

RESOLUTION R-2023-85

**A RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENT NO. 417 WITH
CHC WELLBEING FOR EMPLOYEE WELLNESS SERVICES FOR A THREE-YEAR TERM AND A
TOTAL AMOUNT NOT TO EXCEED \$123,327.58**

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, CHC Wellbeing ("CHC") has provided employee wellness services to the City since 2020; and

WHEREAS, staff requested a cost proposal from CHC for a continuation of services for a three-year term; and

WHEREAS, CHC provided a cost proposal for biometric screenings and the step tracking feature totaling \$40,164 for year one (\$120 per biometric screening and \$13.88 per participant for the step tracking feature based on 300 employees); and

WHEREAS, staff has reviewed the cost proposal from CHC and has determined it meets the City's needs; and

WHEREAS, CHC has the right to increase costs by no more than a total of 5% over the three-year term (\$40,164 year 1; \$40,967.28 year 2 (2% increase); and \$42,196.30 year three (3% increase) for a total amount not to exceed \$123,327.58); and

WHEREAS, the City budgeted \$39,900 in the 2023 Health Insurance Fund for Employee Wellness Services and will be reimbursed at a rate of \$130 per participant from the Intergovernmental Personnel Benefits Consortium (IPBC); and

WHEREAS, both parties agree to the terms and conditions set forth in the cost proposal and the City's Agreement No. 417 for Employee Wellness Services; and

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable and appropriate to enter into an agreement with CHC Wellbeing located at 5440 N. Cumberland Ave., Suite 225, Chicago, Illinois, 60656, for Employee Wellness Services and a total amount not to exceed \$123,327.58.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to City of Wheaton Agreement No. 417 with CHC Wellbeing for Employee Wellness Services for a three-year term; a copy of that Agreement is on file with the City Clerk's office, and is incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 2nd day of October 2023.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller

Nays: None

Absent: None

Motion Carried Unanimously

**CITY OF WHEATON, ILLINOIS
PROFESSIONAL SERVICES AGREEMENT FOR
WELLNESS PROGRAM SERVICES**

THIS AGREEMENT is made and entered into this 29th day of September, 2023 by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("**City**"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and **CHC Wellbeing**, ("**Provider**"), located at 5440 N. Cumberland Ave., Suite 225, Chicago, IL 60656. City and Provider are at times collectively referred to hereinafter as the "Parties."

WHEREAS, the City has determined that it is reasonable and appropriate to engage a professional services provider to provide employee health risk screenings (hereinafter, "**Services**"); and

WHEREAS, the Provider has submitted to the City a proposal of the cost to provide the requested Services to meet the City's needs ("**Proposal**"), which is attached hereto and incorporated herein as if fully set forth as **Exhibit A**; and

WHEREAS, Provider represents that it has the necessary expertise and experience to furnish such Services upon the terms and conditions set forth herein below; and

WHEREAS, the City finds that the Provider's Proposal meets the City's requirements for the services.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the Parties agree as follows:

SECTION 1. CONTRACT DOCUMENTS.

1.1 Incorporated Documents. The Contract Documents consist of this Agreement and the following attached exhibits which are incorporated into this Agreement:

- a. The Provider's Proposal and all related documents is attached as **Exhibit A**;
- b. Insurance Coverage for Professional Services is attached as **Exhibit B**;
- c. Legal certifications and compliance with laws documentation is attached as **Group Exhibit C**;
and
- d. Change Order Form, is attached as **Exhibit D**; and
- e. Business Associate Agreement is attached as **Exhibit E**.

These attachments along with this Agreement represent the entire integrated Contract between the Parties and supersede any and all prior negotiations, representations, or agreements, written or oral. The Contract Documents also shall include any subsequent Change Orders or Written Amendments to any documents listed above or included within the incorporated exhibits, and other documents

amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the effective date of the Agreement and are not attached hereto.

It shall be understood that words "Services Agreement," "Agreement" and "Contract" are synonymous in this document and its incorporated exhibits.

1.2 Controlling Document. In the event of a conflict between this Agreement and any attachment or exhibit, the provisions of this Agreement shall control.

SECTION 2. SCOPE OF SERVICES.

