AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgement of County Manager's Signature; Phy

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached contract

Fiscal Impact:

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 10/25/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 11/3/2017 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/3/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 11/7/2017

Revised April 2015

Physician
and
Employer Participation Agreement

This Agreement is entered into between the County of Gunnison Colorado, a Subdivision of the State of Colorado, (hereinafter referred to as "GC") and Sherry L. Niccoli MD PC, (hereinafter referred to as "NICCOLI"). This Agreement shall be effective September 1, 2017.

RECITALS:

WHEREAS GC has constructed as a Subdivision of the State of Colorado a partially self-funded health plan to provide health benefits to their employees and their dependents;

WHEREAS GC desires to form a direct purchasing program.

WHEREAS GC contemplates entering into various contractual arrangements directly with physicians, health care professionals, facilities, third-party administrators, consultants and other parties in order to fulfill their obligations to provide health benefits pursuant to their respective plan;

WHEREAS NICCOLI provides health care services and is prepared to provide such services to GC participating employer's employees and their dependents pursuant to the terms and conditions of the Agreement; and

WHEREAS GC and NICCOLI desire to provide the employees and their dependents with the highest quality service at the most cost effective rate;

THEREFORE, the parties agree as follows:

ARTICLE I. DEFINITIONS:

For purposes of this agreement, the following terms are so described:

1.1 **Administrator.** The third-party administrator or other entity responsible for paying claims on GC's behalf.

1.2 **Agreement.** This Participation Agreement and all Amendments, if any, hereto made in accordance with Article VII herein.

1.3 **Copayment, Coinsurance, and/or Deductibles.** Amounts payable to NICCOLI by Enrollee toward the cost of Covered Services, which are specified under the Plan. Enrollee is responsible for the payment directly to NICCOLI.

1.4 **Covered Services.** Those Medically Necessary Health Services included within a particular Plan.

1.5 **Enrollee.** Any individual eligible to receive Covered Services from NICCOLI under this Agreement as an employee or dependent of a GC

1.6 **Medically Necessary.** Treatment that is necessary and appropriate for the diagnosis or active treatment of an illness or injury based on generally accepted current medical practice.

A service, medicine, or supply will not be considered Medically Necessary if,

A. It is provided only as a convenience to the covered person or provider;

B. It is not appropriate treatment for the Covered Person's diagnosis or symptoms;

C. It exceeds (in scope, duration, or intensity) that level of care that is needed to provide safe, adequate, and appropriate diagnosis or treatment, based on generally accepted medical standards;

D. It is part of a plan of treatment that is considered to be investigational, experimental or for research purposes in the diagnosis or treatment of an illness or injury. "Investigational, experimental, or for research purposes" means services or supplies not recognized or proven to be effective treatment of an illness or injury in accordance with generally accepted medical practice, based on consultation with an appropriate source; or

E. It involves the use of drug or substance not formally approved by the United States Food and Drug Administration, even if approval is not required. The fact that any Physician may prescribe, order, recommend, or approve a service or supply does not, of itself, make the service Medically Necessary.

1.7 **Emergency Medical Condition**. An emergency medical condition means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

a. placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; or

b. serious impairment to bodily functions; or

c. serious dysfunction of any bodily organ or part; or

d. risk to a mother of a fetus when the time for a transfer or transfer itself may pose a threat to the health or safety of the mother or unborn child.

1.8 **Participating Physician.** An individual physician in the State of Colorado and who has a contractual arrangement with GC to provide Covered Services to Enrollees.

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1.9 **Participating Provider.** A Participating Facility, Physician, or any other health care services provider who/which has a contractual arrangement with GC to provide Covered Services to Enrollees.

1.10 **Participation Agreement.** The participation agreement is the contractual document between GC and the NICCOLI that permits GC to participation in all the rights, benefits and obligations of this contract. This agreement includes the right to receive the benefit of all considerations contained in Schedule A.

1.11 **Plan.** A benefit program sponsored by GC.

