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CO Denver County District Court 2nd JD

Case No. 2008-00051

File ID: 20425969

Review Clerk: Shelly Westman

The Office of the Attorney General and the Office of the State Controller have approved this contract form.

State of Colorado (Name of agency/institution) Regulatory Agencies

Contract Routing Number (CLIN #): 08-00051

STATE OF COLORADO PERSONAL SERVICES CONTRACT

THIS CONTRACT, dated this 28th day of May, 20 08, by and between the State of Colorado, for the use and benefit of the Department of Regulatory Agencies, Division of Registrations, State Board of Nursing, located at 1560 Broadway, Suite 1350, Denver, Colorado, 80202 (the "State"), and Peer Assistance Services, Inc., a Colorado tax exempt corporation under 501 (c), located at 2170 South Parker Road Suite 229, Denver, Colorado, 80231 ("Contractor").

FACTUAL RECITALS

- A. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- B. Contractor's bid was selected in accordance with Colorado law and pursuant to the State's issuance of a **Request for Proposal (RFP)**, and the Contractor's Response to the RFP, attached as **Exhibit A**.
- C. Authority for the agency entering into this contract arises from Colorado Revised Statutes (CRS), section 12-38-131.
- D. The State requires a Nursing Peer Health Assistance or Nurse Alternative to Discipline Program. Contractor is ready, willing and able to provide such Services.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1. "**Compensation**" means the funds payable to Contractor by the administering entity selected by the State pursuant to 12-38-131(3)(c), C.R.S. which are related to the Services set forth in the Statement of Work set forth in **Exhibit B**, attached hereto and incorporated herein.
- 1.2. "**Contract**" means this contract for Services, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to State Fiscal Rules and Policies.
- 1.3. "**Exhibit**" means a statement of work document, schedule, budget, or other identified exhibit which



has been incorporated into and attached to this contract.

- 1.4 "**Fund**" means moneys available in the Nursing Peer Health Assistance or Nurse Alternative to Discipline Program Fund administered by the administering entity authorized by 12-38-131(3)(c), C.R.S.
- 1.5 "**Services**" means work performed or tangible material produced or delivered in the performance of such work.
- 1.6 "**Recipient**" means a person who is a professional or practical nurse and has a license to practice nursing in Colorado or has applied for licensure and paid all required fees.

BASIC CONTRACT TERMS

2. Statement of Work

Contractor shall perform the Services described in **Exhibit B**, Statement of Work Requirements.

3. Performance Standard

Contractor shall perform the Services described in **Exhibit B**, Statement of Work, in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all Services, and materials used in performance of the Services shall be of good quality and free from faults and defects. Contractor warrants that (a) Services provided under this contract shall meet the description in **Exhibit B**, Statement of Work, (b) there are no pending or threatened suits, claims, or actions of any type with respect to the Services and (c) the Services shall be free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

4. Performance Term

- 4.1. This contract shall be effective upon approval by the Department of Regulatory Agencies Executive Director, or designee, or on June 1, 2008, whichever is later (the "Effective Date") and extend through June 30, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit B**, Statement of Work.
- 4.2. In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to three (3) months. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the three (3) month period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate.
- 4.3. The State unilaterally may require continued performance of Contractor's obligations under this contract for one (1) additional year at the same rates and same terms specified in the contract and **Exhibit B**, Statement of Work Requirements. The State may exercise this option by the delivery of written notice to Contractor, in accordance with Section 24 of this contract, substantially in the form of the Option Letter, attached hereto as **Exhibit C**, and incorporated herein, within thirty (30) days of the contract term or any renewal term. Upon exercise of this option by the State, the extended contract shall include this option provision for future use; provided, however, that the total duration of this contract, including the exercise of all options under this provision, shall not exceed a total contract period of sixty-one (61) months. Financial obligations resulting from this contract payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in Section 5 of this contract.

5. Compensation

No State funds will be used to pay for services provided pursuant to this contract. All payments will be managed by an administering entity as set forth in section 12-38-131(3)(c), C.R.S. The allocated amount available to fund the program is based on the actual revenues and the number of licensees in Colorado. Payment will be disbursed quarterly in the estimated amount of \$152,493, not to exceed \$609,975, annually for the duration of the contract term based on the State's fiscal year. Any money received pursuant to a contract with the Board that is unspent by the Contractor as of June 30, 2009 shall be returned to the administering entity selected by the Board pursuant to the provisions of paragraphs 3 (c) of section 12-38-131 for subsequent appropriation and disbursement.

