

REQUEST FOR PROPOSAL

Boulder County Public Health

ENERGY EFFICIENCY REBATE PROGRAM

RFP # 6716-17



SUBMITTAL DUE DATE

Tuesday, November 28, 2017

2:00 p.m.

BOULDER COUNTY PURCHASING

1325 PEARL STREET

BOULDER CO 80302

Purchasing@bouldercounty.org

REQUEST FOR PROPOSAL

Boulder County is seeking qualified contractors to support its energy efficiency rebate program as outlined in the Statement of Work and Scope of Work sections in this RFP.

Specifications and a sample contract are attached

Written Inquiries

All inquiries regarding this RFP shall be submitted via email to the Boulder County Purchasing Office at purchasing@bouldercounty.org on or before 4:00 p.m. **Thursday, November 9, 2017**. A response from the County to all inquiries shall be posted and sent via email no later than **Thursday, November 16, 2017**.

Submittal Instructions

Submittals are due at the Administrative Services Information Desk or the email box (preferred) listed below, for time and date recording on or before **2:00 p.m. Mountain Time on Tuesday, November 28, 2017**.

Your response can be submitted in the following ways. Please note that email responses to this solicitation are preferred, but are limited to a maximum of 25MB capacity. Electronic Submittals must be received in the e-mail box listed below. Submittals sent to any other box will NOT be forwarded or accepted. This e-mail box is only accessed on the due date of your questions or proposals. Please use the Delivery Receipt option to verify receipt of your email.

E-Mail purchasing@bouldercounty.org; identified as **RFP # 6716-17** in the subject line.

-OR-

US Mail **One (1)** unbound copy of your submittal, printed double-sided, 11 point, on at least 50% post-consumer, recycled paper must be submitted in a sealed envelope, clearly marked as **RFP # 6716-17**, to the Administrative Services Information Desk at 1325 Pearl Street, Boulder, CO 80302.

All RFPs must be received and time and date recorded by authorized county staff by the above due date and time. Sole responsibility rests with the Offeror to see that their RFP response is received on time at the stated location(s). Any responses received after due date and time will be returned to the offeror.

The Board of County Commissioners reserves the right to reject any and all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the Board, is in the best interest of the Board and of the County of Boulder, State of Colorado.

Americans with Disabilities Act (ADA): If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator or the Human Resources office at (303) 441-3525 at least 48 hours before the scheduled event.

TERMS AND CONDITIONS

1. Proposers are expected to examine the drawing, specifications, schedule of delivery, and all instructions. Failure to do so will be at the bidder's risk.
2. Each bidder shall furnish the information required in the Request for Proposals.
3. The Contract/Purchase Order will be awarded to that responsible bidder whose submittal, conforming to the Request for Proposals, will be most advantageous to the County of Boulder, price and other factors considered. **The sample contract included with this Request for Proposals is indicative of the contract the winning bidder will be required to sign. The final contract may contain additional terms required under the award agreement between Boulder County Public Health ("BCPH") and its Grantor; a copy of that agreement is available to the bidder upon request.**
4. The County of Boulder reserves the right to reject any or all proposals and to waive informalities and minor irregularities in bids received, and to accept any portion of or all items proposed if deemed in the best interest of the County of Boulder to do so.
5. No submittal shall be withdrawn for a period of thirty (30) days subsequent to the opening of bids without the consent of the County Purchasing Agent or delegated representative.
6. A signed purchase order or contract furnished to the successful bidder results in a binding contract without further action by either party.
7. Late or unsigned proposals will not be accepted or considered. It is the responsibility of proposers to insure that the proposal arrives at the Administrative Services Front Desk or appropriate email box prior to the time indicated in the "Request for Proposals."
8. The proposed price shall be exclusive of any Federal or State taxes from which the County of Boulder is exempt by law.
9. Any interpretation, correction or change of the RFP documents will be made by Addendum. Interpretations, corrections and changes of the RFP documents made in any other manner will not be binding, and proposer shall not rely upon such interpretations, corrections and changes. The County's Representative will not be responsible for oral clarification.
10. Confidential/Proprietary Information: Proposals submitted in response to this "Request for Proposals" and any resulting contract are subject to the provisions of the Colorado Public (Open) Records Act, 24-72-201 et. seq., C.R.S., as amended. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract shall be clearly stated in the proposal itself. Confidential/proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. **Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor bid price information will be considered confidential/proprietary. Any information that will be included in any resulting contract cannot be considered confidential.**
11. Boulder County promotes the purchase/leasing of energy efficient, materials efficient and reduced toxic level products where availability, quality and budget constraints allow. Bidders are expected whenever possible to provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency with power management features enabled. Bidders are encouraged to offer products and equipment with post-consumer recycled-content materials. Products should be packaged and delivered with a minimum amount of recycled packaging that adequately protects the product, but is not excessive.
12. Pursuant to Colorado law (House Bill 1292), in any bidding process for public works in which a bid is received from a non-resident bidder who is from a state that provides a percentage bidding preference, a comparable percentage disadvantage shall be applied to the bid of that bidder. Bidders may obtain additional information from the Department of Personnel's website: <http://www.colorado.gov/dpa/>.

SPECIFICATIONS

RFP # 6716-17

Energy Efficiency Rebate Program

STATEMENT OF WORK

Background

In 2010, BCPH and its grant partners have received a \$25 million grant from the Department of Energy. The goals of the program were to stimulate economic growth and investment in Colorado and to advance the state's energy independence through large-scale retrofits in the neighborhoods and business districts in BCPH. A commercial rebate program was developed to encourage businesses to implement energy efficiency measures and help achieve these goals. To date, over 1,400 rebates totaling more than \$3,600,000 have been dispersed to more than 1,300 businesses in Boulder County.

BCPH is planning to continue offering rebates for at least the next five years. Funding for these rebates will be provided by the County, as well as municipalities including the City of Boulder.

Rebate Program Overview and Goals

The goals of the Rebate Program are to:

- 1) Effectively provide rebate opportunities for Energy Efficiency (EE) improvements to businesses across BCPH.
- 2) Transform the energy efficiency contractor, trades, and manufacturing sectors so that they better understand, recognize, value, and promote the use of energy efficient equipment.
- 3) Maintain and create partnerships with utilities and communities that will allow for sustainable funding.
- 4) Secure the faith and trust of stakeholders and citizens that funds were utilized prudently and successfully.

Budgets

BCPH is anticipating that the annual budget for the Rebate Program will range between \$150,000 and \$500,000. It is anticipated that up to 300 commercial rebates will be fulfilled each year.

Reporting

BCPH requires that the Contractor will provide and oversee as necessary all applicable reporting detailed below.