1.12 **Schedule A.** Schedule A is the part of this contract that contains the financial considerations associated herewith. These data are considered "confidential and trade secret." The full benefits contained in Schedule A accrue in their entirety to GC. The materials in Schedule A of this contract may be examined by GC, and made available to the Third Party Administrator of GC though may not be released, copied or made part of any public record by GC or Third Party Administrator of GC..

ARTICLE II. PURPOSE:

2.1 **Agreement Purpose**. The purpose of this agreement is to include the NICCOLI in the network of physicians, Facilities and other health care providers who are contracted to deliver high quality health care services at a reasonable cost to Enrollees of GC. NICCOLI is to be included as a Participating Provider only for the services specified in Schedule A of this Agreement.

ARTICLE III. OBLIGATIONS OF PARTIES:

3.1 **Eligible Enrollees**. The Agreement applies to provision of services to all enrollees covered by the GC Plan which provides financial incentives for Enrollees to seek care from Participating Providers.

3.2 **Identification Card**. Enrolling Units shall furnish to all eligible Enrollees an identification card which is to be presented upon admission to Facility for inpatient services and upon each instance of outpatient or emergency service being rendered by NICCOLI to such Enrollee. The identification card shall designate that the patient is an Enrollee of GC.

3.3 **Health Plan Information.** In conjunction with NICCOLI's participation in accordance with this Agreement, GC will provide or make available to NICCOLI for informational purposes the following information and any updated versions as they become available;

> 3.3.1 **Administrative Manual.** Documentation in an Administrative Manual of Participating Employer's Plans, methodologies, protocols and administrative procedures, which is incorporated herein by reference;

3.3.2 **Plan Descriptions.** Outlines of the various Plans, specifying effective dates and incentives for Enrollees to seek services from Participating Facilities.

3.4 **Specialist Services**. NICCOLI agrees to treat for inpatient admission or outpatient services all patients who are Enrollees of GC. Such admissions or services shall be in accordance with the general policies of the provider facility and shall be subject to the availability and clinical appropriateness of the required services. NICCOLI agrees to treat all Enrollees in the same manner as all other NICCOLI patients.

3.5 **Utilization Review**. In providing services to Enrollees, NICCOLI will utilize its current utilization review program. NICCOLI, in accordance with the terms of the applicable Plan agree to cooperate with any utilization review, quality assurance or other program of review designed to promote appropriate, Medically Necessary care, while controlling costs, including but not limited to pre-screening of non-emergent care.

3.6 **Operation and Certification.** NICCOLI represents they are board certified and in good standing and has, within its knowledge, complied with all applicable federal, state and local statutes, ordinances, rules and regulations. NICCOLI, at its own cost and expense, shall maintain such certifications as are appropriate to its operation. NICCOLI shall submit to GC, upon request, verification of such certifications. NICCOLI agree to notify GC of any pending or existing violations of any Physician.

ARTICLE IV. BILLING AND PAYMENT FOR SERVICES:

4.1 **Billing for Services**. NICCOLI agrees to seek payment for Covered Services rendered according to the terms set forth in Schedule A, which is incorporated herein by reference. NICCOLI agrees to seek payment from the Enrollee only for Copayments, Coinsurance, Deductibles, and/or for services not covered by the applicable Plan. NICCOLI shall submit bills to Participating Employer's TPA on standard uniform billing forms. Such billing shall include, upon request, an itemization of all charges for services performed. The Participating Employer's TPA will reprice all NICCOLI bills in accordance with the terms outlined in Schedule A.

4.2 **Advance Payment Policy**. NICCOLI agrees that any requirement for advance payments shall not apply for Covered Services rendered by NICCOLI to Enrollees; however, NICCOLI may apply its general credit policies to services or parts of services not covered by the Enrollee's Plan.

