GENERAL SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between the City of Thornton, a Colorado home rule municipality, in the State of Colorado (hereinafter, “Thornton”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the “Service Provider” or “Vendor”). Thornton and Service Provider hereafter may be referred to collectively as, the “Parties” or individually as the “Party.”

1. **RECITALS**
2. Thornton has determined that over the term of this Agreement, from time to time, the need will exist for the provisioning of certain services in connection with **Occupational Physician Services, Project No**. **303-23** (the Project); and
3. Service Provider has held itself out to Thornton as having the requisite expertise and experience to perform the required Services for the Project.
4. In consideration of the covenants and promises contained in this Agreement and Recitals incorporated herein, which their sufficiency is acknowledged by Service Provider and Thornton, the Parties agree as follows:
5. **TERMS AND CONDITIONS**

1. **Description of Services, Work.** Provision of occupational physician services for performing medical and injury diagnosis, and attention to Thornton employees as described in **Scope of Services, Exhibit A.**
2. **Service Provider** **Responsibilities, Scope of Services/Work.** Service Provider will furnish all of the labor, supplies and materials, equipment, printing, and any other facilities or resources required to perform and complete the Services described in the attached **Exhibit A**, hereafter also called, “Service Provider’s Scope of Services” the “Services” or “Work.
3. **Commencement Date, Term**.

1. This Agreement shall commence on January 1, 2024 and terminate on December 31, 2028, or upon Thornton providing Service Provider with seven (7) Calendar Days advance written notice, whichever occurs first.
2. After the first year, Thornton may renew this agreement at the same prices, terms and conditions for up to four (4) additional one (1) year terms by issuance of Purchase Order.
3. Notwithstanding the foregoing, if Notice to Proceed for Services has been issued by Thornton to Service Provider and the Services will not be completed as of the Agreement termination date, and if Thornton desires Service Provider to complete the Services, the terms and conditions of this Agreement shall survive the termination date of the Agreement and continue until the Services are completed to Thornton’s satisfaction.
4. **Contract Documents.**

1. The following documents, which includes any exhibit and attachment listed, contained or referenced in the contract documents, by this reference, are incorporated, verbatim, and will hereafter be, the Agreement:
	1. Approved Amendments to this Agreement; and
	2. This General Service Agreement (together with Exhibits).
2. In the event there is a conflict between any of the above-listed documents, the provisions of the document listed first in order shall govern over those documents listed in descending order in subparagraph D.1 above after the first listed document.
3. Service Provider may need additional documents to perform the required Work and Services, or to clarify certain aspects of the Work and Services, that are not listed in Section D.1 above. Such documents, unless specifically identified as such, are not Contract Documents. These documents, by way of example include, but are not limited to:
	1. The Request for Proposals (including Addenda);
	2. The Service Provider’s response to the Request for Proposals;
	3. Other Thornton policies and procedures as applicable.
	4. [Editor – list others as appropriate]
4. **Personnel**

1. Service Provider shall perform the Services with the employees, subcontractors, agents and all other persons (“Personnel”) identified in the attached **Exhibit B**, unless otherwise authorized in writing by Thornton.
2. Service Provider shall employ competent Personnel at all times during the performance of the Work. Service Provider shall be responsible for acts and omissions of its Personnel working for Service Provider. Service Provider shall enforce strict discipline and good order among its Personnel performing the Work.
3. The person in charge shall represent Service Provider and communications given to the person in charge shall be as binding as if given to Service Provider. Important communications will be confirmed in writing. Other communications shall be similarly confirmed on written request.
4. Thornton, at any time, may revoke its approval of any person who is not performing in a manner satisfactory to Thornton, and Service Provider shall remove the objectionable person from the Work and replace them with someone acceptable to Thornton.
5. **Compensation.**
6. All charges for workers’ compensation services are mandated by the State of Colorado’s Workers’ Compensation Act (the “Act”), which includes a Colorado Fee Schedule. Service Provider shall bill all Services covered by the Act in accordance with this Fee Schedule, discounted by the amount stipulated in **Exhibit C, Schedule of Charges**. Other Services not covered under the Act shall be billed in accordance with **Exhibit C, Schedule of Charges**, attached hereto and incorporated herein. Thornton reserves the right to withhold final payment until such time as the Services are complete. Detailed invoices shall be rendered by Service Provider and shall be due and payable thirty (30) Calendar Days after date of receipt by Thornton of a complete and correct invoice. Service Provider will submit invoices as instructed by a Thornton representative. Invoices shall reference the Purchase Order Number assigned by Thornton.
7. Invoices for Services rendered, and expenses shall be submitted on a weekly basis in pdf format to the designated contact in the Risk Management Division
8. **Changes to Service Provider’s Scope of Services.**
9. A change in the Service Provider’s Scope of Services shall constitute any change or amendment of Services, which is different from or additional to Service Provider’s Scope of Services as defined in **Exhibit A** of this Agreement.