2.1 Retention and Services. The City retains the Provider to perform employee health risk screening services. For and in consideration of the Agreement Amount indicated in **Section 4.1** herein, the Provider promises and agrees that it shall, at its own cost and expense, provide the Services, in accordance with the Proposal submitted by the Provider (**Exhibit A**). All Services shall be subject to and performed in accordance with this Agreement and its attached and incorporated exhibits, unless specifically stated otherwise in writing.

2.2 Time of Performance. The Provider shall perform the Services within the Term of this Agreement as set forth in **Section 8.1** of this Agreement, in accordance with the schedule of services as indicated in the attached Proposal (**Exhibit A**) and in accordance with any other completion schedule or milestones which may be separately agreed upon in writing by the parties. Provider represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. Upon request of City, Provider shall provide a more detailed schedule of anticipated performance to meet the schedule of services.

2.3 Additional Services. The Provider shall provide only the Services specified in this Agreement, and the attached **Exhibit A**. The Provider acknowledges and agrees that the City shall not be liable for any costs incurred by the Provider in connection with any services provided by the Provider that are outside the scope of this Agreement ("**Additional Services**"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City through an approved Change Order. Upon recognizing the need to perform Additional Services, the Provider shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need and submit to the City a Change Order Form for amendment to this Agreement for the City's review and approval setting forth the details of the requested Additional Services. Additional Services that have been authorized in writing by the City shall be subject to the terms and conditions of this Agreement and shall be compensated at the hourly rates included in the Provider's cost proposal included in **Exhibit A** and in the absence of such hourly rates, then payment for Additional Services shall be mutually agreed upon by both the City and Provider before the commencement of any Additional Services.

2.4 Changes and Alterations. Any changes or alterations to the Services affecting, inclusive of, but not limited to, scope, cost, milestones, deadlines or other significant factors shall be integrated in writing on a City of Wheaton Change Order Form (**Exhibit D**); verbal approval is not considered a Change Order and is not authorization to proceed. All Change Orders shall clearly identify the impact of cost and the effect on time required to perform the Services. Any proposed

change to the Project that increases the Agreement price or the costs to be expended by the Provider in an amount of \$20,000 or more shall require the approval of the City of Wheaton City Council before such changes may be made. Any Services that are performed beyond the approved Agreement scope or Agreement price shall not be paid without the City's prior written consent through an approved Change Order.

2.5 Independent Contractor Status. The Provider shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint-venturers between the City and Provider; or (ii) to create any relationship between the City and any subcontractor of the Provider. Unless otherwise provided for in this Agreement, Provider is not in any way authorized to make any contract, agreement, or promise on behalf of the City, or to create any implied obligation on behalf of the City and Provider specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Provider complies with the terms of this Agreement.

SECTION 3. PERSONNEL; SUBCONTRACTORS.

3.1 Availability of Personnel. The Provider shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in the Quote. The Provider shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Provider shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation.

3.2 Use of Subcontractors. The Provider shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the City in writing. All subcontractors and subcontracts used by the Provider shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Provider of full responsibility and liability for the provision, performance, and completion of Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Provider. For purposes of this Agreement, the term "Provider" shall be deemed also to refer to all subcontractors of the Provider, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

3.3 Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional consulting practices, the Provider shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Provider shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

3.4 No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Provider or with any vendor solicited or recommended by the Provider.

3.5 Corporate Authorities of the City. Notwithstanding any provision of this Agreement, any negotiations, or agreements with, or representations by the Provider to, vendors shall be subject to the approval of the City Manager or Corporate Authorities of the City. For the purposes of this Section, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Provider without the knowledge and approval of the City Manager or of the City's Corporate Authorities.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

4.1 Agreement Amount. The total amount billed by the Provider for the Services performed under this Agreement shall not exceed **\$123,327.58**. CHC Wellbeing has the right to raise costs no more than a total of 5% over the length of the three-year term. (Total award is based on 300 participants X \$133.88 (\$120 each biometric screening & \$13.88 each for the walking program) = \$40,164 year 1; year 2 with a potential 2% increase = \$40,967.28; year 3 with a potential 3% increase = \$42,196.30. Total 3-year award shall not exceed \$123,327.58), including reimbursable expenses, without the prior express written authorization of the City.