SCOPE OF WORK

The overall task of the awarded Contractor is to support the deployment of rebate awards within the Rebate Program by creating and maintaining a database that will allow flow of information from the public to BCPH and its partners and vice versa. The scope of work for this includes:

- Rebate Verification
- Check Writing Services
- Reporting of required data metrics to BCPH

BCPH has developed this scope of work as a draft of what will be negotiated in the final contract. BCPH does not assume that this will cover all the requirements of the contract, but rather, aims to direct companies responding to this RFP on what will likely be required. BCPH may determine at a later point to include additional requirements, or remove any of the requirements below, but will work with the Contractor to understand the costs and impacts of such requirements.

Subcontractor Requirements:

BCPH will allow for certain types of subcontracting to occur in the scope of work only under the following circumstances:

1. Documentation showing any subcontractors were chosen through a competitive bid process. The applicant must demonstrate and prove, through documentation, that the subcontractor was chosen through a competitive bid process. BCPH reserves the right to accept or reject the documentation.
2. All subcontractors must have primary offices and complete the work within the continental United States.
3. BCPH expects that core areas below may be subcontracted, but may consider additional areas included in a proposal if reasonably justified.
 - Database design and management
 - Reporting
 - Training
 - Reconciliation of financial transactions
4. Subcontractors cannot be responsible for more than three (3) of the above categories or categories identified by the applicant.
5. BCPH reserves the right to not accept any subcontractors identified in the submitted proposal if it so chooses.

Rebate Application Process

BCPH will work with the potential rebate recipient to complete the rebate application. BCPH will then submit the application to the Contractor to verify the eligibility of the applicant and the equipment being rebated.

- Rebate Reservation- BCPH submits an application that includes specific project information including a contractor bid including the type of equipment being installed.
 - Contractor reviews reservation information
 - If approved, Contractor estimates the rebate amount based upon criteria provided by BCPH.
 - Contractor sends Rebate Reservation Confirmation BCPH identifying the amount and the duration of the rebate to be reserved and tracks this information in the master database.
- Rebate Application – BCPH submits an application for a rebate using the final project cost information.
 - Contractor reviews rebate application.
 - Rebate Contractor confirms that the documentation provided demonstrates that the project was completed and eligibility requirements have been met.
 - Contractor processes and send rebate check once application is approved.
 - If rebate is not approved:
 - Contractor notifies BCPH with reasons for rebate denial.
 - BCPH will work with the business to correct issues when possible or notify the business with the reason(s) for the denial.
 - Database is updated to reflect reason for denial and status of rebate.

Rebate Program Database Requirements

The database must:

- Be a central store of all application data and documentation, and correspondences sent to applicant.
- Provide time-stamped status information.
- Identify and associate multiple application submittals to a single commercial business or vendor record. Provide other functions to mitigate fraud, errors and redundant check processing.
- Can provide up-to-date reports on-demand and periodically (weekly or monthly) as needed.
- Provides an easy-to-use report function that allows BCPH staff and its partners to review and approve all rebate applications that are required for auditing.
- Database records must support the needs of BCPH and its partners to review and approve applications, as well as summarize and measure the rebate program process and results.
- Successfully complete a defined acceptance test prior to launch.
- Ensure that data is never stolen or used improperly.
- Easily determine applicable rebate level based on unique rebate type, location of applicant and remaining funds available in for that rebate category or community.
- The system should be widely accepted, based on industry technology standards and be Open Database Connectivity (ODBC) compliant.
- Adhere to the following technical requirements and expectations:
 - Avoid the use of proprietary systems.
 - Awarded Contractor will provide the data server and web hosting.
 - BCPH will own all data and content.
 - Be responsive to BCPH and the technical team established as the lead by BCPH.

Verification Process and Structure Requirements

The rebate verification structure must:

- Allow for verification that all information is present and is acceptable for fulfillment.
- Ensure that data with entry parameters (set range of numbers for example) meet the parameters. Software will perform a screen of the application to determine if all fields fall within the acceptable requirements for the application to be eligible for the rebate.
- Any data that does not meet the defined criteria must be flagged. BCPH and/or the applicant must be made aware of the issues.
- Manual verification for documentation will be required.
- Successfully complete a defined acceptance test prior to launch.

Reporting Requirements

Each core component task for the Rebate Program will require that periodic progress reports be provided to BCPH. Upon completion of each task or task phase a summary report of the achieved milestones, deliverables, goals, analysis of metrics and suggestions for project adjustments will be required. The awarded Contractor must have the following capabilities:

- Use efficient and transparent project management and metrics tracking tools.
- Provide clear reporting on achieved milestones, deliverables, goals, analysis of metrics and suggestions for project adjustments.
- Communicate the cost-effectiveness and impact of project solutions clearly and measurably.
- Work together with BCPH and other contractors to ensure easy integration of rebate support call center to the main public information call center and BCPH's central database.

- Progress reports will be the basis for billing and all payments will be made “as earned” in accordance with BCPH’s standard contract terms and conditions and shall be made as earned, in whole or in part, from available funds encumbered, beginning after the contract has been negotiated and properly executed.
- Weekly check-ins regarding the status of the milestones and tasks prior to the launch of the Rebate Program will be provided throughout the project.
- Upon completion, each of the tasks and deliverables described in this RFP shall be subject to BCPH’s final review and acceptance. The costs for reporting should be included in the budget for each component.
- The Contractor must be able to provide various types of report, i.e. one set of reports must include how many applications were received, verified, accepted or rejected while another set will be identifying how much funding is left per rebate type, geographical breakdown of where rebates are being delivered (utility, zip code, city) aggregation of systems sizes etc.
- Flags for any rebate application duplicates or multiple rebates assigned to one basic information record.

Additional Requirements

The Contractor has the following responsibilities:

- The Contractor will process rebates (those without reservation requirements) and fulfill the rebate in no more than 6 weeks after the rebate application is complete and submitted.
- The Contractor will process rebates reservations within 1 week after the reservation is complete and submitted.
- If issues are found with the rebate application, the Contractor will contact the applicant to make them aware of the steps necessary to complete the application.
- Once the rebate applications are launched BCPH expects weekly, or when required daily, reports of total rebates submitted, errors in the rebate application process and application duplicates.
- Rebate application submissions should be available to BCPH and its partners in real-time to ensure prompt review and approval. All data submitted should be complete and verified prior to fulfillment.
- All supporting documentation must be maintained and properly stored with all associated rebate transaction records.
- The Contractor must provide BCPH with random applications for auditing upon request. All data submitted should be complete and verified and ready for approval by the Contractor prior to BCPH’s receipt for approval. BCPH will work with the Contractor to determine the number of rebates to be audited.
- All data reports to BCPH must be in either a Comma Separated Value (.CSV) file or Microsoft Access database format and all narratives must be in word format.
- The Contractor must provide a Request for Payment to Boulder, in the format required by BCPH, each quarter.
- The Contractor will pass a rebate processing assurance test (developed with input from BCPH and the Contractor) prior to launch that includes all core components of the process.