1. Work thereunder. All Minor Changes shall be made in writing and signed by the authorized representatives of both Parties.
2. No change to the General Scope of Services, including any requested changes to contractually established billable/unit rates, shall be effective or paid unless authorized by a written Amendment executed by Thornton’s City Manager (“Manager”) or Manager’s designee(s) with the same formality as this agreement.
3. Except as expressly provided herein, no agent, employee, or representative of Thornton has the authority to change or modify - directly or by an implied course of action, the Scope of Services or the terms of this Agreement.
4. If Service Provider proceeds without such written authorization, then Service Provider shall be deemed to have waived any claim for additional compensation, including a claim based on a theory of promissory estoppel, unjust enrichment, quantum meruit, or implied Agreement.
5. **Compliance with All Laws and Regulations.**
6. All of the Services performed under this Agreement by Service Provider shall comply with all applicable laws, rules, regulations, and codes of the United States and the State of Colorado and with the charter, ordinances, and rules and regulations of Thornton.
7. The Service Provider’s attention is directed to the fact that all applicable state and federal laws, county and city ordinances, licenses and regulations of all authorities having jurisdiction over this Agreement and the Services shall apply to this Agreement throughout and they will be deemed to be included in this Agreement the same as though herein written out in full.
8. On or before the Effective Date, the Parties shall sign the Business Associate Agreement attached hereto as **Exhibit D**. The terms and conditions set forth in the Business Associate Agreement are incorporated in full herein.
9. **Confidentiality Obligations.**
10. To the extent Service Provider requires Thornton to provide Service Provider with its reports and other data (“Confidential Information”) as may be available to Thornton and reasonably required for Service Provider to perform the Services, Service Provider will keep Thornton’s Confidential Information secret and will not disclose it to any third party, take or misuse any of the Thornton’s Confidential Information, or any other information Service Provider acquires or has access to because of its provision of Services.
11. At all times this Agreement is in effect, Service Provider will not use or seek to use any of Thornton's Confidential Information for the Contractor's own benefit or for the benefit of any other person or business or in any way adverse to Thornton's interests.
12. Thornton's Confidential Information is Thornton's exclusive property, therefore, on Thornton's request or the termination of this Agreement, Service Provider will promptly return Thornton’s Confidential Information including all documents, disks or other computer media or other materials in the Service Provider’s possession or control containing any of Thornton’s Confidential Information.
13. After this Agreement terminates, the Service Provider will preserve and not disclose directly or indirectly to any third party Thornton's Confidential Information and will promptly advise Thornton of any unauthorized disclosure or use of its Confidential Information by any person or entity.
14. Service Provider is authorized by Thornton to retain copies of its documents at Service Provider expense.
15. In regards to any electronic devices with data storage capability, including but not limited to, computers and copiers used by the Service Provider in connection with the performance of Services pursuant to this Agreement, Service Provider represents the following:
16. All devices, such as copiers or fax machines that are not intended to be a data storage devise for purposes of performing the Services shall be routinely scrubbed, either manually or automatically, to delete any Confidential Information related to the Services.

1. When any electronic device with data storage capacity is taken out of service, all such devises will be securely scrubbed of all data related to Thornton’s Project and all data storage drives will be physically destroyed before disposing of the device to insure no Confidential Information belonging to Thornton could ever be retrieved from such device.
2. **MISCELLANEOUS TERMS**
3. **Indemnification.** To the fullest extent permitted by law, Service Provider agrees to defend, indemnify and hold harmless Thornton, its officers, agents and employees, from and against all liability, judgments, damages or losses which arise out of, result from, or are in any manner connected with the Services to be performed under this Agreement, to the extent it is determined such liability, judgments, damages or losses were caused by the negligent acts, errors, or omissions of Service Provider, any subcontractor of Service Provider, or any officer, employee or agent of Service Provider, or anyone else employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and will pay to Thornton any expenses incurred by reason of such liability, judgments, damages or losses, including, but not limited to, court costs and reasonable attorneys’ fees incurred in defending or investigating such claims. Such payments on behalf of Thornton shall be in addition to any and all other legal remedies available to Thornton and shall not be considered Thornton’s exclusive remedy.
4. **Insurance.** The Service Provider agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:
5. Worker’s Compensation Insurance. Workers' Compensation Insurance as required by the Labor Code of the State of Colorado and Employer's Liability Insurance. Statutory limits are required. Evidence of qualified self-insured status may be substituted.
6. Commercial General Liability Insurance **(MINIMUM LIMITS)**
7. Each Occurrence $2,000,000
8. Products/Completed Operations Aggregate $1,000,000
9. Personal and Advertising Injury $1,000,000
10. General Aggregate $2,000,000

