

FIFTH AMENDATORY AGREEMENT

THIS FIFTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **FAMILY TREE INC.**, a Colorado nonprofit, whose address is 3805 Marshall Street, Wheat Ridge, CO 80033 (the “Contractor”), individually a “Party” and collectively the “Parties.”

WHEREAS, the Parties entered into an Agreement dated May 31, 2018, an Amendatory Agreement dated August 5, 2019, a Second Amendatory Agreement dated July 16, 2020, a Third Amendatory Agreement dated July 27, 2021, and a Fourth Amendatory Agreement dated June 29, 2022, to ensure stability and permanency of children in kinship care and to divert children from the foster care system (the “Agreement”); and

WHEREAS, the Parties now wish to modify the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective July 1, 2023, all references to Exhibits A, A-1, A-2, A-3, and A-4 in the existing Agreement shall be amended to read Exhibits A, A-1, A-2, A-3, A-4, and A-5, as applicable. Exhibit A-5 is attached and will control from July 1, 2023.

2. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The term of the Agreement (“Term”) shall commence on May 1, 2018, and expire, unless sooner terminated, on June 30, 2024. Subject to the Director’s prior written authorization, the Contractor shall complete any work in progress as of the then current expiration date and the Term will extend until the work is completed or earlier terminated.”

3. Subsection 4(D)(1) of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not One Million Nine Hundred Five Thousand Six Hundred Fifteen Dollars (\$1,905,615.00) (the “Maximum Contract Amount”). The City is not obligated to execute an agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibits A, A-1, A-2, A-3, A-4, and A-5**. Any services performed beyond those in **Exhibits A, A-1, A-2, A-3, A-4, and A-5** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

4. Section 21 of the Agreement, titled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THIS AGREEMENT**,” is amended to read as follows:

“21. **INTENTIONALLY OMITTED.**”

5. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

6. This Fifth Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

7. The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A-5**, Scope of Work.

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Contract Control Number:
Contractor Name:

SOCSV-202367650-05 / Alfresco SOCSV-201841755-05
FAMILY TREE INC.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By: _____

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: _____

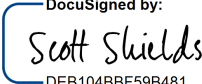
REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number:
Contractor Name:

SOCSV-202367650-05 / Alfresco SOCSV-201841755-05
FAMILY TREE INC.

By:  _____
DEB104BBF59B481...

Name: Scott Shields
(please print)

Title: CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Family Tree Inc.
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I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Family Tree Inc. (Contractor) as part of the Temporary Assistance to Needy Families (TANF) Stable Families / Kinship Payment Strategic Initiative to ensure stability and permanency of children in the Child Only TANF / Kinship care and divert children from the foster care system.

II. Background

DHS is allocated funds on an annual basis from the Colorado Department of Human Services (CDHS) for the operation of the TANF/Colorado Works Program. The TANF county block grant funds are utilized only to support the purposes of the Colorado Works program. Code of Colorado Regulations 9 CCR 2503-6 Income Maintenance (Volume 3.2). Households are determined at application to be either eligible or ineligible for TANF basic cash assistance.

III. Services

- A.** To support and engage families eligible for Child Only TANF through assessment and support to meet the children/families' needs. The Contractor shall provide the following:
 - 1.** Marketing, outreach and engagement with TANF/Colorado Works families as they become eligible for cash assistance and periodically while receiving assistance.
 - 2.** Thorough assessment of family and child(ren)'s short and longer term needs not addressed by the monthly TANF/Colorado Works monthly child only payment.
 - 3.** Development of community-based referral sources and strategies for effective supportive service, monetary payments that help to address child and family stability, childcare and school readiness/achievement, mental and other health needs not covered by Medicaid and other sources, including legal clinics.
 - 4.** Crisis intervention and assistance during normal business hours to Child Only TANF families referred by DHS and direct them to resources and/or external agencies that provide assistance.
 - 5.** Help families navigate systems such as Food Assistance, Medicaid, TANF, Child Welfare, Social Security, and the judicial system.
 - 6.** Home Visits and/or telephone Assessment based on each client's individualized needs.
 - 7.** Case Management Services to families, which includes an in-person (if available) assessment of needs and a service plan based on those needs that includes monetary and/or non-monetary services.
 - 8.** Support Services for children.
 - 9.** Referrals to community resources to increase family stability.
 - 10.** Referrals to legal services on issues such as custody, guardianship and adoption.
 - 11.** Access CBMS to request monetary assistance for eligible participants.



