

**ADDENDUM TO AGREEMENT TO PURCHASE OUT-OF-HOME PLACEMENT SERVICES
SS23A**

This addendum to Agreement to Purchase Out-Of-Home Placement Services SS23A (the "Addendum") is attached and incorporated into the Agreement dated July 1, 2022 between Third Way Center, Inc. (the "Contractor") and the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, for the benefit of the Department of Housing and Human Services, (the "County") (each, a "Party" and, collectively, the "Parties") for services at Bannock, Lincoln, Lowry, Pontiac and York.

1. Insurance Requirements: Prior to commencing the Work, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage as required by this Section. All policies evidencing coverage required by the Addendum will be issued by insurance companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to: HHScontracts@bouldercounty.org.

a. Boulder County as Additional Insured: Boulder County and the State of Colorado shall be named as an additional insured for General Liability and Umbrella/Excess Liability, as designated in this Addendum. Additional insured shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *County of Boulder, State of Colorado, a body corporate and politic, and the State of Colorado are named as Additional Insured.*

b. Notice of Cancellation: Each insurance policy required by this Addendum 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 the County 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 required notice, Contractor or its insurance broker shall notify the County any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

c. Insurance Obligations of County: County is not required to maintain or procure any insurance coverage beyond the coverage maintained by the County in its standard course of business. Any insurance obligations placed on the County in the Agreement shall be null and void.

d. Deductible: Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

e. Primacy of Coverage: Coverage required of Contractor and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by the County.

f. Subrogation Waiver: All insurance policies in any way related to the Agreement secured or maintained by Contractor as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County, its organizations, officers, agents, employees, and volunteers.

g. Requirements: For the entire duration of this Agreement including any extended or renewed terms, and longer as may be required by the Agreement, Contractor shall procure and maintain at its own expense, and without cost to the County, the following kinds and minimum

amounts of insurance to insure the liability risks that Contractor has assumed under the Agreement:

i. **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.

ii. **Automobile Liability**

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

iii. **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.

iv. **Umbrella / Excess Insurance**

Umbrella/Excess Liability insurance in the amount \$1,000,000.00, following form.

v. **Professional Liability (Errors and Omissions)**

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 the Agreement; 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 Agreement is completed.

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

The Crime limit shall be \$5,000 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.

vii. **Privacy / Cyber Liability Insurance**

As a provider of a service which *may* require the knowledge and retention of personal identifiable information including but not limited to, names, dates of birth, social security numbers, usernames, and passwords, and/or HIPAA sensitive personal information of clients served, the following minimum insurance limits are required:

Contractors with 10 or fewer County clients:	\$50,000
Contractors with 11 – 15 County clients:	\$500,000
Contractors with more than 25 County clients:	\$1,000,000

viii. **Sexual Abuse and Molestation Coverage**

As a provider of a service which has contact with individuals that are part of a sensitive population and are in a position of trust the following minimum insurance limits are required:

Contractors with 5 or fewer County clients:	\$100,000
Contractors with 6-10 County clients:	\$250,000
Contractors with 11-15 County clients:	\$500,000

Contractors with 16 or more County clients: \$1,000,000

If the number of clients increases during the contract period, the required coverage limit will increase to correspond accordingly.

2. Notices: For purposes of any notices required to be provided, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, Electronic Mail, or hand-delivered to the following representatives of the Parties at the following addresses:

For the County: BCDHHS Director
P.O. Box 471
Boulder, CO 80306
Fax: (303) 441-1055
Email: HHScontracts@bouldercounty.org

For the Contractor: Third Way Center, Inc.
455 Acoma Street
Denver, CO 80204
David Eisner, Executive Director
deisner@thirdwaycenter.org

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

4. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement. Any claim relating to this Agreement or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

5. Breach: Either Party's failure to perform any of its material obligations under this Agreement, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Agreement or at law, including immediate termination of this Agreement.

6. Invalidity Provision: Should any of the provisions of this Agreement 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 Agreement, forthwith.

7. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other person receiving

services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement.

8. Conflict of Provisions: In the event of any conflict between the terms of this Addendum and the terms of the Agreement or any other addenda (Child Specific Addendum) the following order of priority will apply:

- a. Addendum to Agreement to Purchase Out-Of-Home Placement Services SS23A;
- b. Agreement to Purchase Out-Of-Home Placement Services SS23A with Contractor; and
- c. Any Child Specific Addenda in conjunction with this Agreement.

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

10. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Agreement in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

11. No Suspension or Debarment: Contractor certifies, and warrants for the Agreement Term, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

12. Health Insurance Portability and Accountability Act (HIPAA): Contractor acknowledges that it may receive confidential information, Personal Identifying Information (PII), and Protected Health Information (PHI) through Contractor's performance of its obligations under this Agreement.

Contractor will comply with all laws and standards with respect to the access, use, protection, disclosure, and storage of such PII/PHI, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule")(45 C.F.R. Parts 160 and 164) under HIPAA. The definitions set forth in the Privacy Rule are incorporated by reference into this Agreement (45 C.F.R. § 160.103 and 164.501). Contractor shall maintain the confidentiality of PII/PHI and protect the privacy of the individuals to whom the records pertain. Pursuant to C.R.S. § 6-1-713 et seq., with respect to PII/PHI provided by County, Contractor will implement and maintain reasonable security procedures and practices that are (a) appropriate to the nature of the PII/PHI, and (b) reasonably designed to help protect the PII/PHI from unauthorized access, use, modification, disclosure, or destruction. If a security breach compromises PII/PHI, Contractor will notify County as quickly as possible, and without unreasonable delay, following discovery of a security breach.

Contractor will cooperate with County in responding to the breach, including sharing information relevant to the breach. This provision shall survive expiration or termination of this Agreement.

County is not required to mark confidential information or PII/PHI as confidential in order for Contractor's obligations under this provision to apply. If Contractor is ever unsure as to the confidential nature of any information or documentation, Contractor shall seek clarification from County prior to using, disclosing, or communicating such information or documentation.

Contractor will treat confidential information received under this Agreement with at least the same degree of care as it uses in maintaining its own confidential information, but no less than a reasonable degree of care. Contractor will comply with all applicable laws in its retention and use of confidential information under this Agreement. Contractor will only access the confidential information as necessary to perform the Work. Contractor will require that all of its employees, volunteers, and agents protect the confidential information against unauthorized use or disclosure. Contractor is prohibited from disclosing the confidential information to any third-party without the County's consent. Contractor will maintain and adhere to adequate administrative, technical, and physical safeguards designed to protect confidential information against unauthorized access or disclosure. The administrative, technical, and physical safeguards must be: (1) no less rigorous than those maintained by Contractor for its own confidential information; (2) no less rigorous than generally accepted industry standards; and (3) as required by applicable laws. If Contractor becomes aware that the security of any confidential information has been compromised or otherwise used or disclosed in a manner not authorized by this Agreement, Contractor will, at its expense: (i) promptly notify County in writing of the occurrence; (ii) develop and implement an appropriate plan to address the cause of the occurrence, to the extent such cause is within Contractor's control; and (iii) comply with County in County's reasonable efforts to respond to the occurrence. This provision shall survive expiration or termination of this Agreement.

Without limiting the scope of this provision and Contractor's obligations hereunder, Contractor shall protect confidential information by applying best practices such as:

- a. Using, disclosing, and communicating confidential information only as necessary to perform work under the Agreement and only the minimum amount of information necessary to accomplish the Work.
- b. Using private rooms when possible to discuss confidential information.
- c. Speaking quietly when communicating confidential information in a public area and avoiding using client's names where others may overhear.