The funds provided under the contract may be used only for educational, intervention and administrative Services and Services related to the identification of the physical, emotional, or psychological problems and the evaluation, diagnosis, treatment and monitoring of licensed Colorado Recipients.

PROCEDURES FOR AND OBLIGATIONS OF CONTRACT PERFORMANCE

6. Inspection and Acceptance

The State reserves the right to inspect the services provided under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the services do not conform to contract requirements, the State may require Contractor to promptly perform the services again in conformity with contract requirements, at no additional cost to the State. When defects in the quality or quantity of services cannot be corrected by re-performance, the State may:

- (a) require Contractor to take necessary action to ensure that future performance conforms to this contract requirements; and
- (b) equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed.

These remedies shall in no way limit the remedies available to the State in other provisions of this contract or remedies otherwise available in equity or at law, all of which may be exercised by the State, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment under this provision shall not constitute a breach of contract or default by the State.

7. Reporting

Unless otherwise provided in this contract or the exhibits hereto, Contractor shall submit, on a quarterly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in Contractor's duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of Contractor and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified, thirty (30) days following the quarter. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 33, specific reporting requirements as set forth in **Exhibit B**, Statement of Work Requirements, or in other exhibits to this contract, shall take precedence over this general reporting provision.

8. Rights in Data, Documents, and Computer Software

- 8.1 Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by Contractor in the performance of its obligations under this contract (the "Work Product"), shall be the exclusive property of the State and all Work Product shall be delivered to the State by Contractor upon completion, termination, or cancellation of this contract. The rights of the State with respect to such

Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such Work.

- 8.2 Contractor shall not use, willingly allow, cause or permit such property to be used for any purpose other than the performance of Contractor's obligations under this contract, without the prior written consent of the State. The rights of the State with respect to such property shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use such property.

9. Maintenance, Inspection and Monitoring of Records

- 9.1 Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until the resolution of the audit findings.

- 9.2 Contractor shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.

- 9.3 Contractor also shall permit these same described entities to monitor all activities conducted by Contractor pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

10. Confidentiality of State Records and Information

- 10.1 Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited to, personal records and information of individuals. It shall be the responsibility of Contractor to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of Contractor made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.

- 10.2 Contractor shall notify all of its agent, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be cause for legal action against Contractor or its agents. Defense of any such action shall be the sole responsibility of Contractor.

- 10.3 Contractor may receive or create certain health or medical information ("Protected Health

Information" or "PHI," as defined below) in connection with the performance of this Contract. This PHI is subject to protection under state and federal law, including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations, as amended, promulgated thereunder by the U.S. Department of Health and Human Services (the "Regulations").

The State is not a "Covered Entity" under HIPAA and the Regulations because it is functioning as a health oversight agency. Contractor represents and warrants that it has in place policies and procedures that will adequately safeguard any confidential information it receives or creates under this Contract, and Contractor specifically agrees, on behalf of its subcontractors and agents, to safeguard and protect the confidentiality of all information consistent with applicable law, including State confidentiality laws and currently effective provisions of HIPAA and the Regulations.

11. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services provided or Contractor's performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the State's principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

12. Conflict of Interest.

12.1 During the term of this contract, Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations under this contract.

12.2 Additionally, Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of Contractor's obligations to the State in accordance with the terms and conditions of this contract, without the prior written approval of the State.

12.3. In the event that Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

12.4. Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) an employee, officer or agent;
- (b) any member of the employee's immediate family;
- (c) an employee's partner; or
- (d) an organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. Contractor's or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements.

REPRESENTATIONS AND WARRANTIES

13. Warranties. During the term of this contract and for a period of 24 months following the State's final acceptance under this contract, Contractor warrants as follows:

- 13.1 All Services under this Contract shall be performed in accordance with the specifications set forth in this contract including but not limited to **Exhibit B** and in a manner acceptable to the State. Contractor shall re-perform any Services that fail to satisfy this warranty.
- 13.2 All deliverables delivered under this contract by Contractor shall meet the specifications set forth in this contract including but not limited to **Exhibit B**. Contractor shall correct or replace any deliverables which fail to satisfy this warranty.

The foregoing warranties and such other warranties as may be set forth in **Exhibit B**, Statement of Work Requirements, are a part of the minimum work requirements of this contract, and as such will be at no additional cost to the State.

14. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services covered by this contract. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees and subcontractors of the Contractor performing Services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this contract, shall be deemed to be a default by Contractor and grounds for termination of this contract by the State.

15. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, State or local government tax authority. The State also is not liable for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State.

16. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to its terms. Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of Contractor warrant(s) that such person(s) have full authorization to execute this contract.