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- B.** DHS and Contractor will work collaboratively to ensure services are available to participants in a variety of fashions. Programming offered virtually and online, not just in person. In the event the curriculum requires in person components, Contractor will work with DHS and other partners to ensure these in person services are appropriate, safe, and compliant. The content of all virtual/ online programming can be cross-walked to the in-person services with minimal disruption to participants and the targeted outcomes to be achieved.
- C.** Contractor agrees to ensure all electronic communication referencing TANF participants will follow all privacy requirements, including but not limited to; encrypting emails to recipients outside of the City network.
- D.** Contractor agrees to use City/DHS issued email addresses in compliance with all City prescribed privacy requirements related to communication and information sharing.
- E.** Contractor will utilize the designated data systems, including but not limited to, the Colorado Benefits Management System (CBMS) for TANF customers. CBMS shall be used to track all TANF participant information. CBMS must be used in accordance with the DHS and CDHS written policies, procedures, and trainings. Each staff person will be given the minimum access required to perform their specific role under the Contract. Contractor agrees to abide by and require all staff users to abide by the City and County of Denver data confidentiality and security agreements.
- F.** DHS and the State will coordinate CBMS security access setup and controls. All requests should be routed through the DHS CBMS Help Desk to ensure that State and internal processes are followed.

G. Audits

Contractor and DHS will work collaboratively to collect and retain all Colorado Works/TANF program information necessary to ensure compliance with the requirements of any applicable state or federal law and program regulations. This includes all case management records (paper and automated), which includes, but is not limited to, all assessments, Individual Plans (IPs), workforce development activities, participation tracking sheets, contracted services, and workforce counseling administered by Contractor. Contractor and DHS will cooperate with each other in responding to inquiries that either agency may receive from state or federal authorities regarding any programs that Contractor is responsible for administering pursuant to this agreement. DHS will notify Contractor in advance of every TANF related audit and Contractor will have a representative present at such audit. Contractor will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

H. Management Site Visits and other Audits



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Denver County and/or the State of Colorado may conduct regular on-site reviews of Colorado Works contracts and related services. These on-site reviews are meant to provide service providers with direct feedback on the implementation of their program and include a summary of the findings from the ongoing case file reviews. Denver County and/or state staff will analyze and review contractor policies, plans, procedures, contracts/sub-contracts, and other relevant documents and administrative data that describe and inform program implementation, strengths and opportunities for improvement. The focus of the site visit is primarily one of information sharing, technical assistance, and training with county and/or state staff representing various areas of program operations (finance, budget, policy, program, training and technical assistance).

For other formal federal, state, and county audits, Contractor will provide accurate and complete case files within the DHS timeline requirements. Contractor will be responsible for repayment to DHS of any disallowed costs resulting from a final audit action imposed by CDHS or other regulatory authority pertinent to the work at Family Tree. Contractor will be responsible for following up on auditor findings, providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor Contractor's response to audit related matters to ensure ongoing compliance. DHS and Contractor will work with State and Federal auditors as requested. Contractor will provide a designee as a point of contact for monthly quality meetings and for audits.

I. Records

Contractor will comply with written State and City/DHS policies and processes provided to Contractor by DHS related to case file maintenance, case retention and storage. Documentation obtained to support the SSI/SSDI application or appeal process shall be retained by Contractor as this information does not pertain to the Colorado Works/TANF Workforce program. At a minimum, Contractor will maintain all client documentation in client case files according to stated case order policy provided by DHS. Contractor agrees to work with DHS to provide information from these files should a documented request, audit or need arise for the information. Client documentation will be sent to the scanning department for electronic filing no more than five (5) days after the document was created. Contractor will provide a copy of their current record retention and destruction policy as required by House Bill 18-1128 within 30 days after the execution of this contract. Upon termination of this contract, all relevant case files will be provided to DHS in a DHS approved format.