4.3 **Source of Payment.** NICCOLI shall look solely to the applicable Plan for payment of Covered Services, except for those authorized under Article 4.1. NICCOLI agrees to accept and collect from the Enrollee the Copayment, Coinsurance and/or Deductible amounts indicated by the applicable Plan. Under no circumstance shall NICCOLI hold any eligible Enrollee financially responsible for Covered Services or parts of Covered Services, except applicable Copayment, Coinsurance and Deductible amounts and/or for services not covered by the applicable Plan or secondary insurance.

4.4 **Payment for Services**. NICCOLI agrees to accept payment from the applicable Administrator according to the terms set forth in Schedule A. Reimbursement will be made for the covered services by the administrator based upon the rates set forth in Schedule A which are in effect on the first date of service (admission date).

4.4.1 **Timeliness of Payment**. The applicable Administrator will make payments according to the following:

a) When the Plan is in the primary payor, the Administrator will make all reasonable and good faith effort to make payment within thirty (30) days from the date of receipt of the complete and accurate billing from NICCOLI; or

b) When the Plan is the secondary payor, using the Plan's prescribed coordination of benefits rules, the Administrator will make all reasonable and good fait effort to make payment within thirty (30) days from the date of receipt of the payment detail from the primary payor.

4.4.2 **Administrator's Failure to Pay**. The failure of an Administrator to render payment to NICCOLI shall not put this agreement in breach. Rather, if non-payment occurs, the matter will be referred to GC for resolution. If resolution is not reached within 30 days of such referral, NICCOLI may terminate this Agreement with respect to the particular Participating Employer.

4.5 **Filing Limit.** NICCOLI agree to submit claims within one (1) year of the date of service or discharge date whichever is later. Claims submitted more than one (1) year after the date will be ineligible for payment and not billable to a Plan or the Enrollee. NICCOLI agrees to submit requests for adjustments within six (6) months of the date of payment. Any requests submitted more than six (6) months after the date of payment will be ineligible for adjustment and not billable to a Plan or Enrollee.

4.6 **Audits.** NICCOLI agree to cooperate, in accordance with NICCOLI rules and regulations, with claim audits to confirm amounts billed for reimbursement under this Plan. In connection with such audits, NICCOLI agrees to provide, at no cost to GC, the applicable Administrator their representative, full access to any and all relevant medical and billing records to GC the applicable Administrator and their representatives, subject to all applicable legal requirements of confidentiality. NICCOLI agree to provide such access within 30 days of request from GC, the applicable Administrator their representatives to conduct such audit, GC the applicable Administrator or their representative, agrees to provide reasonable notice and to conduct audits during regular business hours.

4.7 **Coordination of Benefits.** Upon request, NICCOLI agree to reasonably assist the applicable Administrator for purpose of coordinating benefits with primary payors. If a Plan is a primary payor and such Plan's payment does not cover all billed charges, NICCOLI may submit claims to the secondary payor. If a Plan is the secondary payor, such Plan shall pay NICCOLI Covered

Services based upon the Plan's coordination of benefits procedures. Covered Services not paid by the primary payor will be considered by the Plan subject to the terms set forth in Schedule A as the maximum covered expense.

ARTICLE V. ACCESS TO BOOKS AND RECORDS:

5.1 **Access to Books and Records**. Subject to applicable federal and state laws, NICCOLI agrees to permit GC and the GC's utilization review representative to inspect patient records during regular business hours with prior written notice and to request copies of said records, at an expense to requesting party of no more than ten cents ($.10) per page, provided that prior written consent has been obtained from Enrollees authorizing NICCOLI to release such information and a copy of the consent is provided for the NICCOLI. For purposes of this section, patient records shall include those records that are, or will become part of the NICCOLI medical records of the Enrollees.

5.2 **Legal Requirements.** NICCOLI authorizes GC to release such information pertaining to NICCOLI or Enrollees treated by NICCOLI as may be required to maintain compliance with any applicable law or regulation.