INSURANCE REQUIREMENTS

The Contractor shall procure and maintain at its own expense, and without cost to BCPH, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

a. **Commercial General Liability.**

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

b. **Automobile Liability.**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

c. **Workers' Compensation and Employer's Liability.**

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

d. **Commercial Crime Insurance / Third Party Fidelity Bond**

The Crime limit shall be \$150,000 Per Loss and include an endorsement for "Employee Theft of Client Property". This third party coverage can also be provided by obtaining a third party fidelity bond

The Contractor shall provide Certificates of Insurance to BCPH demonstrating that the insurance requirements have been met prior to the commencement of Work under this Contract. The Commercial General Liability certificate shall indicate BCPH as an **ADDITIONAL INSURED**.

The "Additional Insured" wording should be as follows: *Boulder County Public Health, State of Colorado, a body corporate and politic, and Boulder County, State of Colorado, a body corporate and politic, are named as Additional Insureds.*

These Certificates of Insurance shall also contain a valid provision or endorsement that these policies may not be canceled, terminated, changed or modified without **thirty (30) days** written notice to BCPH.

Note: Insurance amounts are the minimum required for this project, and BCPH reserves the right to amend insurance coverages in the awarded bidder's contract. Proof of current insurance must be provided with your proposal in the form of a sample certificate.

SUBMITTAL SECTION
RFP # 6716-17
Energy Efficiency Rebate Program

Please submit the following information in the order listed below:

1. Legal Name of your company/organization
2. Legal Type of organization: (Corporation, Partnership, etc.)
3. Address
4. Names and Address of the Partners and Subcontractors if applicable
5. Contact Person(s)
6. Telephone, Fax, e-mail
7. A detailed project schedule with an all-inclusive total cost
8. Information on the relevant experience of key personnel
9. Submit three references for similar projects your company has completed within the last three years and contact information.
10. Proof of active certificate of insurance
11. Provide a copy of your business's W-9
12. Completed signature Page.

SIGNATURE PAGE
RFP # 6716-17
Energy Efficiency Rebate Program

Failure to complete, sign and return this signature page with your proposal may be cause for rejection.

Contact Information	Response
Company Name	
Name and Title of Primary Contact Person	
Company Address	
Phone Number	
Email Address	
Company Website	

By signing below I certify that:

I am authorized to bid on my company's behalf.

I am not currently an employee of Boulder County or BCPH.

None of my employees or agents is currently an employee of Boulder County or BCPH.

I am not related to any BCPH, Boulder County employee or Elected Official.

I am not a Public Employees' Retirement Association (PERA) retiree.

**Signature of Person Authorized to Bid on
 Company's Behalf**

Date

Note: If you cannot certify the above statements, please explain in the space provided below.

SAMPLE CONTRACT
--DO NOT COMPLETE OR RETURN WITH YOUR PROPOSAL--

THIS CONTRACT ("Contract") is entered into between *Boulder County Public Health, a political subdivision of the State of Colorado* ("BCPH") and (*Name of Company*) ("Contractor").

In consideration of the rights and obligations specified below, BCPH and the Contractor agree as follows:

1. **Incorporation into Contract:** The following documents (the "Contract Documents" are each expressly incorporated into this Contract by reference:

- a. *The Invitation for Bid or Request for Proposal and Specifications of Boulder County Bid No. (NUMBER)*, together with any alterations and/or modifications to these Specifications (the "Bid Documents"),
- b. Contractor's proposal in response to the Bid Document(s), (the "Proposal"),
- c. The scope of work, attached hereto as "Attachment A" (the "Scope of Work"),
- d. The fee schedule, attached hereto as "Attachment (letter)" (the "Fee Schedule"),
- e. (If required) BCPH's contract with the Colorado Department of (*Name of Department/Office*), (*Routing No.*) ("State Contract"), dated (*date*), including all subsequent contract renewals, amendments, and option letters, which shall be provided upon Contractor's request ("Attachment (letter)").
- f. (If required) In compliance with the federal Health Insurance Portability and Accountability Act (HIPAA), services will be provided in accordance with the Business Associate Agreement ("Attachment (letter)").

2. **Work to be Performed:** The Contractor will, in a good and workmanlike manner and at its own cost and expense, furnish all labor and equipment and do all work necessary and incidental to perform (*specify type of work*), as specified in the Contract Documents, and this Contract (the "Work"). The Contractor shall perform the Work in strict accordance with the Contract Documents and this Contract.

3. **Term of Contract:** This Contract shall begin and become effective on the date of execution by the parties, which date is the date specified on the signature page of this Contract. Under this Contract, the Contractor shall begin Work on (*date*), and shall continue through (*date*).

4. **Payment for Work Performed:** In consideration of the Work to be performed by the Contractor, and subject to the "Termination and Related Remedies" paragraph of this Contract, BCPH shall pay to the Contractor an amount not to exceed \$(*contract price*), as services are provided, approved by BCPH, and **upon submission of Contractor invoicing** in accordance with the "Invoicing" paragraph of this Contract.

5. **Invoicing:** The Contractor shall submit invoices to BCPH **within thirty (30) days upon the completion of the Work and** as follows:

- a. **All invoices submitted require the following components:** Contractor's name and address (which must match the submitted W-9), payment remittance address, payer (e.g. BCPH) name and address, date of invoice, invoice number, brief description of services, dates of services, and total amount due.
- b. Send invoices using either of the following options:
 - i. Mail: BCPH, ATTN: Accounts Payable, 3450 Broadway, Boulder, CO 80304, or
 - ii. Email: HealthAP@bouldercounty.org
- c. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract may cause a delay in payment.

- d. BCPH reserves the right to recoup any damages incurred as a result of Contractors failure to submit invoices pursuant to the terms of this paragraph.
6. Extension and/or Renewal of Contract Term:
- a. BCPH, in its sole discretion, may elect to extend the term of this Contract. In the event BCPH elects to exercise this right, it shall send written notice to Contractor, pursuant to the "Notices" paragraph of this Contract, of its intent to extend the term of the Contract. The notice shall set forth the length of the extension.
 - b. Upon mutual agreement by the parties, this Contract may be renewed for four (4) additional twelve-month periods through (date) during which time this Contract shall be in full force and effect, subject to the termination provisions of the "Termination and Related Remedies" paragraph of this Contract. If this option to renew is exercised, the parties shall execute a written agreement no later than thirty (30) days before the expiration of this Contract.
 - c. All of the provisions of this Contract shall remain in full force and effect during any extension or renewed term except that the scope of services and compensation to be paid to Contractor during any extension or renewed term shall be mutually agreed upon prior to the commencement of any extension or renewed term. The agreed upon scope of services and compensation shall be reduced to writing, signed by both parties, and attached to this Contract.
 - d. **TEN CALENDAR DAYS BEFORE THE COMMENCEMENT OF ANY EXTENDED TERM THE CONTRACTOR SHALL SUBMIT TO THE BCPH PROOF OF INSURANCE AS REQUIRED IN THE "INSURANCE REQUIREMENTS" PARAGRAPH OF THIS CONTRACT.**
 - e. Should the parties fail to agree upon the scope of services or compensation to be paid to Contractor for any extension or renewed term, or should Contractor fail to submit the required documents within the time period specified in subsection (d) of this "Extension and/or Renewal of Contract Term," then this Contract shall terminate at the end of the then current term and no extension or renewal of the term of the Contract shall occur.
7. Quality of Performance: The Contractor shall perform the Contract in a manner satisfactory and acceptable to BCPH. BCPH shall be the sole judge of the quality of performance.
8. Schedule of Work: The Contractor shall perform the Work during the hours designated by BCPH so as to avoid inconvenience to BCPH and its personnel and interference with BCPH's operations.
9. Indemnity: The Contractor shall be liable and responsible for any and all damages to persons or property caused by or arising out of the actions, obligations, or omissions of the Contractor, its employees, agents, representatives or other persons acting under the Contractor's direction or control in performing or failing to perform the Work under this Contract. The Contractor will indemnify and hold harmless BCPH, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including but not limited to attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of the Contractor, its employees, agents or representatives, or other persons acting under the Contractor's direction or control.
10. Insurance Requirements: The Contractor shall procure and maintain at its own expense, and without cost to the BCPH, the following kinds and minimum amounts of insurance for purposes of insuring the liability risks which the Contractor has assumed until this Contract has expired or is terminated:

- a. Commercial General Liability.

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

Coverage should be provided on an Occurrence form, ISO CG0001 or equivalent. The policy shall be endorsed to include Additional Insured endorsements CG 2010 (or equivalent), Designated Construction Projects General Aggregate Endorsement CG2503 (or equivalent) and Additional Insured (for products/completed operations) CG 2037 (or equivalent). Minimum limits required of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate". The County may require Products/Completed Operations coverage to be provided for up to 3 years after completion of construction.

b. Automobile Liability.

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

This coverage may not be required if Contractor is not using a vehicle as part of its performance under the contract. Contact Risk Management for a waiver.

c. Workers' Compensation and Employer's Liability.

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

This coverage may not be required if contractor has no employees. Contact Risk Management for a waiver.

d. Professional Liability (Errors and Omissions).

All contractors required to be professionally certified by the State of Colorado (i.e., architects, engineers, doctors, nurses, etc.) and/or any consultants whose errors in judgment, planning, design, etc. could result in economic loss to the County, must provide proof of professional liability coverage with minimum limits of \$1,000,000 Per Loss and \$1,000,000 Aggregate. Professional Liability provisions indemnifying for loss and expense resulting from errors, omission, mistakes or malpractice is acceptable and may be written on a claims made basis. The contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

e. Pollution Liability.

This coverage is required whenever work under the contract involves pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's scope of services. The policy shall cover

the Contractor's completed operations. The coverage must include sudden and gradual pollution conditions including clean-up costs when mandated by governmental authority, when required by law or as a result of a third party claim. Minimum limits required are \$1,000,000 Per Loss and \$1,000,000 Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.

f. Third Party Fidelity or Crime Insurance.

This coverage is required when the contractor or employees of the contractor handle money on behalf of the County (an auction company, someone collecting fees for the County, etc...) If the Contractor is physically handling money at a County owned location, the Contractor's crime insurance should provide a coverage extension for "Employee Theft of Client Property". This can also be provided by a third party fidelity bond/policy. The limit shall be \$1,000,000 Per Loss.

g. Farmer's Liability.

Farmer's Liability may be substituted for Commercial General Liability to support Parks and Open Space agriculture leases.

The Contractor shall provide Certificates of Insurance to BCPH demonstrating that the insurance requirements have been met prior to the commencement of Work under this Contract. BCPH and Boulder County shall be named as an **ADDITIONAL INSURED** for Commercial General Liability and Pollution Liability (if included in this Contract), on the insurance certificate. .

The "Additional Insured" wording should be as follows: *Boulder County Public Health, State of Colorado, a body corporate and politic, and Boulder County, State of Colorado, a body corporate and politic, is named as Additional Insured.*

Notice of Cancellation: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to BCPH, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. If any insurance company refuses to provide the require notice, the Contractor or its insurance broker shall notify BCPH of any cancellation, suspension, and/or non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

Please send any of the above **insurance** notices and certificates to the following certificate holder:

Boulder County Public Health
ATTN: Contracts Specialist
3450 Broadway
Boulder, CO 80304
Email: healthcontracts@bouldercounty.org

11. **Nondiscrimination:** The Contractor agrees to comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, state and federal laws respecting discrimination and unfair employment practices. BCPH prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-

economic status, sexual orientation, genetic information, or any other status protected by applicable federal, state, Boulder County and BCPH Policy (both of which are available to the Contractor upon written request).

12. Nondiscrimination Provisions Binding on Subcontractors: In all solicitations by the Contractor for any Work related to this Contract to be performed under a subcontract, either by competitive bidding or negotiation, the Contractor shall notify each potential subcontractor of the Contractor's obligations under this Contract, and of all pertinent regulations relative to nondiscrimination and unfair employment practices.

13. Information and Reports: The Contractor will provide to authorized governmental representatives, including those of the County, State, and Federal Government, all information and reports which they may require for any purpose authorized by law. The Contractor will permit such authorized governmental representatives access to the Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where any information required by any such authorized government representative is in the exclusive possession of a person other than the Contractor, then such Contractor shall so certify to BCPH, and shall explain what efforts it has made to obtain the information.

14. Independent Contractor: The Parties recognize and agree that the Contractor is an independent contractor for all purposes, both legal and practical, in performing services under this Contract, and that the Contractor and its agents and employees are not agents or employees of Boulder County for any purpose. As an independent contractor, the Contractor shall be responsible for employing and directing such personnel and agents as it requires to perform the services purchased under this Contract, shall exercise complete authority over its personnel and agents, and shall be fully responsible for their actions.

Contractor acknowledges that it is not entitled to unemployment insurance benefits or workers' compensation benefits from Boulder County, its elected officials, agents, or any program administered or funded by Boulder County. Contractor shall be entitled to unemployment insurance or workers' compensation insurance only if unemployment compensation coverage or workers' compensation coverage is provided by Contractor, or some other entity that is not a party to this Contract. Contractor is obligated to pay federal and state income tax on any monies earned pursuant to this Contract.

15. Termination and Related Remedies:

- a. The other provisions of this Contract notwithstanding, financial obligations of BCPH payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. BCPH is prohibited by law from making financial commitments beyond the term of its current fiscal year. BCPH has contracted for goods and/or services under this Contract and has reason to believe that sufficient funds will be available for the full term of the Contract. Where, however, for reasons beyond the control of BCPH as the funding entity, funds are not allocated for any fiscal period beyond the one in which this Contract is entered into, BCPH shall have the right to terminate this Contract by providing seven (7) days written notice to the Contractor pursuant to the "Notices" paragraph of this Contract, and will be released from any and all obligations hereunder. If BCPH terminates the Contract for this reason, BCPH and the Contractor shall be released from all obligations to perform Work and make payments hereunder, except that BCPH shall be required to make payment for Work which has been performed by the Contractor prior to the effective date of termination under this provision; and, conversely, the Contractor shall be required to complete any Work for which BCPH has made payment prior to providing written notice to the Contractor of the termination.