IV. Process and Outcome Measures

A. Process Measures

DHS will refer up to 400 families to Family Tree. Family Tree will provide services to a total of 250 Child Only TANF families over the course of the year –for 30 to 90 days,



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serving 50 families at any given time. The average monthly Home Visitation Assessments completed by Family Tree will be for 18-20 families.

B. Outcome Measures

Provide marketing, outreach and engagement to families referred for services. Assist a total of 250 families in the contract year. Family Tree shall collect and report monthly on the following measures:

1. Number of referrals.
2. Number and mode of outreach to each family.
3. Number of assessments performed.
4. Average payment made.
5. Description of services provided.
6. Number of referrals made and to which agencies.
7. Additional recommended long term supports identified.
8. Other information that would be of use in determining efficacy of programming.

V. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and other designated DHS staff throughout the term of the agreement. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

B. Reporting

The following reports shall be developed and delivered to the City as stated in this section.

| Report Name | Description | Frequency | Reports to be sent to: |
|-------------|-------------|-----------|------------------------|
|-------------|-------------|-----------|------------------------|



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| | | | |
|-------------------|--------------------------------------|---------|----------------------------|
| 1. Monthly Report | Measures noted in Section IV, Part B | Monthly | FAAD Program Administrator |
|-------------------|--------------------------------------|---------|----------------------------|

VI. DHS funding information:

- A. Program Name:** TANF Stable Families / Kinship
B. Funding Source: TANF/Colorado Works

VII. Budget

- A.** Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.
- B.** The funds allocated under this Agreement are from the federal TANF block grant and shall be used solely for TANF purposes and eligible participants. These funds shall not be used to supplant existing funding for a non-TANF program.

Invoices shall be submitted to: DHS Contractor Invoices@denvergov.org or by US Mail to:

Attn: Financial Services
Denver Human Services
1200 Federal Boulevard
Denver, Colorado 80204

| Contractor Name: Family Tree, Inc. | | | |
|--|-------------------|------------------|---|
| Contract Number: SOCSV-201841755-05 & SOCSV-202367650-05 | | | |
| Contract Term: 7/1/2023 – 6/30/2024 | | | |
| Project Name: TANF Stable Families/Kinship Strategic Initiative | | | |
| Key Deliverable | Fee | Total | Narrative |
| Completion of an Assessment (Home Visitation if available) | \$1382 per family | \$345,500 | Fee for this deliverable is payable upon completion and documentation submitted and approved by the Program Manager. Documentation includes Case Name, CBMS#, and completed Home Visitation Assessment. |
| Total Budget | | \$345,500 | |

Contract Summary of Amounts:



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| Contract Version | Term | Previous Amount | Additional Amount | New Contract Total |
|---------------------------------|----------------------|------------------------|--------------------------|---------------------------|
| Base | 5/1/2018 - 6/30/2019 | \$0 | \$316,315 | \$316,315 |
| 1st Amendment | 7/1/2019 - 6/30/2020 | \$316,315 | \$276,400 | \$592,715 |
| 2nd Amendment | 7/1/2020 - 6/30/2021 | \$592,715 | \$276,400 | \$869,115 |
| 3rd Amendment | 7/1/2021 - 6/30/2022 | \$869,115 | \$345,500 | \$1,214,615 |
| 4th Amendment | 7/1/2022 - 6/30/2023 | \$1,214,615 | \$345,500 | \$1,560,115 |
| 5th Amendment | 7/1/2023 - 6/30/2024 | \$1,560,115 | \$345,500 | \$1,905,615 |

VIII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.



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- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:



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- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.



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- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.



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- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).



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- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is



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reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.

5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as



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practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.

- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
 - 6.03.1 The Disclosure is required by law; or
 - 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.



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- 7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
 - 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
 - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
- 8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.
 - 8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.
 - 8.02.2 CONTRACTOR shall retain no copies of the PHI.
 - 8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.
- 8.03 The obligations of this Agreement shall survive the termination of the Agreement.



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9 SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.