5.3 **Confidential Information.** During the terms of this Agreement and thereafter, GC and NICCOLI shall ensure that GC, and NICCOLI, and their directors, officers employees, contractors, and agents hold confidential information in accordance with state and federal law. Confidential information shall include all information and records disclosed prior to or subsequent to the execution of this Agreement regarding the following: patients, utilization review, quality assurance, finances, volume of business, and contracts. NICCOLI and GC expressly acknowledge the need to have confidential information for the normal performance of their respective duties. Additionally, both GC and NICCOLI agree that such confidential materials may be distributed to the officers, directors, staff, medical and review staffs and, further, that such confidential information are not for distribution outside the respective organizations. Representatives of GC may receive information if a statement of confidentiality has been executed in advance by each recipient forbidding further disclosure by GC's representative of NICCOLI-specific information.

Notwithstanding the above, NICCOLI agree that GC may distribute NICCOLI-specific information relating to charges, payments and average length of stay, on aggregate or Enrollee-specific bases, to the Participating Employers.

ARTICLE VI. TERM. TERMINATION AND AMENDMENTS:

6.1 **Term.** The term of this Agreement shall commence effective September 1, 2017 and shall continue thereafter in effect until August 31, 2018 and is automatically renewable annually, unless terminated as stated in Article 6.2.

6.2 **Termination.** This Agreement may be terminated as follows:

6.2.1 **Termination With Cause**. Either party shall have the option of terminating this Agreement with cause upon written notice of intent to terminate at least one hundred eighty (180) days in advance of any date on which termination is desired. The parties agree to meet and attempt to alleviate the cause associated with either party's desire to terminate In the event the parties are not able to reach agreement regarding the cause, the parties agree to terminate this agreement at the end of a 180 day period from the time when the parties reach impasse in resolution of the cause. In no case shall the time period for reaching agreement extend beyond 90 days.

6.2.2 **Termination Without Cause**. Either party shall have the option of terminating this Agreement without cause upon written notice of intent to terminate at least one hundred twenty (120) days in advance of any date on which termination is desired.

6.2.3 **Accreditation.** If, at any time, NICCOLI should fail to have its credentials.

6.2.4 **Termination Upon Default.** Either party shall have the option of terminating this Agreement by reason of the other party's default under this Agreement. An event of default hereunder shall occur if either party to the Agreement shall fail to keep, observe, pay, or perform any material covenant, obligation, agreement, term, or provision of this Agreement, and such condition is not remedied within sixty (60) days after the receipt of the initial written notice thereof by one party to the other. In the event of a continuing material breach hereunder, the party desiring termination shall provide a final written notice and termination shall occur thirty (30) days from the receipt of said final notice.

ARTICLE VII. GENERAL PROVISIONS:

7.1 **Binding Effect.** The terms, covenants, conditions, provisions and agreements herein contained shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

7.2 **Notices.** All official notices and communications pertaining to this Agreement shall be made in writing and communicated by regular mail or personal delivery to the parties hereto at their respective addresses stated in the conclusion of this Agreement, or at such other addresses as the parties hereto may designate in writing.

7.3 **Entire Agreement.** This Agreement contains the entire understanding between the parties hereto, and no representations or agreements, oral or otherwise, between the parties not embodied herein or attached hereto shall be of any force and effect.

7.4 **Amendments.** This Agreement may not be modified except by an instrument in writing signed by all parties hereto. This Agreement may be executed in two (2) or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

7.5 **Unforeseen Circumstances.** Neither party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reasons beyond its control, including without limitations, acts of God or of the public enemy, flood or storm, strikes or statutory regulations, rule or action of any federal, state or local government, or any agency thereof.

7.6 **Assignment.** NICCOLI may not assign, delegate or transfer this Agreement without GC's prior written consent. GC may not assign, delegate or transfer this Agreement without NICCOLI' prior written consent.

7.7 **Rights of Parties.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assignees. Nothing in this Agreement shall relieve the liability of any third persons to any party of this Agreement. No provision shall give any third persons any right of subrogation or action against any party to this Agreement.