The policy shall include coverage protecting against bodily injury, property damage, and personal injury claims arising from the exposures of (i) premises-operations; (ii) products and completed operations including materials designed, furnished, and/or modified in any way by Service Provider; (iii) independent subcontractors; (iv) contractual liability risk covering the indemnity obligations set forth in this Agreement; and (v) where applicable, liability resulting from explosion, collapse, or underground exposures. The coverage shall not exclude faulty workmanship as a covered occurrence.

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

1. Professional Liability Insurance **(MINIMUM LIMITS)**
2. Each Claim $2,000,000
3. Aggregate $2,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

1. Cyber Liability Insurance with a minimum of one million dollars ($1,000,000) limit of liability.
2. Medical Malpractice Liability **(MINIMUM LIMITS)**
3. Each Occurrence/Claim $1,000,000
4. Aggregate $3,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement.

1. Automobile Liability Insurance. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars ($1,000,000) for any one (1) occurrence. This insurance will insure against bodily injury and/or property damage arising out of the Service Provider’s operation, maintenance, use, loading or unloading of any auto including owned, non-owned, hired, and employee autos.
2. Additional Insured. The Service Provider shall name Thornton, its officers, agents, and employees as additional insureds with respect to the Commercial General Liability and Auto Liability coverages required herein.
3. Certificates of Insurance. A Certificate of Insurance shall be completed and forwarded, along with the Additional Insured Endorsement, to Thornton by the Service Provider’s Insurance Agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect and shall be subject to review and approval by Thornton prior to commencement of any Services under this Agreement. The initial completed Certificate of Insurance and Additional Insured Endorsement shall include the Service Provider’s e-mail address for future inquires and updates, and shall be sent to:

 City of Thornton

 Attention: Andrew Miskell, CPPB

 Senior Purchasing Analyst

 9500 Civic Center Drive

 Thornton, CO 80229-4326

Subsequent Certificates of Insurance indicating renewal of coverage(s) shall be sent to Thornton’s Risk Manager at certificatesofinsurance@ThorntonCo.gov no later than thirty (30) Calendar Days prior to the expiration date along with the renewal Additional Insured Endorsement, and shall indicate “Renewal COI” and the Project Number in the e-mail subject line. Thornton reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Service Provider agrees to execute any and all documents necessary to allow Thornton access to any and all required insurance policies and endorsements pertaining to this particular Project.

1. Failure to Insure. Failure on the part of the Service Provider or subcontractor to procure or maintain policies providing the required coverages, conditions, and minimum limits **shall constitute a material breach of Agreement upon which Thornton may immediately terminate this Agreement,** or at its discretion, Thornton may procure, or renew any such policy, or any extended reporting period thereto, and may pay any and all premiums in connection therewith, and all monies so paid by Thornton shall be repaid by Service Provider to Thornton upon demand, or Thornton may offset the cost of the premiums against any monies due to Service Provider from Thornton.
2. Other Insurance Requirements.
3. Service Provider shall procure and maintain and shall cause any subcontractor of the Service Provider to procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Thornton. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Service Provider pursuant to this section. The coverage shall not exclude faulty workmanship as a covered occurrence. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
4. Every policy required above shall be primary insurance and any insurance carried by Thornton, its officers, or its employees shall be excess and not contributory insurance to that provided by the Service Provider. The Service Provider shall be solely responsible for any deductible losses under the policies required above.
5. Service Provider shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
6. All policies shall include a provision that the coverages afforded under the policies shall not be canceled or materially changed prior to the natural termination date or until at least thirty (30) Calendar Days prior written notice has been sent to Thornton. The Certificate(s) shall indicate the form used, if any, under which this provision is included.
7. **Independent Contractor.**
8. It is understood and agreed by and between the Parties that the status of the Service Provider shall be that of an independent contractor and of a person retained on a contractual basis to perform professional and/or technical services for limited periods of time and it is not intended, nor shall it be construed, that the Service Provider is an employee or officer of Thornton under Chapter VII of the City Charter, or Chapter 54 of the City Code, or for any purpose whatsoever.
9. Without limiting the foregoing, the Parties hereby specifically acknowledge that **the Service Provider is not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Service Provider or some other entity besides Thornton, that the Service Provider is not entitled to Workers’ Compensation benefits from Thornton and that the Service Provider is obligated to pay federal and state income tax on any monies earned pursuant to this Agreement.** The Parties further acknowledge that the provisions of this paragraph are consistent with the Service Provider’s insurance obligations that are set forth in this Agreement.
10. **Governmental Immunity**. The Parties hereto understand and agree that Thornton, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as from time to time amended, or otherwise available to Thornton, its agents, officers, or employees.
11. **Grounds for Termination.**
12. Termination for Convenience by Thornton. In the event this Agreement is terminated for convenience, Thornton shall issue a written Notice to Terminate and Service Provider will be paid for all Services previously authorized and completed up to the date of Termination. Service Provider shall not be entitled to profit or overhead on uncompleted Services.
13. Termination for Cause. Thornton shall have the right to immediately terminate this Agreement for cause upon written notice to the Service Provider, if Service Provider substantially or materially breaches the terms of this Agreement, or defaults in fulfilling the applicable terms and conditions of this Agreement. Thornton may seek to exercise all available legal and/or equitable remedies.
14. Termination for Non-Appropriations. In the event that Thornton City Council fails to appropriate funds for the continuation of this Agreement for any fiscal year past the initial year, Thornton may, at the beginning of the fiscal year for which the City Council does not appropriate such funds and upon prior written notice as provided for, may terminate this Agreement without penalty and be released of further obligations.