- b. The preceding provisions notwithstanding, BCPH may terminate this Contract, either in whole or in part, for any reason, whenever BCPH determines that such termination is in BCPH's best interests. Such termination shall be effective after BCPH provides seven (7) days written notice to the Contractor pursuant to the "Notices" paragraph of this Contract.
- c. In the event BCPH exercises either of the termination rights specified in subsections (a) or (b) of this "Termination and Related Remedies" paragraph, this Contract shall cease to be of any further force and effect, with the exception of all Contract remedies which are specified herein and may otherwise be available to the parties under the law, and with the exception of any rights or liabilities of the parties which may survive by virtue of this Contract.

16. Notices: For purposes of the notices required to be provided under this Contract, all such notices shall be in writing, signed by a person duly authorized to provide such notice, and shall be either sent by electronic, U.S. Mail (return receipt requested), or hand-delivered to the following representatives and addresses:

For BCPH: **NAME**
 Director of Administrative Services
 3450 Broadway
 Boulder, CO 80304
 Email: xxxxxxxxxxxx
 Phone: xxx-xxx-xxxx

For Contractor: **NAME**
 dba **NAME**
ADDRESS
CITY, STATE ZIP
 E-mail: xxxxxxxxxxxx
 Phone: xxx-xxx-xxxx

In the event a notice is mailed pursuant to the provisions of this paragraph, the time periods specified in the "Termination and Related Remedies" paragraph of this Contract shall commence to run on the day after the postmarked date of mailing.

17. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally. Without limiting the scope of this provision, the Contract is specifically subject to the following statutory requirement:

- a. Contract payments may be withheld pursuant to C.R.S. §38-26-107 if BCPH receives a verified statement that the Contractor has not paid amounts due to any person who has supplied labor or materials for the project.

18. Prohibitions on Public Contract for Services: Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, et seq., as amended on May 13, 2008, the Contractor shall meet the following requirements prior to signing this Contract (public contract for service) and for the duration thereof:

- a. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- b. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- c. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work

under this public contract for services through participation in either the E-Verify Program or the Department Program.

- d. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- e. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and BCPH within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous sentence, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- f. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- g. If Contractor violates any provisions of this Section of this Contract, BCPH may terminate this Contract for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to BCPH.

19. Amendments: This Contract may be altered, amended, or repealed only on the mutual agreement of BCPH and the Contractor by a duly executed written instrument.

20. Assignment: This Contract shall not be assigned or subcontracted by the Contractor without the prior written consent of BCPH.

21. Complete Agreement/Binding Effect: This Contract represents the complete agreement between the Parties hereto and shall be fully binding upon the successors, heirs, and assigns of the Parties, if any, during the term hereof.

22. Governing Law: The laws of the State of Colorado shall govern the interpretation and enforcement of this Contract. Any litigation that may arise between the parties involving the interpretation or enforcement of the terms of this Contract shall be initiated and pursued by the parties in the Boulder Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

23. Breach: Any waiver of a breach of this Contract shall not be held to be a waiver of any other or subsequent breach of this Contract. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

24. Termination of Prior Agreements: This Contract cancels and terminates, as of its effective date, all prior agreements between the parties relating to the services covered by this Contract, whether written or oral or partly written and partly oral.

25. Invalidity Provision: Should any of the provisions of this Contract be held to be invalid or unenforceable, then the balance of the agreement shall be held to be in full force and effect as though the invalid portion was not included; provided, however, that should the invalidity or unenforceability go to the essence of the agreement or be of substantial nature, then the Party or Parties who would receive the benefit of the provision, were it not invalid or unenforceable, shall have the option to terminate this

Contract, forthwith.

26. Third Party Beneficiary: The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to BCPH and the Contractor, and nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this Contract that any person receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

27. Conflict of Provisions: In the event of any conflict between the terms of this Contract and the terms of any attachments or addenda, the terms of this Contract shall control.

28. Governmental Immunity: Nothing in this agreement shall be construed in any way to be a waiver of BCPH's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

29. Representations and Warranties: Contractor represents and warrants the following to BCPH, as a material inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of this Contract, any termination of this Contract, and the final completion of the work. The Contractor affirms the following:

- a. Execution of this Contract and performance thereof is within the Contractor's duly authorized powers;
- b. Any individual executing this Contract is authorized to do so by the Contractor;
- c. The Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the project; and
- d. All licenses and/or certification requirements necessary to provide the services specified in this Contract are current and shall be made available to BCPH, upon request.
- e. The Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the work and perform all obligations under the Contract.

30. Execution by Counterparts; Electronic Signatures: This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of the Contract and to officially bind the Parties to this Contract, provided that the electronic signatures are in either of the following two formats: (1) electronic or facsimile delivery of a fully executed copy of a signature page; or (2) the image of the signature of an authorized signer is inserted onto PDF format documents. All documents must be properly notarized, if required. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §24-71.3-101 to -121.

31. Limitation on Public Statements and Lobbying Activity. Contractor shall not, without prior written consent from BCPH, disclose at any time information obtained as a result of this contractual relationship to any third party, lobby any County agency on any pending matter as related to this subject matter of this Contract while they are under contract to BCPH, nor make any public statements or appear at any time to give testimony at any public meeting on the subject matters with regard to which Contractor is or was retained by BCPH, under the terms of this Contract.

32. No Suspension/Debarment: (For all contracts involving federal funding only.) The Parties certify that they are not suspended or debarred, or otherwise excluded from or ineligible for participation in Federal

Assistance Programs under Executive Order 12549.

33. Laws to be Observed: The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations which in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction over the same, and shall defend, at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall defend, protect and indemnify BCPH, as permitted by law, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself, its subcontractors, agents, or employees.

[Signature Page to Follow]

SAMPLE

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

Executed by BCPH this _____ day of _____, 20____.

BOULDER COUNTY PUBLIC HEALTH, COUNTY OF BOULDER, STATE OF COLORADO

NAME, Director of Administrative Services

Approved as to form:

NAME, DIVISION NAME Division Manager

CONTRACTOR

NAME, TITLE (date)

SAMPLE

CONTRACTOR'S CERTIFICATE OF COMPLIANCE

--DO NOT COMPLETE THIS PAGE OR RETURN WITH YOUR PROPOSAL --

Pursuant to Colorado Revised Statute, § 8-17.5-101, et seq., as amended May 13, 2008, as a prerequisite to entering into a contract for services with Boulder County Public Health or Boulder County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name

Date

Name (Print or Type)

Signature

Title

NOTE:

Note: Registration for the E-Verify Program can be completed at: <https://e-verify.uscis.gov/enroll/>.