4.2 Invoices and Payments. The Provider shall be paid in accordance with the amounts set forth in the Proposal (**Exhibit A**). The Provider shall submit an itemized invoice(s) containing sufficient detail of the Services performed to enable the City to properly evaluate the payout request along with all supporting documentation as required by the City. The City shall pay Provider in accordance with the Illinois Local Government Prompt Payment Act. The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires the City Council's approval of the expenditure which occurs at publicly scheduled meetings. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Services were completed, will not be paid. Under no circumstances will a third party be reimbursed for Services performed under this Agreement.

4.3 Unappropriated Funds. The obligation of the City for payment to the Provider is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

4.4 Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools,

appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Provider.

4.5 Interest Waiver. Provider hereby waives any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) as amended or the Illinois Interest Act (815 ILCS 205/1, *et seq.*) as amended.

4.6 Account Records. The Provider shall maintain records showing actual time devoted and costs incurred in connection with the Services performed under this Agreement and shall permit the authorized representative of the City to inspect, audit and make copies of all data and records of the Provider for the Services done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the termination of the Agreement.

SECTION 5. REPRESENTATIONS OF PROVIDER.

5.1 Standard of Care. The Provider represents, certifies and warrants that it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other recognized professional employee risk screening providers under similar circumstances at the time the Services are performed. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

5.2 Solvency. The Provider represents that it is financially solvent and has the necessary financial resources to perform the Services with the standard of care required under this Agreement.

SECTION 6. INDEMNIFICATION; INSURANCE; LIABILITY

6.1 Indemnification.

6.1.1 Professional Services. With respect to the Provider's provision of professional services under this Agreement, the Provider, without regard to the availability of any insurance, either of the City or of the Provider, shall indemnify, and hold harmless (hereinafter collectively the "**Professional Services Indemnification Obligations**"), the City, its past, present, and future elected officials, directors, officers, representatives, employees, agents, volunteers, and attorneys (hereinafter the "**Indemnitees**"), from and against any and all lawsuits, claims, allegations, demands, losses, damages, injuries, liabilities, fines, settlements, judgments, penalties, costs, and expenses, including, but not limited to, reasonable expert witness fees, attorney fees, and costs (hereinafter collectively referred to as the "**Professional Services Claims**" or "**Professional Services Claim**"), to the extent caused by (i) the Provider's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to the Provider's Services; or (ii) the negligence or willful misconduct of the Provider, its employees, agents, representatives, and subcontractors in the performance or failure to perform

professional services under this Agreement. The costs incurred by the City or Indemnites for enforcing any Professional Services Indemnification Obligation shall be borne by the Provider. The Professional Services Indemnification Obligations shall apply to the fullest extent permitted by law, and in the event any provision hereof is determined to be unenforceable, such indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect. The Professional Services Indemnification Obligations shall survive the expiration and termination of this Agreement.

6.1.2 Liability other than Professional Services. With respect to liability other than that arising out of the Provider's provision of professional services under this Agreement, the Provider, without regard to the availability or unavailability of any insurance, either of the City or of the Provider, shall indemnify, hold harmless and, not excluding the City's right to participate, defend (hereinafter collectively referred to as the "**Other Liability Indemnification Obligations**") the City, its past, present, and future elected officials, officers, agents, employees, and volunteers (hereinafter "**Indemnites**"), in whole or in part, from and against any and all lawsuits, claims, allegations, demands, losses, damages, injuries, liabilities, causes of action, penalties, fines, judgments, or settlements, together with all costs and expenses related thereto, including reasonable expert witness and attorney fees, (hereinafter collectively referred to as the "**Other Liability Claims or Other Liability Claim**") that the City or City Indemnites may incur, sustain or be subject to on account of any actual or alleged personal injury, bodily injury, sickness, death, or property damage which results from, arises out of or is connected directly or indirectly with or is alleged to result from, arise out of or be connected directly or indirectly with (i) any willful or negligent error, omission, or act of the Provider, its agents, subcontractors, or any person employed by Provider, or of anyone for whose act the Provider is legally liable, in the performance of this Agreement, or (ii) the Provider's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to the Provider's Services. With respect to Provider's duty to defend the City and Indemnites, the Provider shall engage legal counsel, subject to the approval of the City (which approval may be withheld by City in its sole discretion), and shall assume control of the defense of any Claims and pay all expenses incurred in connection with such defense, and when such control of defense is assumed by Provider's legal counsel it shall also defend any Professional Liability Claims when permitted by law. The City may, but does not have the obligation to, engage its own legal counsel, at its own expense, and monitor or associate in the defense of any such matter. Any settlement of any claim or suit related to this Agreement by Provider shall be made only with the prior written consent of the City Attorney, if the settlement requires any action on the part of the City. The costs incurred by the City and or Indemnites for enforcing any Other Liability Insurance Obligation shall be borne by the Provider. The Other Liability Indemnification Obligations shall apply to the fullest extent permitted by law, and in the event any provision hereof is determined to be unenforceable, such indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect. The Other Liability Indemnification Obligations shall survive the expiration and termination of this Agreement.