1. **Notice.** Any notice or communication between Service Provider and Thornton which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class, United States mail, addressed as follows:

 THORNTON: City of Thornton

Attention: Megan deGrood, CPPB, Purchasing Manager

 9500 Civic Center Drive

 Thornton, CO 80229-4326

 SERVICE PROVIDER: \_**<*Sample Only>***\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Applicable Law, Venue, Statute of Limitations.** This Agreement shall be governed by the laws of the State of Colorado. Any legal action concerning the provisions hereof shall be brought in the District Court, County of Adams, State of Colorado. Any action arising out of or relating to this Agreement or the Services asserted by the Service Provider against Thornton shall be brought within two (2) years from when the action accrued, pursuant to C.R.S. § 13-80-102(h).
2. **Assignment.** Service Provider agrees not to assign, pledge, or transfer its duties and rights in this Agreement, in whole or in part, without first obtaining the written consent of the Manager.
3. **No Waiver of Rights.** No assent, expressed or implied, to any breach of any one (1) or more of the terms and conditions of this Agreement shall be deemed to be or taken to be by Thornton a waiver of any subsequent breach of any such terms and conditions.
4. **Inspection of Records.** In connection with the Services performed hereunder, Thornton and any of its duly authorized representatives shall have access to all of Service Provider’s books, documents, papers, and any other records of Service Provider which relate to the Services. Service Provider further agrees that such records shall contain information concerning the personnel who performed the Services, the specific tasks they performed, and the hours they worked. Service Provider shall retain these records for three (3) years after termination of this Agreement.
5. **Conflict of Interest.** Service Provider agrees that it and its subsidiaries, affiliates, subcontractors, principals, or employees shall not engage in any transaction, activity, or conduct which would result in a conflict of interest. Service Provider represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities, or conduct that would affect the judgment, actions, or services of Service Provider by placing Service Provider’s own interests, or the interest of any party with whom Service Provider has a contractual arrangement, in conflict with those of Thornton. Thornton, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Service Provider written notice that describes the conflict. Service Provider shall have twenty (20) Calendar Days after the notice is received to eliminate or cure the conflict of interest in a manner acceptable to Thornton.
6. **Coordination of Services.** Service Provider shall fully coordinate its services with other service providers, contractors, or other entities performing Services on the Project that interfaces with or is affected in any way by Service Provider’s services, and with any interested city or other governmental agencies.
7. **Non-Discrimination.** Service Provider, its agents, employees, and subcontractors shall not discriminate on the basis of race, color, creed, national origin, ancestry, age, gender, religion, or mental or physical disability in any policy or practice.
8. **Advertising, Public Disclosure.** Service Provider shall not include any reference to this Agreement or to Services performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the Manager or his designee.
9. **Time is of The Essence.** The Parties agree that in the performance of the terms and requirements of this Agreement by Service Provider that time is of the essence.
10. **Inurement.** The rights and obligations of the Parties set forth herein shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.
11. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
12. **Joint Venture**. If a Joint Venture, participants shall be jointly and severally liable to Thornton for the performance of all duties and obligations of Service Provider set forth in this Agreement.
13. **Taxes and Licenses.** Service Provider shall promptly pay, when they are due, all taxes, excises, license fees, and permit fees of whatever nature applicable to the services and shall take out and keep current all required municipal, county, state, or federal licenses required to perform the work. Service Provider shall furnish Thornton, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. Service Provider shall promptly pay, when due, all bills, debts, and obligations it incurs performing the Services and allow no lien, mortgage, judgment, or execution to be filed against land, facilities, or improvements owned by Thornton.
14. **Severability.**  In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.
15. **No Third Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Thornton and Service Provider nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of Thornton and Service Provider that subcontractors and any other persons other than Thornton or Service Provider receiving any benefits from this Agreement shall be deemed to be incidental, and not intended, beneficiaries only.
16. **Electronic Signatures and Electronic Records.** The Parties consent to the use of electronic signatures.  The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by any applicable City regulation, rule, and/or ordinance. 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.
17. **Entire Agreement.** The Parties acknowledge and agree that the provisions contained herein constitute this entire Agreement and that all representations made by any officer, agent, or employee of the respective Parties unless included herein are null and void and of no effect. No alterations, amendments, changes, or modifications to this Agreement, except those that are expressly reserved herein to the Manager or his designee, shall be valid unless they are contained in an instrument that is executed by the Parties with the same formality as this Agreement.