SAMPLE

SCOPE OF WORK

--DO NOT COMPLETE THIS PAGE OR RETURN WITH YOUR PROPOSAL --

SAMPLE

**SAMPLE
BUSINESS ASSOCIATE AGREEMENT**

(If applicable to scope of work)

**--DO NOT COMPLETE THIS PAGE OR RETURN WITH YOUR PROPOSAL --
BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is effective the ____ day of MONTH, YEAR (the “Effective Date”), by and between NAME (“Business Associate”), and Boulder County Public Health, (“Covered Entity”).

RECITALS:

WHEREAS, Covered Entity and Business Associate are subject to federal standards for the privacy and security of protected health information (as defined below); and

WHEREAS, Business Associate provides services to Covered Entity that require Business Associate to use, access, disclose, receive, or create protected health information; and

WHEREAS, Covered Entity and Business Associate are committed to complying with the HIPAA Standards (as defined below) and desire to set forth the rights and responsibilities of the parties with respect to protected health information.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. DEFINITIONS.

- 1.1 “Breach” shall have the same meaning as the term “breach” at 45 CFR § 164.402.
- 1.2 “CFR” shall mean the United States Code of Federal Regulations and any amendments and additions to such regulations, which may be adopted from time to time.
- 1.3 “Designated Record Set” shall mean a group of records containing protected health information maintained by or for Covered Entity that falls within any of the following categories:
- (a) A health care provider’s medical and billing records about an Individual (as defined below).
 - (b) A health plan’s enrollment, payment, claims adjudication, and case management records.
 - (c) Records used in whole or in part by Covered Entity to make decisions about the Individuals to whom the information relates.
- 1.4 “Discovery,” as used in Section 3.5, shall mean that the unauthorized use or disclosure or breach is known to Business Associate or any employee, officer, or other agent of Business Associate or should reasonably have been known to Business Associate or any employee, officer, or agent of Business Associate to have occurred by exercising reasonable diligence, in accordance with 45 CFR § 164.410(a).
- 1.5 “Electronic Health Record” shall mean an electronic record of health-related

information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.6 “Electronic PHI” shall have the same meaning as the term “ePHI” at 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.7 “Individual” shall mean the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.8 “HIPAA Standards” shall mean, collectively, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (Pub. L. No. 111-5 (2009)); the Security Standards for the Protection of Electronic Protected Health Information as set forth in 45 CFR Part 160 and Part 164, Subparts A and C (the “Security Rule”); and the Standards for Privacy of Individually Identifiable Health Information as set forth in 45 CFR Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), and any amendments and additions to such laws and regulations which may be adopted from time to time.

1.9 “Protected Health Information” or “PHI” shall mean any information, whether oral or recorded in any form or medium, that is:

- (a) Created or received by Covered Entity or by Business Associate or another person or entity on behalf of or for the benefit of Covered Entity.
- (b) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.
- (c) Identifies an individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.10 “Required By Law” shall mean a mandate contained in law that compels Covered Entity or Business Associate to use or disclose PHI and that is enforceable in a court of law, including, but not limited to, court orders, court-ordered warrants, and statutes and regulations that require such information if payment is sought under a government health care program.

1.11 “Secretary” shall mean the Secretary of the United States Department of Health and Human Services.

1.12 “Service Provider” shall mean a person or entity that provides a service directly to Covered Entity in connection with one or more “Covered Accounts” as such accounts are defined in 16 CFR Part 681 (the “Red Flag Rules”).

1.13 “Unsecured PHI” shall mean PHI in any form that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified in guidance issued by the Secretary.

1.14 **Other Terms.** All other terms use but not otherwise defined in this Agreement

shall have the same meaning as provided in the HIPAA Standards.

2. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

2.1 **Permitted Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may use PHI received from or created on behalf of Covered Entity to carry out the responsibilities of Business Associate, as outlined in Attachment A, provided that such use or disclosure would not violate the HIPAA Standards, this Agreement, or the policies and procedures of Covered Entity.

Business Associate may use PHI in connection with the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

Business Associate may disclose PHI in connection with the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if either:

- (a) The disclosure is required by law.
- (b) Business Associate receives reasonable assurances, in writing, from the person to whom the information is disclosed that the information will be held confidentially, used, or further disclosed only as required by law or for the purposes for which the disclosure was made, and that the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

2.2 **Unauthorized Uses and Disclosures.** Any use or disclosure of PHI which is not explicitly permitted by this Agreement is prohibited.

2.3 **Violations of Law.** Business Associate may use PHI to report violations of law to appropriate authorities consistent with 45 CFR § 164.502(j)(1).

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

3.1 **Compliance with HIPAA Standards.** Business Associate shall comply with all provisions of the HIPAA Standards applicable to Business Associate, this Agreement, and other applicable law.

3.2 **Non-disclosure.** Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement or as required by law (collectively “permitted disclosures”). All permitted disclosures shall be made in strict compliance with the HIPAA Standards. Any use or disclosure of PHI that is not a permitted disclosure, including but not limited to any breach of unsecured PHI, shall be considered an “unauthorized use or disclosure” for purposes of this Agreement.

3.3 **Safeguards.** Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate will document and keep all such safeguards current.

3.4 **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect, known to Business Associate, of any unauthorized use or disclosure.

3.5 **Reporting.** Business Associate agrees to report to the privacy officer of Covered Entity any unauthorized use or disclosure of PHI of which Business Associate becomes aware. The initial report shall be made by telephone call to the privacy officer of Covered Entity within seventy-two (72) hours after

discovery by Business Associate of such unauthorized use or disclosure. The initial report shall be followed by a written report to the privacy officer, which shall be made as soon as reasonably possible but in no event more than five (5) business days after discovery by Business Associate of such unauthorized use or disclosure. This reporting obligation shall include unauthorized uses or disclosures by Business Associate, its employees, subcontractors, and/or agents. Each such report of an unauthorized use or disclosure will:

- (a) Identify each individual whose unsecured PHI has been or is reasonably believed to have been accessed, acquired, or disclosed as a result of such unauthorized use or disclosure
- (b) Identify the nature of the unauthorized use or disclosure, including the date of discovery and date of the unauthorized use or disclosure.
- (c) Identify the PHI used or disclosed.
- (d) Identify who made the unauthorized use or disclosure.
- (e) Identify who received the unauthorized PHI.
- (f) Identify what corrective action Business Associate took or will take to prevent further unauthorized use or disclosures.
- (g) Identify what Business Associate did or will do to mitigate any deleterious effect of the unauthorized use or disclosure.
- (h) Provide such other information as Covered Entity may reasonably request.

Business Associate agrees to pay the actual costs of Covered Entity to provide required notifications and any associated costs incurred by Covered Entity as a result of a breach caused by Business Associate, such as credit monitoring for affected patients, and including any civil or criminal monetary penalties or fines levied by any federal or state authority having jurisdiction if Covered Entity reasonably determines that the nature of the breach warrants such measures.