17. Compliance with Applicable Law

Contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract.

REMEDIES

18. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the State may exercise the following remedial actions if Contractor substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- (a) Suspend Contractor's performance pending necessary corrective action as specified by the State, without Contractor's entitlement to adjustment in price/cost or schedule. Furthermore, at the State's option, a directive to suspend may include suspension of this entire contract or any particular part of this contract that the State determines in good faith would not be beneficial or in the State's best interests due to Contractor's substantial non-performance. Accordingly, the State shall not be liable to Contractor for costs incurred after the State has duly notified Contractor of the suspension of performance under this provision, and Contractor shall promptly cease performance and incurring costs in accordance with the State's directive;
- (b) Withhold payment to Contractor until the necessary Services, or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of Contractor identified by the State, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the State deems to be contrary to the public interest or not in the best interests of the State;
- (d) Deny payment for those Services or obligations which have not been performed, which have not been provided and which, due to circumstances caused by Contractor, cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- (e) Terminate this contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

19. Termination for Convenience

19.1 When the interests of the State so require, the State may terminate this contract in whole or in part, for the convenience of the State. The State shall give written notice of termination to Contractor specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, Contractor shall stop work to the extent specified. Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this contract shall, at the option of the State, be delivered by Contractor to the State and shall become the State's property. The State may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor shall complete and deliver to the State the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

19.2 If this contract is terminated by the State as provided herein, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed bear to the total Services covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the State may authorize reimbursement to the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by Contractor during the contract period which are directly attributable to the uncompleted portion of Contractor's obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for

cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

20. Termination for Default/Cause

If Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the State may notify Contractor in writing of such non-performance. If Contractor fails to promptly correct such delay or non-performance within the time specified, the State, may at its option, terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the State shall authorize reimbursement to the Contractor only for deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished documents, data, studies, research surveys, reports, other materials prepared by Contractor, or materials owned by the State in the possession of Contractor, at the option of the State, shall be returned immediately to the State or retained by the State as its property. At the State's option, Contractor shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the State in procuring from third parties replacement Services or substitute services as cover. Notwithstanding any remedial action by the State, Contractor also shall remain liable to the State for any damages sustained by the State by virtue of any breach by Contractor and the State may authorize the Fund to withhold any payment to Contractor for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Contractor is determined. Upon termination by the State, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest. Further, the State may authorize the Fund to withhold amounts due to Contractor as the State deems necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar Services. Any action taken by the State hereunder or pursuant to paragraph 15 shall not be cause for Contractor to terminate this Contract for default or material breach. If, after termination by the State, it is determined for any reason that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

21. Insurance

21.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

- 21.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- 21.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.
- 21.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- 21.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- 21.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the Services under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
- 21.7 Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

22. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

23. Force Majeure

Neither Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

MISCELLANEOUS PROVISIONS

24. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address for such party set forth

below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent.

For the State:

Name: Rita Postolowski
Title: Manager, Licensing & Contracts
Address: 1560 Broadway, Denver, CO 80202
Telephone: (303) 894-2451

For Contractor:

Name: Elizabeth Pace
Title: Chief Executive Officer
Address: 2170 South Parker Road, Suite 229, Denver, CO 80231
Telephone: (303) 369-0039

25. Assignment and Successors

Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent shall be void, except that Contractor may assign the right to receive payments from the State pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the State shall be made subject to the requirements, terms and conditions of this contract. Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work, and performance of any subcontracted Services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the State as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

26. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the State and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and Contractor that any such person or entity, other than the State or Contractor, receiving Services or benefits under this contract shall be deemed an incidental beneficiary only.

27. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

28. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

29. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the Colorado State Fiscal Rules.

30 Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of the contract, shall survive such termination date and shall be enforceable by the State in the event of the Contractor's failure to perform or comply as required.

31. Modification and Amendment

31.1 This contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this contract on the effective date of such change, as if fully set forth herein.