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 This Agreement is expressly subject to and will not become effective or binding on Thornton until it is fully approved and executed by Thornton.

APPROVED AS TO LEGAL FORM: CITY OF THORNTON, COLORADO:

Tami Yellico, City Attorney

By:

 , City Attorney Kimberly Newhart

 Finance Director

ATTEST: CITY OF THORNTON, COLORADO:

Kristen Rosenbaum, City Clerk Sean Saddler, PE

 Support Services Director

|  |  |
| --- | --- |
| ATTEST FOR FIRM SIGNATURE:(If corporation) \_\_***<Sample Only>\_\_\_\_\_\_\_\_***\_\_\_\_\_\_\_\_\_\_\_Signature Print Name  Title  | INSERT FIRM NAME: \_\_***<Sample Only>\_\_\_\_\_\_\_\_***\_\_\_\_\_\_\_\_\_\_\_Signature Print Name  Title  |

**EXHIBIT A**

**SERVICE PROVIDER’S SCOPE OF SERVICES**

*Scope of Services to be inserted and completed by the Buyer of Record after an award has been issued by Thornton for the RFP. This is a placeholder for the sample agreement.*

**EXHIBIT B**

**SERVICE PROVIDER’S PERSONNEL**

*Service Provider’s Personnel to be inserted and completed by the Buyer of Record after an award has been issued by Thornton for the RFP. This is a placeholder for the sample agreement.*

**EXHIBIT C**

**SCHEDULE OF CHARGES**

*Schedule of Charges to be inserted and completed by the Buyer of Record after an award has been issued by Thornton for the RFP. This is a placeholder for the sample agreement.*

**EXHIBIT D**

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) between the **City of Thornton**  (“Thornton/Covered Entity”) and **Company Name** (“Company Name/Business Associate”) is executed to ensure that **Company Name** will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Thornton in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq*., as amended ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

WHEREAS, Covered Entity has retained Business Associate to provide certain services to be performed for or on behalf of Covered Entity, which are described or set forth in the Benefits Broker/Consulting Services Agreement, Project No. 135-17, between Thornton and Hays and, in connection with those services Business Associate may use or disclose certain individual health information that is subject to protection under the HIPAA Privacy & Security Rules (HIPAA Rules); and

WHEREAS, the Parties desire to establish the terms under which Business Associate may use or disclose PHI such that Covered Entity may comply with applicable requirements of the HIPAA Rules and the requirements of the HITECH Act that are applicable to business associates.

NOW THEREFORE, in consideration of these premises and the mutual promises and agreements hereinafter set forth, Covered and Business Associate hereby agree as follows:

**A. DEFINITIONS – Unless otherwise specified in this Agreement, all capitalized terms used in this Agreement and not otherwise defined herein have the meanings established for purposes of the HIPAA Rules and the requirements of the HITECH Act.**

1. **Breach** means the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Rules that compromises the security or privacy of the PHI.

2. **Business Associate** means any entity controlling, controlled by or under common control with Business Associate and each of Business Associate’s contractors that create, receive, maintain, or transmit PHI on behalf of Business Associate.

3. **ePHI** means all PHI that is transmitted or maintained in electronic media.

