcontracted under this Agreement shall be specified by written agreement and shall be subject to each applicable provision of this Agreement and any and all applicable Federal and State Laws with appropriate changes in nomenclature in referring to such subcontract. The Contractor shall submit proposed subcontract agreements to the DWS Director for the DWS Director's review and approval. Such consent of the City obtained as required by this Section 19.12 shall not be construed to constitute a determination of approval of any cost under this Agreement, unless such approval specifically provides that it also constitutes a determination of approval of such cost.
- 19.13. Inurement:** The rights and obligations of the Parties to the Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
- 19.14. No Third-Party Beneficiary:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the Parties.



Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity including without limitation One-Stop Partners authorized to co-locate with Contractor in the Licensed Premises. Any person or entity other than the City or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

**19.15. No Authority to Bind City to Contracts:** The Contractor lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

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

**19.17. 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 City 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 or other relationship, in conflict with those of the City. During the Term, the Contractor shall disclose promptly any potential conflicts of interest that arise from its activities and relationships with training or other service providers. 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. The Contractor will have thirty (30) days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to the City.

**19.18. Advertising and Public Disclosure:**

- a) **Approval Required:** The Contractor shall not include any reference to the Agreement or to Services performed pursuant to the Agreement in any

of the Contractor's advertising or public relations materials without first obtaining the written approval of the DWS 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 DWS Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.

- b) **Acknowledgment of Funding:** In accordance with applicable federal or state requirements, the Contractor shall prominently insert the following acknowledgement (or substantially similar acknowledgement) in all allowable advertising, public relations items, or informational materials, including without limitation, signs, media releases, promotional items, giveaways, and public announcements: "The activities, services, programs, and materials are made possible by support from the Office of Denver Economic Development & Opportunity, Workforce Services of the City of and County of Denver through funding from the Workforce Innovation and Opportunity Act."

19.19. **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.

19.20. **Agreement as Complete Integration-Amendments:** The Agreement is the complete integration of all understandings between the Parties as to the subject matter of the Agreement. No prior or contemporaneous addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. No subsequent novation, renewal, addition, deletion, or other amendment will have any force or effect unless embodied in a written amendment to the Agreement properly executed by the Parties. No oral representation by any officer or employee of the City at variance with the terms of the Agreement or any written amendment to the Agreement will have any force or effect or bind the City. The Agreement is, and any amendments thereto will, be binding upon the Parties and their successors and assigns. Amendments to this Agreement will become effective when approved by both Parties and executed in the same manner as this Agreement.

19.21. **Use, Possession or Sale of Alcohol or Drugs:** The Contractor shall cooperate and comply with the provisions of City Executive Order 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs, as amended. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

- 19.22. Time is of the Essence:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- 19.23. Tobacco Products and Smoking Policy:** There shall be no sale or advertising of tobacco products on the Licensed Premises, the City Buildings, or other facilities owned or operated or controlled by Denver. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. "Advertising" includes the display of commercial and noncommercial promotion of the purchase or use of tobacco products through any medium whatsoever but does not include any advertising and sponsoring which is a part of a performance or show or event displayed or held in City facilities. The Contractor and its officers, agents and employees will fully comply with the provisions of City Executive Order No. 99 prohibiting smoking in all indoor City Buildings and facilities, as amended.
- 19.24. Litigation Costs and Attorneys' Fees:** In the event of any litigation or other action between the City and the Contractor to enforce any provision of this Agreement or otherwise with respect to the subject matter hereof, each Party shall bear all of its own costs and expenses, including attorneys' fees.
- 19.25. Notice of Pending Litigation:** The Contractor will notify the City in writing within five (5) calendar days of the date upon which any legal action or proceeding connected with or related to this Agreement is initiated by or brought against Contractor and will provide copies of all such documents provided to or served upon the Contractor.
- 19.26. Transition:**
- a) Upon termination or expiration of this Agreement, or upon the City's request, Contractor shall ensure that all Personal Information, or access to all Personal Information, is securely transferred to the City, or to a party designated in writing by the City, within thirty (30) calendar days of such termination or expiration. At the City's request, Contractor shall ensure that such Personal Information will be provided to the City in an industry-standard format. Contractor shall provide to the City with no less than ninety (90) calendar days' notice of impending cessation of its business or that of any Subcontractor providing any Services described hereunder, and shall provide reasonably sufficient contingency plans to the City in the event of notice of such cessation to effect a reasonable transition of the Services described herein to another successor contractor of the City's choosing. In connection with any cessation of Contractor's business with its customers, Contractor shall implement its contingency or exit plans and take all reasonable actions to provide for an orderly,

effective and efficient transition of Services with minimal disruption to the City.

- b) Contractor shall reasonably coordinate in good faith with any successor contractors retained by the City to provide the Services described herein upon the expiration of the term of this Agreement, including any extensions or renewals thereof. As soon as may be reasonably practicable, but under no circumstances later than ninety (90) days' prior to the expiration of the term of this Agreement, including any extensions or renewals thereof, the City shall notify Contractor in writing if the City has retained one or more successor contractors to provide the Services described herein. The Contractor shall work closely and coordinate in good faith with its successor contractor and the City to ensure a successful, expedient and efficient transition of all Services, staffing, personnel, customers, casefiles, as well as both City-owned and Contractor-owned equipment, technology (including, without limitation, software, hardware, telephones, computers, monitors, printers, copiers, fax machines, scanners, servers, administrator identification passwords and logins, switches, etc.), City-owned and Contractor-owned workspace (including, without limitation, all office furniture), and facilities from Contractor to the successor contractor identified by the City, with reasonably minimal downtime and negative effects imposed upon the City and the recipients of the Services described herein. All transitional work shall be coordinated and performed in advance of the formal and final transition date mutually agreed upon by the City and Contractor, and all of Contractor's costs and expenses associated with such transitional work shall be borne solely by Contractor.
- c) For purposes of this Section 19.26, "Personal Information" means all information that individually or in combination, does or can identify a specific individual by or from which a specific individual can be identified, contacted, or located. Personal Information includes, without limitation, name, signature, address, e-mail address, telephone number, social security number (full or partial), business contact information, date of birth, national or state identification numbers, and any other unique identifier or one or more factors specific to the individual's physical, physiological, mental, economic, cultural, or social identity.
- d) This Section 19.26 shall survive the termination or expiration of this Agreement.

**19.27. 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.

**Signature pages and Exhibits follow this page.**

SAMPLE