3.6 **Agents and Subcontractors.** In accordance with 45 CFR § 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate agrees to ensure that any agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees, in writing, to the same restrictions and conditions that apply to Business Associate through this Agreement with respect to such information (“Subcontractor Agreement”).

If Business Associate knows or has reason to know of a pattern of activity or practice of a subcontractor that constitutes a material breach or violation of the subcontractor’s obligations under the Subcontractor Agreement, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful:

- (a) Business Associate shall terminate the Subcontractor Agreement and any related business arrangements between Business Associate and the subcontractor involving the use, disclosure, or creation of PHI, if feasible.
- (b) If such termination is not feasible, Business Associate shall report the situation to Covered Entity and the Secretary.

3.7 **Access.** To the extent Business Associate maintains a designated record set, Business Associate shall provide access to PHI it maintains in the designated record set to Covered Entity or, as directed by Covered Entity, to an individual or another person properly designated by the individual, within five (5) days of receiving a written request from Covered Entity in order to meet the requirements of 45 CFR § 164.524. If Business Associate maintains PHI electronically in a designated record set and if the individual requests an electronic copy of such information, Business Associate shall provide Covered Entity,

or the individual or person properly designated by the individual, as directed by Covered Entity, access to the PHI in the electronic form and format requested by the individual, if it is readily producible in such form and format; or if not, then in a readable electronic form and format as agreed to by Covered Entity and the individual. If Business Associate receives a request for access to PHI directly from an individual, Business Associate shall notify Covered Entity of the request in writing within one (1) business day.

3.8 **Amendments.** To the extent Business Associate maintains PHI in a designated record set, Business Associate shall make any amendment(s) to PHI in the designated record set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 within five (5) days of receiving a written request from Covered Entity. Business Associate shall make any such amendment only by appending the amendment to the PHI in the designated record set, and under no circumstance shall PHI be deleted from the designated record set as part of the amendment process. If Business Associate receives a request for an amendment to PHI maintained in a designated record set directly from an individual, Business Associate shall notify Covered Entity of the request in writing within one (1) business day.

3.9 **Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to Covered Entity or to the Secretary during regular business hours within five (5) business days of receiving a written request, or sooner if requested by the Secretary, for purposes of the Secretary determining Covered Entity's or Business Associate's compliance with the HIPAA Standards.

3.10 **Accounting of Disclosures.** Business Associate shall document such disclosures of PHI made by Business Associate, its employees, subcontractors, or agents and information related to such disclosures as are required for Covered Entity to respond to a request by an Individual for an accounting of disclosures in accordance with 45 CFR § 164.528, including:

- (a) The date of the disclosure.
- (b) The name and address (if known) of the person or entity who received the disclosure.
- (c) A brief description of the PHI disclosed.
- (d) A brief statement of the purpose of the disclosure or a copy of the consent to the disclosure signed by the individual to whom the PHI relates.

Business Associate agrees to provide Covered Entity or, at Covered Entity's request, an individual within five (5) business days of receiving a written request from Covered Entity, information collected in accordance with this Section to permit Covered Entity to respond to a request by an individual for such an accounting of disclosures. If Business Associate receives a request for an accounting of disclosures of PHI directly from an individual, Business Associate shall notify Covered Entity of the request in writing within one (1) business day. Additionally, as of the compliance date set forth in the relevant regulations, if Business Associate makes disclosures of PHI through an electronic health record, Business Associate shall account for all such disclosures in accordance with the HITECH Act and any future regulations promulgated thereunder.

3.11 **Trading Partner" Provisions: Use and Disclosure in Connection with Standard Transactions.** If Business Associate conducts Standard Transactions (as defined in 45 CFR Part 162) for or on behalf of Covered Entity, Business Associate will comply and will require each subcontractor or agent involved with the conduct of such standard transactions to comply with each applicable requirement of 45 CFR Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into,

any trading partner agreement in connection with the conduct of standard transactions for or on behalf of Covered Entity that:

- (a) Changes the definition, data condition, or use of a data element or segment in a standard transaction
- (b) Adds any data elements or segments to the maximum defined data set.
- (c) Uses any code or data element that is marked “not used” in the standard transaction’s implementation specification or is not in the standard transaction’s implementation specification.
- (d) Changes the meaning or intent of the standard transaction’s implementation specification.

3.12 **Prevention of Identity Theft.** If Business Associate is a service provider, as defined above, Business Associate shall perform all services and conduct all activities under the Service Agreement and this Agreement in accordance with reasonable policies and procedures which are designed to identify, prevent, and mitigate identity theft in accordance with the standards established by the Red Flag Rules and other applicable law. Business Associate shall provide its identity theft policies and procedures to Covered Entity upon request. Business Associate’s failure to establish the policies required by this Section, or to conform to its conduct to such policies, shall constitute a material breach of this Agreement and the Service Agreement.

3.13 **Security of Electronic Data.** If PHI is transmitted to or maintained by Business Associate in electronic format, Business Associate agrees to:

- (a) Develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the integrity, confidentiality, and availability of the electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity and to comply with all applicable provisions of Subpart C of Part 164 of the Security Rule.
- (b) Ensure that any agent or subcontractor to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect such PHI.
- (c) Report to Covered Entity any security incident of which Business Associate becomes aware. Notwithstanding the foregoing, Business Associate and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful security incidents that are trivial in nature, such as pings and port scans, and Covered Entity acknowledges and agrees that no additional notification to Covered Entity of such unsuccessful security incidents is required. However, to the extent that Business Associate becomes aware of an unusually high number of such unsuccessful security incidents due to the repeated acts of a single party, Business Associate shall notify Covered Entity of these attempts and provide the name, if available, of said party. At the request of Covered Entity, Business Associate shall identify the date of the security incident, the scope of the security incident, Business Associate’s response to the security incident, and the identification of the party responsible for causing the security incident, if known.

3.14 **Minimum Necessary.** Business Associate will make reasonable efforts, to the extent practicable, to limit requests for and the use and disclosure of PHI to a “limited data set” (as defined in 45 CFR § 164.514(e)(2)) or, if needed by Business Associate, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure, or request, and as applicable, in accordance with the regulations and guidance issued by the Secretary on what constitutes the minimum necessary for Business Associate to perform its obligations to Covered Entity under this Agreement or as required by law.

3.15 **Data Ownership.** Business Associate acknowledges that all right, title, and interest in and to any PHI furnished to Business Associate vests solely and exclusively with Covered Entity or the individual to whom such PHI relates.

3.16 **Delegated Obligations.** To the extent Business Associate is delegated to carry out Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such delegated obligations.

4. QUALIFIED SERVICE ORGANIZATION.

4.1 **Federal Alcohol and Drug Abuse Confidentiality Regulation.** Some of the PHI may also be protected by the Federal Alcohol and Drug Abuse Confidentiality Regulations, 42 CFR Part 2 ("Part 2").