4. **HIPAA Privacy & Security Rule** means the Health Insurance Portability and Accountability Act of 1996, codified at 45 C.F.R. Parts 160 and 164 (Privacy Rule) and 45 C.F.R. Parts 160, 162 and 164 (Security Rule) including the requirements of the final modifications as issued on January 25, 2013, and the implementing regulations related to privacy, security, breach notification, and enforcement, as amended from time to time.

5. **HITECH Act** means Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, and all associated existing and future implementing regulations, when and as each is effective.

6. **PHI** means “protected health information” as defined in 45 C.F.R. §160.103, and is limited to the information received from, or received or created on behalf of, Covered Entity by Business Associate pursuant to performance of the services set forth in the Service Agreement.

7. **Security Incident** means an attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system and involves only PHI that is created, received, maintained, or transmitted by or on behalf of Business Associate in electronic form.

8. **Unsecured PHI** means PHI that is not secured through the use of a technology or methodology specified by guidance issued by the U.S. Department of Health and Human Services from time to time.

**B. Responsibilities of Business Associate**

1. **Permitted Uses and Disclosures**. Except as otherwise provided in this BAA, Business Associated agrees to use PHI only as necessary to provide the services set forth in the Service Agreement and Business Associate agrees to limit disclosure of PHI, to the extent practical, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request. Business Associate will not use or further disclose PHI other than as permitted required by this BAS or the Service Agreement or as required by law.
2. **Safeguards**. Business Associate agrees to implement and use appropriate administrative, physical and technical safeguards to (a) prevent use or disclosure of PHI; and (b) reasonably protect the confidentiality, integrity, and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Such safeguards include a written information security policy, a response plan for Security Incidents, periodic security awareness training, and confidentiality/nondisclosure agreements with those independent subcontractors and consultants with which Business Associate has delegated duties under this BAA.
3. **Reporting a Breach**. Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by this BAA of which it becomes aware, including any security incident (as defined in the HIPAA Security Rule) and any breaches of unsecured PHI as required by 45 CFR § 164.410. Breaches of unsecured PHI shall be reported to Covered Entity without unreasonable delay but in no case later than 60 days after discovery of the breach.
4. **Assistance with Breach Investigation**. In the event of a Breach, Business Associate will provide reasonable assistance to and cooperate with Covered Entity in investigating the Breach and Business Associated agrees to provide the following information in writing to Covered Entity: (a) Identification of each individual who is the subject of Unsecured PHI that has bee, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed; (b) a brief description of the events; (c) date of the potential Breach; (d) date of discovery; € type of PHI involved; (f) any preliminary steps taken to mitigate the damage; and (g) a description of the investigatory steps taken.
5. **Internal Practices**. Business Associate agrees to make available its internal practices, books, and records relating to the use and disclosure of PHI created for or from Covered Entity to the U.S. Department of Health and Human Services for purposed of determining Business Associate’s compliance with the HIPAA Privacy and Security Roles or this BAA.
6. **Disclosure Accounting**. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI. In addition, within Seven (7) calendar days after receiving a written request from Covered Entity, Business Associated will make available to Covered Entity the information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual, in accordance with 45 C.F.R. §164.528.
7. **Subcontractors**. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate will require any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
8. **Availability of Information**. Business Associate agrees to provide access to Covered Entity, within thirty (30) calendar days after receiving a written request from Covered Entity, to PHI in a designated record set about an individual who has a right of access in a manner that satisfies the Covered Entity’s obligations to provide access to PHI in accordance with 45 CFR §164.524. Business Associate will make such information available in an electronic format where required by the HITECH Act.
9. **Amendment of Information**. Business Associate agrees to make any amendment(s) to PHI in a designated record set as directed by Covered Entity, or take other measures necessary to satisfy Covered Entity’s obligations under 45 CFR §164.526.
10. **Management and Administration**. Business Associate agrees to only use or disclose PHI received in its capacity as a business associate to Covered Entity for Business Associate’s own operations if: (a) the use relates to the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate or to provide data aggregation services relating to health care operations of Covered Entity; or (b) the disclosure of information received in such capacity will be made in connection with Business Associate’s performance of the services set forth in the Service Agreement and such disclosure is required by law or Business Associate receives assurance from the person to whom the information will be disclosed that it will be kept confidential and the person further agrees to notify Business Associate of any Security Incident or Breach.
11. **Data Aggregation Services**. Except as otherwise prohibited by this BAA, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B).
12. **Prohibited Communications**. Business Associate will not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. §17936(a).
13. **Prohibited Fundraising**. Business Associate will not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. §17936(b).
14. **Carrying Out Covered Entity’s Obligations**. To the extent Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 C.F.R. Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.
15. **Mitigation of Damages**. Business Associate agrees to mitigate, to the extent practical, any harmful effect that is known to Business Associate of the use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