7.8 **Relationship Between Parties**. As part of this Agreement, NICCOLI and GC agree that each party is an independent contractor acting solely for the purpose of providing quality, cost-effective services to GC and Participating Employer's Enrollees. Further, NICCOLI or any employee of NICCOLI is not an agent or employee of GC nor is GC or any employee of the GC an agent of NICCOLI. Although this Agreement contemplates NICCOLI services for Enrollees, NICCOLI and GC reserve the right to amend or terminate this Agreement without notice to, or consent of, any such Enrollees. The relationship between NICCOLI and any Enrollee is that of NICCOLI and patient.

7.9 **Non-Exclusive Agreement.** NICCOLI and GC hereto agree that NICCOLI and the GC shall not be precluded from entering into agreements similar, or dissimilar to this Agreement with any other entity or group of entities, NICCOLI or group of NICCOLI, person or group of persons, or organization or group of organizations.

7.10 **Public References.** NICCOLI agree that, during the term of this Agreement, the GC shall have the right to designate and make public reference to NICCOLI as a Participating Provider, including use of NICCOLI' name, address, phone number and list of contracted services in a list of Participating Providers. GC agrees that, during the. term of this Agreement, NICCOLI shall have the right to designate and make public reference to its status as Participating NICCOLI.

7.11 **Confidentiality.** NICCOLI and GC agree to strictly maintain the confidentiality of information contained within this Agreement during the term hereof and following the termination of this Agreement.

7.12 **Indemnification.** Both parties and their representative shall maintain at their own expense, such liability insurance' policies and/or program of self-insurance necessary to insure them and their employees and agents against any claims for damages arising from or in connection with the performance of the services described herein. NICCOLI and GC shall bear and be solely

responsible for all costs incurred against it in connection with claims or suits, real or imaginary, which are a result of activity, acts or omission by it, or its agents, regardless of whether the claim or suit involves the other or the other's agents. Neither party shall be obligated to indemnify the other for any such amounts.

7.13 **No Waiver of Breach.** The failure of either party to this Agreement to object to or take affirmative action with respect to any conduct of the other which is a breach of this Agreement shall not be construed as a waiver of the breach or of any prior or subsequent breaches of this Agreement.

7.14 **Choice of Law.** This Agreement shall be governed by the laws of the State of Colorado, and, when applicable, by the Employees' Retirement Income Security Act (ERISA). The unenforceability or invalidity of any provision of this Agreement shall not affect the validity and enforceability of the remainder of this Agreement.

7.15 **Arbitration.** In the event that any problem, dispute or controversy arises regarding any of the terms of this contract, and is not satisfactorily resolved between the parties, then GC and NICCOLI agree to arbitrate the problem, dispute or controversy. Either party may initiate the arbitration, which shall be conducted in Grand Junction, Colorado and judgment on the award rendered by the arbitrator will be final and binding on both parties and may be entered in any court having jurisdiction thereof.

7.16 **Marketing.** GC shall promote the NICCOLI' status as a provider of Covered NICCOLI Services at least to the same extent that it promotes any other provider of such services. With respect to the dissemination of information to Enrollees concerning providers of Covered Services, such information shall not discriminate against the NICCOLI in comparison to any other provider of the same services.

Provider Name	Sherry L. Niccoli MD PC
Address	234 N Main St., Suite 2C
Address	Gunnison CO 81230
Phone Number	970-641-2885
Tax id:	

Billing address if different from above

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NICCOLI PARTICIPATION AGREEMENT

Schedule A

This schedule is a part of the Agreement between NICCOLI (hereinafter referred to as "NICCOLI") and Gunnison County (hereinafter referred to as GC), effective September 1, 2017.

NICCOLI will be designated Participating Providers for the services listed in this Schedule A.

Reimbursement made according to this schedule shall represent payment in full for the services rendered. All Copayment, Coinsurance and Deductibles will be deducted from the Administrator's payment and will be billable to the Enrollee by NICCOLI.

20% Discount off of Eligible Billed Charges

By: _____

Name: Matthew Birnie

Title: County Manager

Date: 10/20/2017

By: _____

Name: Sherry L. Niccoli

Title: President/Owner

Date: 10/12/2017