4.2 **Confidentiality Agreement.** Business Associate, also known as a Qualified Service Organization pursuant to Part 2 (42 CFR § 2.11), acknowledges that in receiving, storing, processing, or otherwise dealing with any PHI from or for Covered Entity:

- (a) It is fully bound by Part 2, as it would apply to Covered Entity.
- (b) If necessary, will resist in judicial proceedings any efforts to obtain access to PHI, covered by Part 2, except as permitted by Part 2.

4.3 **Prohibition on Re-disclosure.** Business Associate agrees to ensure that any PHI received from Covered Entity, which is subject to Part 2, will not be re-disclosed to any other person or entity, including an agency or subcontractor that provides services for Business Associate, except as may be permitted by Part 2.

5. OBLIGATIONS OF COVERED ENTITY.

Covered Entity shall make available to Business Associate upon request Covered Entity's notice of privacy practices, any relevant privacy policies or other information, and any restrictions on the use or disclosure of PHI voluntarily agreed to by Covered Entity that may impact the permissible uses or disclosures of PHI by Business Associate.

6. TERM AND TERMINATION.

6.1 **Term.** The term of this Agreement shall commence on the effective date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is not feasible to return or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon Covered Entity's reasonable determination that Business Associate has breached a material term of this Agreement, Covered Entity shall be entitled to do any one or more of the following:

- (a) Give Business Associate written notice of the existence of such breach and give Business Associate an opportunity to cure the breach upon mutually agreeable terms. If Business Associate does not cure the breach or end the violation according to such terms, or if Covered Entity and Business Associate are unable to agree upon such terms, Covered Entity may immediately terminate this Agreement. If termination of this Agreement is not feasible, Covered Entity shall report the breach to the Secretary, to the extent required by law.

- (b) Immediately terminate this Agreement or any other arrangement between Covered Entity and Business Associate which is the subject of such breach.
- (c) Immediately stop all further disclosures of PHI to Business Associate pursuant to the Service Agreement or other arrangement which is the subject of such breach.

6.3 **Termination Without Cause.** This Agreement shall terminate upon any such date as Covered Entity and Business Associate may agree in a writing signed by both parties.

6.4 **Termination of Services.** This Agreement shall terminate upon the termination or expiration of the services provided by Business Associate.

6.5 **Effect of Termination.** Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or destroy upon the prior written consent of Covered Entity, all PHI received, created, received, or maintained in any form by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of such information. This Section shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

- (a) In the event that Business Associate determines that return or destruction of PHI is not feasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains such PHI.
- (b) Business Associate shall cooperate with Covered Entity to the extent reasonably necessary for Covered Entity to determine that all PHI has been properly returned, destroyed, or protected upon termination of this Agreement.
- (c) Business Associate's obligations to protect the privacy and security of PHI, as provided in this Agreement, including Business Associate's obligations pursuant to this Section, are continuous and shall survive any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity.

6.6 **Business Associate's Termination Rights.** Business Associate shall ensure that it maintains for itself the termination rights in this Section in any Subcontractor Agreement it enters into with an agent or subcontractor.

7. MISCELLANEOUS.

7.1 **Indemnification; Limitation of Liability.** To the extent permitted by law, Business Associate shall indemnify, defend, and hold harmless Covered Entity from any and all liability, claim, lawsuit, injury, loss, expense, or damage resulting from or relating to the acts or omissions of Business Associate in connection with the representations, duties, and obligations of Business Associate under this Agreement. Any limitation of liability contained in any other agreement between the parties shall not apply to the indemnification requirement of this Section. This Section shall survive the termination of the Agreement.

7.2 **Assistance in Litigation.** Business Associate shall make itself and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise,

in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claim of violation of the HIPAA Standards or other laws related to security and privacy by Business Associate.

7.3 **Relationship of the Parties.** In the performance of the work, duties, and obligations described in this Agreement, the parties acknowledge and agree that each party is at all times acting and performing as an independent contractor, and at no time shall the relationship between the parties be construed as a partnership, joint venture, employment, principal/agent relationship, or master/servant relationship.

7.4 **Scope of Agreement.** This Agreement relates only to the use, disclosure, and protection of PHI if it is disclosed to, created, or received by Business Associate in connection with the services provided to Covered Entity and identified in Attachment A. This Agreement is the sole understanding between the parties relating to such matters and supersedes all prior agreements and understandings, whether oral or written. Nothing herein shall require Covered Entity to disclose any PHI to Business Associate for such services or to utilize any service of Business Associate. Nothing herein requires Business Associate to accept any PHI or to provide any particular services beyond those specified in Attachment A.

7.5 **Assignment.** No assignment of this Agreement or of the rights and obligations hereunder by any party shall be valid without the prior written consent of the other party. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors, heirs, and permitted assigns, if any.

7.6 **Severability.** In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby.

7.7 **Waiver and Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

7.8 **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and may be either personally delivered, sent by registered or certified mail in United States Postal Service mail, return receipt requested, postage prepaid, or through the use of a reputable overnight courier, delivery prepaid, and signature required. Such notice shall be addressed to each party at the addresses set forth at the end of this Section. Any such notice shall be deemed to have been given, if mailed as provided herein, as of forty-eight (48) hours after mailing. All required notices shall be in writing and shall be to the representatives at the addresses set forth below.

Business Associate Representative:

NAME

TITLE

AGENCY NAME

ADDRESS

CITY, STATE ZIP

Covered Entity Representative:

Director of Administrative Services
Boulder County Public Health
3450 Broadway
Boulder, CO 80304

7.9 **Amendments.** Except as provided herein, this Agreement may only be amended or modified by written agreement executed by all parties. The parties agree to take such action to amend this Agreement as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Standards.

7.10 **Governing Law/Construction.** This Agreement shall be governed by applicable federal law and the laws of the State of Colorado, without regard to conflict of laws principles. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Standards and with any Colorado laws relating to the confidentiality of individual health information that are not preempted by the HIPAA Standards. In the event that the HIPAA Standards impose any additional or more rigorous limitations on disclosures and uses of PHI by Business Associate, then this Agreement shall be read to comply with those higher standards. To the extent any provision of this Agreement is contrary to or inconsistent with any provision in any other agreement between the parties, the provision in this Agreement shall govern.

7.11 **No Third Party Beneficiaries.** Business Associate and Covered Entity agree that individuals who are the subject of PHI are not third party beneficiaries of this Agreement. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

7.12 **Further Acts.** The parties agree that the intent of this Agreement is to comply with the HIPAA Standards. Each of the parties shall execute and deliver all documents, papers and instruments reasonably necessary or convenient to carry out the terms of this Agreement. The parties shall, upon request at any time after the date of this Agreement, execute, deliver and/or furnish all such documents and instruments, and do or cause to be done all such acts and things as may be reasonable to effectuate the purpose and intent of this Agreement as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BOULDER COUNTY PUBLIC HEALTH

AGENCY NAME

By: _____
Name: NAME
Title: TITLE

By: _____
Name: NAME
Title: TITLE