**C. RESPONSIBILITIES OF COVERED ENTITY**

1. **Identification of Records. With respect to the records Covered Entity furnishes to Business Associate, Covered Entity will identify those records that it considers to be PHI for purposes of this BAA.**
2. **Minimum Necessary. Covered Entity will provide to Business Associate only the minimum PHI necessary to perform the services set forth in the Service Agreement.**
3. **Increased Privacy Protections. In the event that Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R.** §164.522, Covered Entity will notify Business Associate of any restriction to the extent any such restriction may limit Business Associate’s ability to use and/or disclose PHI as permitted or required under this BAA or impose obligations on Business Associated additional to or inconsistent with the obligations assumed under this BAA.
4. **Privacy Notice Limitations. Covered Entity will notify Business Associate of any limitations in its Notice of Privacy Practices in accordance with 45 C.F.R.** §164.520, to the extent that any such limitation may affect Business Associate’s use or disclosure of PHI or impose obligations on Business Associate additional to or inconsistent with the obligations assumed under this BAA.
5. **Changes in Permission. Covered Entity will notify Business Associate of any changes in or revocation of permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI or impose obligations on Business Associate additional to or inconsistent with the obligations assumed under this BAA.**
6. **Breach Notification. In the event of a Breach or Security Incident, Covered Entity will have the sole right to determine whether notice is to be given to any individuals, regulators, law enforcement agencies, consumer reporting agencies, media outlets, the U.S. Department of Health and Human Services, or others as required by law or in Covered Entity’s discretion. In addition, Covered Entity will have the sole right to determine the contents of such notice, whether any type of remediation may be offered to affected individuals, as well as the nature and extent of any such remediation. Covered Entity will be solely responsible for providing such notice and for the costs thereof.**

**D. PERMITTED USES AND DISCLOSURES OF PHI**

 **Unless otherwise limited in this BAA, in addition to any other uses and/or disclosures permitted or required by this BAA, Business Associate may:**

1. Make any and all uses and disclosures of PHI necessary to provide the services set forth in the Service Agreement to Covered Entity.
2. Use and disclose to subcontractors and agents the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate.
3. Subject to the confidentiality provisions of the BAA, de-identify any and all PHI received or created by Business Associate under this BAA, which de-identified information shall not be subject to this BAA and may be used an disclosed on Business Associate’s own behalf, all in accordance with the de-identification requirements of the HIPAA Privacy & Security Rules.
4. Provide Data Aggregation Services relating to the Health Care Operations of the Covered Entity in accordance with the HIPAA Privacy & Security Rules.
5. Identify Research projects conducted Business Associate, third parties for which PHI may be relevant, obtain on behalf of Covered Entity documentation of individual authorizations or any Institutional Review Board or a Privacy Board waiver that meets the requirements of 45 C.F.R. §164.512(i)(1) (each an “Authorization” or “Waiver”) related to such projects, provide Covered Entity with copies of such Authorizations or Waivers, subject to confidentiality obligations (Required Documentation); and disclose PHI for such research.
6. Make PHI available for reviews preparatory to Research and obtain and maintain written representations in accordance with 45 C.F.R. §164.512(i)(1)(ii) that the requested PHI is sought solely as necessary to prepare a Research protocol or for similar purposes preparatory to Research, that the PHI is necessary for the Research, and that no PHI will be removed in the course of the review.
7. Use the PHI to create a Limited Data Set in compliance with 45 C.F.R. §164.514(e) for Research, Health Care Operations or Public Health purposes.
8. Use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(J)(1).