This indemnification shall apply to the fullest extent of the law, and in the event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect.

Provider (and any subcontractor into whose subcontract this clause is incorporated) shall assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided there under. Provider agrees to indemnify and defend the City and City Indemnitees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, which the City or City Indemnitees may sustain as a result of personal injury claims by Provider's employees, except to the extent those claims arise as a result of the City's own negligence.

The obligation on the part of the Provider to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed as prohibiting the City or City Indemnitees from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of the performance of this Agreement.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Provider and the City, the Parties agree that any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses shall be apportioned between the Parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

6.2 Insurance. Contemporaneous with the Provider's execution of this Agreement, the Provider shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the **Special Provisions for: Insurance Coverage for Professional Services**, which is attached hereto and incorporated as if fully set forth, as **Exhibit B** to this Agreement. The City shall be included under Provider's insurance as an additional primary insured with respect to claims and/or liability arising out of Services performed for the City by Provider. All subcontractors shall comply with each and every insurance provision in **Exhibit B**. Provider shall therefore not allow any subcontractor to commence work/services on any subcontract to perform any part of the Services until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Agreement. The insurance described herein as set forth in **Exhibit B** shall be maintained for the duration of the Agreement, including any warranty period.

6.3 No Personal Liability. No elected or appointed official, director, officer, agent, or employee of the City shall be personally liable, in law or in contract, to the Provider as the result of the execution, approval or attempted execution of this Agreement.

6.4 Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by the City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 *et. seq.*

6.5 Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

6.6 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING

WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

SECTION 7. CONFIDENTIAL INFORMATION.

7.1 Confidentiality. The Parties will not use or disclose any sensitive or confidential information in any way that would violate any law regarding the privacy, confidentiality or security of the sensitive or confidential information including but not limited to the Illinois Personal Information Protection Act codified at 815 ILCS 530/1, *et seq.*, the Illinois Identity Protection Act codified at 5 ILCS 179/1 *et seq.*, the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 as codified in 42 U.S.C. § 1320d through 3-8 ("HIPAA") and the requirements of any regulations promulgated thereunder, including without limitation the federal security, breach notification, and privacy regulations as contained in 45 C.F.R. part 164 (the "Federal Privacy Regulations"). Both Parties agree not to use or further disclose any "protected health information," as defined in 45 C.F.R. 164.504, "individually identifiable health information," as defined in 42 U.S.C. § 1320d (collectively, the "Protected Health Information"), "health insurance information" as defined in 815 ILCS 530/5, "medical information" as defined in 815 ILCS 530/5, and "personal information" as defined 815 ILCS 530/5 concerning a patient other than as permitted under this Agreement and the requirements of HIPAA, regulations promulgated under HIPAA, including without limitation, the Federal Privacy Regulations, or the requirements of the Illinois Personal Information Protection Act or the Illinois Identity Protection Act.

7.2 Non-disclosure. During the course of the Services, Provider and City may have access to the other Party's proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Each Party shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the other Party.

7.3 Business Associate Agreement. For purposes of this Agreement, Provider is a Covered Entity and City is a Business Associate. The Parties shall execute the attached Business Associate Agreement, **Exhibit E**, which shall be incorporated into this Agreement as if fully set forth herein.