31.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an Amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

32. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

33. Order of Precedence

The provisions of this contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) Colorado Special Provisions, page 12-13
- (b) Remaining pages of the contract, pages 1 to 11
- (c) **Exhibit B**, Statement of Work Requirements
- (d) **Exhibit A**, Contractor Proposal to RFP
- (d) **Exhibit C**, Option Letter

SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS 24-30-202(5,5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
7. *[Not Applicable to Intergovernmental Contracts]* **VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
10. *[Not Applicable to Intergovernmental Contracts].* **ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.
Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

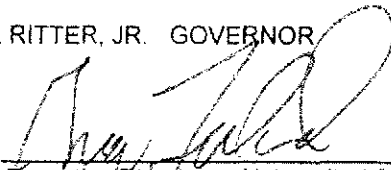
CONTRACT SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

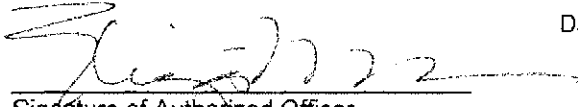
STATE OF COLORADO:

Peer Assistance Services, Inc.
Legal Name of Contracting Entity

BILL RITTER, JR. GOVERNOR
By 
Executive Director or University / College President

84-0942147
Social Security Number or FEIN

Dept. of Regulatory Agencies
Department / Agency or Higher Education Institution


Signature of Authorized Officer

Date 5-30-08

Elizabeth M. Pace, CEO
(Print) Name & Title of Authorized Officer

LEGAL REVIEW:
Attorney General, John W. Suthers

Date 5/29/08

By N/A

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By  MS RN
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER
Leslie M. Shenefelt

By _____
Date _____

Exhibit B – Statement of Work

1. Management and Technical Approach

The Contractor shall provide a nursing peer health assistance or nurse alternative to discipline program that:

- a. Provides assessment, evaluation, monitoring, support services and case management for Recipients with physical, emotional, psychological, substance use and/or abuse problems.
- b. Shall have qualified staff available either in house or through subcontractors to be dedicated to provide Recipients with the necessary evaluation, education, diagnosis, counseling, test administration and monitoring.
- c. Is available to all potential Recipients statewide in all geographical areas of the state.
- d. Identifies a statewide treatment resource network which includes treatment and screening programs and support groups. Contractor must demonstrate a process for evaluating the effectiveness of such programs.
- e. Provides reports in accordance with time frames set forth below.
- f. Provides testimony by the appropriate person(s) in contested cases if requested by the State. Any testimony shall be provided at the State Division of Registrations' standard rate for the witness' profession
- g. Assures the Contractor and any subcontractors have adequate insurance
- h. Assures that, to the extent practicable, the licensed professionals involved in the evaluation of Recipients shall not also provide treatment of same Recipients. The Contractor must also ensure that such professionals hold an unrestricted license from their respective board(s).
- i. Offers assistance and education to Recipients concerning the recognition, identification, and prevention of physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems and provide intervention when necessary.
- j. Evaluates all Recipients referred to the Contractor, either for participation or for evaluation only. The evaluation shall be sufficient to determine the extent of the Recipient's physical, emotional, psychiatric, psychological, drug abuse, or alcohol abuse problems, if any. Such evaluation shall include an assessment of whether the Recipient is addicted to or dependent on alcohol or habit-forming drugs; or is a habitual user of controlled substances as defined in section 12-22-303(7), or other drugs having similar effects. Such evaluation shall also include an assessment of whether the Recipient has a physical or mental disability that renders the Recipient unable to practice

nursing with reasonable skill and safety to patients and which may endanger the health or safety of persons under the Recipient's care.

- k. At a minimum, requires all Recipients to complete a history and physical screening.
- l. Uses current and appropriate urinalysis, blood and other types of screening, and provide an annual update, if requested, to the State on the Contractor's screening procedures.
- m. Provides counseling with a therapist who meets Board approved criteria.
- n. Places all Recipients under a contractual agreement for completion of any treatment recommended by the Contractor. Discharge criteria must be identified in the contract.
- o. Develops a monitoring contract for each Recipient and reports contract compliance and progress to the State. Recipients must be monitored according to the requirements determined by the State as set forth in the recipient's Stipulation or Final Agency Order ("Order").
- p. Provides written documentation to the State within 24 hours or the next business day, of any Recipients known or believed to be unable to practice with reasonable skill and safety to the patient. Except in the case of Recipients with active cases as defined in paragraph 1 (q) below, this obligation to report shall not apply with respect to those recipients who are in compliance with the Contractor's recommendations for evaluation, treatment, monitoring and/or work limitations, sufficient for public protection.

For purposes of this Contract, "Recipients with active cases" include those Recipients under current Order from the State to receive an evaluation; treatment referral and/or monitoring with the Contractor; Recipients under a current Agreement to Participate in an alternative to discipline program administered by the Contractor; and those Recipients whose cases were referred to the Office of the Attorney General following a report, referral or evaluation from the Contractor.