**E. TERM AND TERMINATION**

1. **Term.** This BAA will continue in full force and effect for as long as the Service Agreement remains in full force and effect. The term of this BAA will effective as of the Effective Date and will continue in effect unless terminated as authorized in paragraph 2 below. In addition, certain provisions and requirements of this BAA will survive expiration or termination in accordance with Section F. herein.
2. **Termination for Cause.** Without limiting the rights of the Parties as set out in the Service Agreement, each Party will have the right to terminate this BAA and the Service Agreement if the other Party has engaged in a pattern of activity or practice that constitutes a material violation or breach of its obligations regarding PHI under this BAA. Prior to terminating this BAA, the terminating Party will provide the other Party with an opportunity to cure the material violation or breach. If these efforts to cure the violation or breach are unsuccessful, as determined by the terminating Party in its reasonable discretion, then the Parties will terminate this BAA and the Service Agreement as soon as administratively feasible. If a Party determines, in its sole discretion, that the other Party has breached the terms of this BAA and such breach is not cured, but the non-breaching Party decides that termination of the BAA is not feasible, the non-breaching Party may report such breach to the U.S. Department of Health and Human Services.
3. **Effect of Termination.** Except as otherwise provided herein, the Parties agree that upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or destroy all PHI received from Covered Entity or created, maintained, or received by Business Associate on behalf of Covered Entity. Upon mutual agreement of the Parties, Business Associate may retain the PHI and will continue to extend all protections, limitations and restrictions contained in this BAA to Business Associate’s use and/or disclosure of PHI for so long as Business Associate maintains such PHI.
4. Termination without Cause. Notwithstanding any provision of this Contract to the contrary, this Contract may be terminated by the City of Thornton, at its sole discretion, if the City of Thornton submits to the Business Associate a written notice of intent to terminate this Contract.

**F. MISCELLANEOUS**

1. **Interpretation and References**. Any ambiguity in this BAA or the Service Agreement shall be resolved to maintain compliance with the HIPAA Privacy & Security Rules and the HITECH Act. A reference to a section of the HIPAA Privacy & Security Rules mains the section in effect or as amended and for which compliance is required.
2. **Indemnification**. Business Associate shall indemnify and hold harmless City of Thornton, and its officers, agents and employees, from and against any and all costs, expenses, claims, demands, causes of action, damages, attorney’s fees and judgments that arise out of or that may be imposed upon, incurred by, or brought against City of Thornton to the extent directly resulting from a breach of this Agreement or any violation of HIPAA or HITECH and applicable regulations by Business Associate. These indemnification provisions will become effective on the effective date of this Agreement and will survive termination of this Agreement.
3. **Governing Law.** This BAA is governed by the laws of the State of Colorado. The state courts located in Adams County, Colorado, will have jurisdiction to adjudicate any dispute arising out of or relating to this BAA. Each Party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise.
4. **Amendment.** The Parties agree to take any action necessary to amend this BAA from time to time as necessary, for either Party to comply with the requirements of HIPAA or the HITECH Act.  This Contract shall not be amended except by written instrument executed by both Parties.
5. **Severability.** If any provision of this BAA shall be adjudged by any court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not affect, impair or invalidate the remainder of this BAA, and the Parties shall reform or amend the BAA, if necessary, to the extent that such reform or amendment is legally and reasonably possible, in order to carry out the intent of this BAA and the provisions of HIPAA and the HITECH Act.
6. **Independent Contractor.** Business Associate, including its directors, officers, employees and agents, is an independent contractor and not an agent of Covered Entity or a member of its workforce. Without limiting the generality of the foregoing, Covered Entity will have no right control direct or otherwise influence Business Associate’s conduct in the course of performing the services, other than through the enforcement of this BAA or the Service Agreement, or the mutual amendment of the same.
7. **No Third Party Beneficiaries.** The Parties agree there are no intended third party beneficiaries under this BAA. Nothing express or implied in this BAS is intended to confer upon any person, other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. This provision shall survive termination of this BAA and the Service Agreement.

**G. Legal Requirements**

The Parties recognize that this BAA is subject to and agree to comply with applicable state, local and federal statutes and rules and regulations and orders of the court as applicable.  Any provision of applicable statutes, rules and regulations in accordance with the now existing or enacted or promulgated after the effective date of this BAA that invalidates the term of this BAA, or is inconsistent with the term of or would cause performance hereof by one or both of the Parties to be in violation of the law, shall be deemed to have superseded the terms of this BAA and this BAA shall be automatically amended to achieve compliance with the applicable law.  Provided, however, that if such amendment does preserve in all material respects the underlying economic and financial arrangement between the Parties, the BAA may be terminated by written notice of either Party.

APPROVED AS TO LEGAL FORM: CITY OF THORNTON, COLORADO:

Tami Yellico, City Attorney

By:

 , City Attorney Kimberly Newhart, Finance Director

ATTEST: CITY OF THORNTON, COLORADO:

Kristen Rosenbaum, City Clerk Sean Saddler, Support Services Director

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| ATTEST FOR FIRM SIGNATURE:(If corporation) \_\_***<Sample Only>\_\_\_\_\_\_\_\_***\_\_\_\_\_\_\_\_\_\_\_Signature Print Name  Title  | COMPLETE COMPANY NAME\_\_***<Sample Only>\_\_\_\_\_\_\_\_***\_\_\_\_\_\_\_\_\_\_\_Signature Print Name  Title  |