7.4 Breach of Confidentiality Provisions. In the event of breach of the confidentiality provisions of this **Section 7**, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including, but not limited to, compensatory, incidental, consequential, exemplary, and punitive damages. The confidentiality provisions of this Agreement shall survive the termination of this Agreement.

7.5 Confidential Information. The term "**Confidential Information**" shall include, but not be limited to, information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Provider from a source other than the City prior to the time of disclosure of said information to the Provider under this Agreement ("**Time of Disclosure**"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Provider or the City; or (iv) to have been supplied to the Provider after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

SECTION 8. TERM; TERMINATION; and DEFAULT.

8.1 Term. This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Provider, and shall continue in full force and effect until the earlier of the following occurs: (i) the termination of this Agreement; or (ii) final completion of the Services specified in the Agreement by **October 31, 2026** or to a new date mutually agreed upon by the parties in writing, or (iii) the completion by Provider and City of their respective obligations under this Agreement, in the event such completion occurs before the date(s) in item (ii) above. A determination of completion shall not constitute a waiver of any rights or claims which the City may have or thereafter acquire with respect to any term or provision of this Agreement. The City retains the right to utilize the services of the Provider for future phases of this project.

8.2 Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Provider. In the event that this Agreement is so terminated, the City shall pay Provider for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Provider's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Provider's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Provider shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement. On receiving such notice, Provider shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Provider shall submit an invoice to the City showing in detail the Services performed under this Agreement up to the termination date. Provider's receipt of payment for Services rendered upon City's termination of this Agreement, is Provider's sole and exclusive

remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement.

If this Agreement is terminated as provided herein, City may require Provider to provide all finished or unfinished documents and data and other information of any kind prepared by Provider in connection with the performance of the Services under this Agreement. Provider shall be required to provide such documents, data, and other information within fifteen (15) days of the request.

8.3 Default. If it should appear at any time that the Provider has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Provider. The City may require the Provider, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all action necessary to bring the Provider and the Services into compliance with this Agreement.

2. Termination of Agreement by City. The City may terminate this Agreement as to any or all Services yet to be performed, effective at a time specified by the City, and shall pay Provider for the Services performed or reimbursable expenses actually incurred as of the effective date of termination.

3. Withholding of Payment by City. The City may withhold from any payment, whether or not previously approved, or may recover from the Provider, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Provider or as a result of actions taken by the City in response to any Event of Default by the Provider.

SECTION 9. COMPLIANCE WITH LAWS AND GRANTS.

9.1 Generally: Permits/Codes/Business Laws/Safety Standards/Grants. Provider shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and will comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Provider shall comply with all conditions of any federal, state, or local grant received by City or Provider with respect to this Agreement or the Services. Provider shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or regarding Provider's, or its sub-contractors, performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

9.2 Freedom of Information Act. The Provider shall, within four (4) business days of the City's request, provide any documents in the Provider's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("**FOIA**"). This provision is a material covenant of this Agreement. Provider agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Provider request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Provider agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Provider agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Provider's request to utilize a lawful exemption to the City.

9.3 No Delinquent Taxes. The Provider represents and certifies that the Provider is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Provider is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

9.4 No Collusion. The Provider represents and certifies that the Provider is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. The Provider represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Provider has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Provider shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

9.5 Sexual Harassment Policy. The Provider shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

9.6 Patriot Act (USA Freedom Act) Compliance. The Provider represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. The Provider further represents and warrants to the City that the Provider and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Provider hereby agrees to defend, indemnify, and hold

harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

9.7 Anti-Discrimination Laws. Provider shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in **Group Exhibit C**.

9.8 Americans with Disabilities Act. Provider shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

9.9 Drug Free Workplace Act. Provider shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

9.10 Public Works Employment Discrimination Act. Provider shall comply with all conditions and requirements of the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.

9.11 Execution of Certifications. Provider shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as **Group Exhibit C**.

9.12 HIPAA and Related Regulations. When applicable, Contractor shall comply with the requirements of the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, and the related federal regulations promulgated by the Secretary of the Department of Health and Human Services.