- q. Provides notification, written or verbal, by the end of the next working day of any Recipients with active State cases:
 - If the Recipient is not in compliance with his or her monitoring contract for more than 2 months
 - If the Recipient has had 2 relapses
- r. Requires on admission an authorization to release information from incoming Recipients for the release to the State (pursuant to a subpoena issued by the State), of each Recipient's records, including records received from other sources in the Contractor's custody. The Contractor shall utilize an authorization to release information, which it obtains from Recipients, that is legally adequate to permit redisclosure to the State of records obtained from other sources and for the State to utilize such records in connection with an investigation, disciplinary action, or other purpose authorized by the Nurse

Practice Act. In the case of records that are subject to the requirements of 42 U.S.C Section 290eee-3 and 42 C.F.R. Part 2, the Contractor shall obtain an authorization from each recipient that meets the requirements for redisclosure found in 42 C.F.R. Section 2.32. Records in the Contractor's custody are subject to subpoena by the State when the Recipient has been referred to the Board for disciplinary action.

- s. Provides services to Recipients whose licenses are suspended and assist them with meeting reinstatement requirements.
- t. Has services available to all Recipients statewide and have program coverage 24 hours a day, 7 days a week.

2. Administrative Reporting and Review

- a. At the request of the State, a review may be made of the performance provided under the terms of the contract six months from the first day of the contract period for any new Contractor and annually each subsequent twelve-month period during the contract term for any contractor, as deemed necessary by the State. This performance review will be conducted at the State's direction in consultation with the Contractor, and at the Contractor's expense.
 - An unsatisfactory review may result in cancellation of the contract
 - The reviewer may determine total service quality, responsiveness, timeliness of required reporting, and any other specifics as required under the terms of this contract. Review results, along with recommendations for change, will be distributed to the Contractor.
 - Should the Contractor desire, a meeting will be arranged between all concerned parties within ten (10) calendar days of the date the Contractor received, or could reasonably have been expected to receive, the review comments. This meeting will provide the Contractor with an opportunity to appeal the review recommendation to the Executive Director of the Department of Regulatory Agencies.
- b. The State retains the right to examine the financial records of the Contractor to determine the use of funds provided pursuant to this contract. The Contractor agrees to undergo a financial audit by a CPA firm of the State's choice, if requested by the State. Such audit will be at the Contractor's expense.
- c. The Contractor shall provide financial statements, including balance sheet and income statement, to the State on a quarterly basis to account for the monies received pursuant to the contract. The Contractor agrees to permit an authorized agent of the State to inspect any other financial records relating to the performance of the contract at a reasonable time and place after notice to the Contractor. It is understood that the Contractor may provide peer assistance programs for persons who are not licensed nurses in Colorado and, if so, the Contractor shall obtain funding for those persons from other sources. The Contractor shall also provide any other financial data requested by the State or its authorized agent.

- d. Contractor must provide quarterly reports to the Board that contains the following service demographics:
- Current number of participants in the program
 - Number of participants under case management
 - Number of monitoring contracts
 - Number of peer support group session participants
 - Number of assessments completed
 - Number of assessments pending
 - Number of participants terminated without successfully completing the program
 - Number of participants who successfully completed program
 - Number of referrals back to the Board of Nursing for non-compliance
 - Total census
 - Education and Outreach
 - Other contract activity details
- e. The demographic breakdown in the quarterly reports must include:
- Presenting problems
 - Diversion of drugs
 - Types of drugs diverted
 - Type of initial treatment
 - Length of recovery
 - Relapses
 - Location of participants residence
 - Referral source
 - Marital status
 - Ethnicity
 - Age
 - Practice setting
 - Practice location

OPTION LETTER

Exhibit C

Date: xx/xx/xxxx State Fiscal Year: _____ Option Letter No. _____

SUBJECT: (Please indicate purpose by choosing one of the following)

- 1 - **Option to renew only (for an additional term)**
- 2 - Change in the amount of goods within current term
- 3 - Change in amount of goods in conjunction with renewal for additional term
- 4 - Level of service change within current term
- 5 - Level of service change in conjunction with renewal for additional term

In accordance with Paragraph 4 of contract routing number (FY) (Agency) (Routing #), between the State of Colorado, Department of Regulatory Agencies, and _____, the State hereby exercises the option for an additional term of one (1) year at a cost/price specified in Paragraph/Section/Provision _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Paragraph/Schedule/Exhibit.

The amount of the current Fiscal year contract value is increased/decreased by (\$ amount of change) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (indicate Fiscal Year). This first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

APPROVALS:

State of Colorado:

Bill Ritter Jr., Governor

By: _____ Date: _____
Executive Director
Colorado Department of Regulatory Agencies