9.13 HITECH. When applicable, Contractor shall comply with the requirements of the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009.

9.14 PIP Act. When applicable, Contractor shall comply with the requirements of the Illinois Personal Information Protection Act, 815 ILCS 530/1 et seq.

9.15 Illinois Identity Protection Act. When applicable, Contractor shall comply with the requirements of the Illinois Identity Protection Act, 5 ILCS 179/1 et seq.

SECTION 10. GENERAL PROVISIONS.

10.1 Integration. The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations,

as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

10.2 Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

10.3 Assignment. This Agreement, or any part, rights, or interests hereof, may not be assigned by the City or by the Provider to any other person, firm, or corporation without the prior written consent of the other party.

10.4 Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

10.5 News Releases. The Provider shall not issue any news releases or other public statements regarding the Services without prior approval from the City Manager.

10.6 Work Products. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, studies, logbooks, instructions, manuals, models, recommendations, printed and electronic files, and any other data or information, in any form, prepared, collected, or received by the Provider in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Provider shall cause the Documents to be promptly delivered to the City.

10.7 Waiver. Any failure of either the City or the Provider to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

10.8 Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10.9 Time. Time is of the essence as to those provisions in which time is an element of performance.

10.10 Governing Laws/Jurisdiction. This Agreement shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

10.11 Force Majeure. No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

10.12 Headings. The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

10.13 Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

10.14 Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10.15 Notice. Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered to as follows:

If to the Provider:

CHC Wellbeing
Attn: Natalie Hansen
5440 N. Cumberland Ave, Suite 225
Chicago, IL 60656
E-Mail: nhansen@chcw.com

If to the City:

City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-727
E-Mail: cityclerk@wheaton.il.us

10.16 Contract Numbering. The faces of all invoices and documents shall contain the following contract number **417** for reference purposes.

10.17 Electronic Signature. The parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a ".pdf" format data file, and any such signature shall

have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

10.18 Authority to Enter Agreement. Provider has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party. If the Provider is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Provider is a co-partnership the true name of the firm shall be set forth below, together with the signatures of all partners; and if the Provider is an individual, the Provider shall sign his or her name below. If signature is by an agent other than an officer of a corporation or a member of a partnership, a power-of-attorney must be attached hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 29th day of September, 2023.

CITY OF WHEATON, an Illinois municipal corp.

By: Philip J. Swan Date: 10/3/2023
Mayor

ATTEST: Andrea Remedale
By: Andrea Remedale
City Clerk

CHC Wellbeing

By: Joan Knauss-Harwell Date: 09/29/2023
Signature

Its: Managing Director

ATTEST:

By: _____
Signature

Title: _____



Envelope Data

Subject: City of Wheaton 3-year Agreement and Documents
Documents: Exhibit D_Change Order Form.pdf, Exhibit A_Proposal.pdf, Agreement No. 417.pdf, Exhibit E_Bus Assoc Agmt.pdf, Exhibit B_Insurance Requirements.pdf, Exhibit C_Certification.pdf
Document Hash: 23910173
Envelope ID: ENV15866094-7853-FFCD-8513-EECA
Sender: Account Management
Sent: 09/29/2023 11:06 AM CDT
Status: Completed
Status Date: 09/29/2023 13:37 PM CDT
Access Authentication: None
Email Access Code: Unchecked
Email Verification: Not enabled

Recipients / Roles

Name / Role	Email	Type
Account Management	chcam@chcw.com	Sender
Joan Knauss-Harwell	jmharwell@chcw.com	Signer
Armand Hamberlin	ahamberlin@chcw.com	Cc

Document Events

Name / Roles	Email	IP Address	Date	Event
Account Management	chcam@chcw.com	98.63.201.84	09/29/2023 11:06 AM CDT	Created
Joan Knauss-Harwell	jmharwell@chcw.com	107.219.229.41	09/29/2023 13:37 PM CDT	Signed
			09/29/2023 13:37 PM CDT	Status - Completed

Carbon Copy Events

Name / Roles	Email	Sent
Armand Hamberlin	ahamberlin@chcw.com	09/29/2023 13:37 PM CDT

Signer Signatures

Signer Name / Roles	Signature	Initials
Joan Knauss-Harwell		