

THIRD AMENDATORY AGREEMENT

Out-Of-Home Placement Services
Residential Child Care Facility (RCCF)

THIS THIRD AMENDATORY AGREEMENT is between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **EXCELSIOR YOUTH CENTERS, INC.** located at 15001 East Oxford Avenue, Aurora, Colorado 80014 (the “Contractor”), collectively “the parties”.

The City and the Contractor previously entered into an Agreement and two Amendatory Agreements to provide Residential Child Care Facility (RCCF) services (the “Agreement”).

The parties now desire to further amend the Agreement to change the rates of reimbursement (following State changes, beginning July 1, 2014), to revise HIPAA/HITECH language, and to substitute revised attachments.

The parties agree as follows:

1. Paragraph 9 in General Provisions in Attachment A is amended to read:
 9. **Rate of Care.** The Contractor agrees to provide the care and services which are described in this Agreement and its attachments, based on a child specific authorization, **Out-of-Home Placement Authorization and Terms (OOHPA)** form, attached and incorporated as **Attachment 2**, identifying individual service needs completed by DDHS for each child being served by the Contractor.
2. Paragraph 16 in Description of Services to be Purchased in Attachment A is amended to read:

“**16.** The **amount paid** for purchased care and services for less than a full month will be based upon the daily rate contained in **Attachment 1-2.**”
3. Paragraph 17 in Description of Services to be Purchased in Attachment A is amended to read:

“**17.** The **services purchased** under this Agreement may include, but are not limited to basic 24 hour care and child maintenance (food, shelter, clothing, educational supplies, personal incidentals and allowance), administrative overhead, and case management. Behavioral health services which may include but are not limited to individual, group and family therapy, in home services and day treatment may be authorized and paid through the child’s Medicaid eligibility. Behavioral health services may also be authorized and purchased directly by the City through the Core Service program. The amount paid for purchased care and services must be in writing and will be based upon the negotiated rate. The total rate of payment for care and services under this Agreement shall not exceed the

established negotiated rate as found in **Attachment 1-2** for preferred providers, network providers or group homes or centers.”

4. Paragraph 19 in Description of Services to be Purchased in Attachment A is amended to read:

“**19. Transportation** shall be furnished by City between the child’s residence and Contractor’s facility for the initial placement and return after the treatment plan is completed. (Emergency Placement is an exception and contractor will be responsible for transportation). During placement the Contractor shall provide or pay for reasonable fees associated with transportation as defined in **Attachment 1-2.**”

5. **Attachment 1-2** shall be added to the Agreement effective July 1, 2014. It shall control the scope of work and rates from July 1, 2014 forward. All references to “...Attachment 1...” in the existing Agreement and attachments shall be amended to read: “...**Attachments 1, 1-1, and 1-2**, as applicable...” **Attachment 1-2** is attached and incorporated by reference.

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

7. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

Attachments 1-2

SIGNATURE PAGES FOLLOW

Contract Control Number:

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:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: SOCSV-201205739-03

Contractor Name: EXCELSIOR YOUTH CENTERS, INC.

By: *[Signature]*

Name: MARTY ZAFFARONI
(please print)

Title: DIR. BUSINESS DEVELOPMENT
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Scope of Work for EXCELSIOR YOUTH CENTERS, INC.

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and scope of services between Denver Department of Human Services (DDHS) and Contractor to provide Out-of-Home Placement Services for youth in the custody of the Department.

II. Program Goals & Outcomes

Goal	Outcome
Goal #1 To improve client outcomes.	Improved outcomes for children and youth in placement and treatment services.
Goal #2 To develop partnerships to ensure appropriate placements, collaborative service planning and successful and meaningful coordination of care.	Improved matching of children with treatment centers. Decreased likelihood of children re-entering same or higher level of care.
Goal #3 To improve communication between placement contractors and DDHS staff.	Increase frequency of communication between Contractor and DDHS Utilization Management (UM) team.
Goals #4 To decrease length of time children spend in out-of-home placement.	Children returned home or placed with relatives more quickly.
Goal #5 To increase monitoring of provider agreement.	Improved continuum of care for children and cost savings to Department.

III. Services

This agreement seeks to describe between DDHS and Contractor requirements, best practices, and other methods for providing a comprehensive framework of care as described here and in the Agreement.

A. In addition to any other services required by the agreement and attachments, services will be provided based on a Child Specific Needs Based Care Assessment determined for each child (or, if necessary, on such other assessment instrument as determined by the parties to this agreement).

- 1.** The services purchased under this Agreement may include, but are not limited to:
 - a.** Basic 24 hour care and child maintenance (food, shelter, clothing, educational supplies, personal incidentals and allowance).
 - b.** Administrative overhead and case management.
 - c.** Behavioral health services which may include but are not limited to individual, group and family therapy. In home services and day treatment may be authorized and paid through the child’s Medicaid eligibility.
 - d.** Behavioral health services may also be authorized and purchased directly by the City through the Department’s Core Service program.

B. Service Expectations

- 1.** Family Therapy: When family is available, the Contractor shall actively engage the family and provide a minimum of one family therapy session per

week. Note that if other non family adults are available to participate in therapy, such as foster parents, this same standard shall apply to those parties. This may be waived based upon not being clinically indicated with agreement between the Contractor and the UM staff.

2. The plan for Medicaid billings shall be approved by the DDHS UM team in advance of billing.
3. Other Family Involvement: The facility shall offer at least one family event per month so children remain connected to their family, when available.
4. Passes with Family: Passes with family may occur after the family has engaged with the program therapeutically, such as participating in family therapy. Passes shall incorporate therapeutic goals to be worked on during the time the child is on pass with the family. Passes must be approved by DDHS staff prior to occurring.
5. If the youth has issues related to the safety of others, such as being sexually aggressive or violent, a safety plan shall be put into place and approved by DDHS prior to the youth going on pass. If Probation is involved, Probation shall approve such a plan as well prior to the child going on pass.
6. Urinalysis: The Contractor shall arrange and pay for post-pass urinalysis for youth who have a history of substance use..
7. Treatment Plan:
 - a. At a minimum the treatment plan shall be completed within the time frame allowed by the state.
 - b. The initial treatment plan shall contain a primary discharge plan and secondary discharge plans (i.e. moving to home or to a foster home), based upon the child's needs.
 - c. The treatment plan and services shall support the DDHS "permanency goal."
 - d. The treatment plan shall focus on resolution and/or management of the primary issue(s) resulting in the placement with the goal of bringing the youth to a minimally adequate functioning level to be successful in the community setting (note services generally will continue to occur in the community to enhance the child's functioning).
 - e. Treatment plans shall be approved by DDHS staff, and Probation when involved.
8. General Programming in Relation to Behavior Management: The program shall manage youth in the placement utilizing the tools available in the program to modify behaviors. Unless crimes are committed, the police, probation officers, and DDHS shall not be contacted with the expectation that they manage the youth's behaviors.
9. Reporting:
 - a. Progress reports shall be provided to DDHS, and Probation if involved, within each calendar month for services provided in the preceding month. Reports shall include, at a minimum, number and types of therapies provided and the child's and family's engagement in such therapies, a history of critical and important incidents in which the child was involved (see directly below for a definition), specific measurable progress related to each component of the treatment plan, and revised plans/strategies to engage youth who are not being successful in completing the plan.
 - b. Major incidents, including state defined "critical incidents" as well as incidents involving drug use, assaultive behaviors, major property

damage, running away, and physical management shall be reported within one business day to DDHS UM staff and Probation, if involved.

- c. Additional reporting requirements requested by DDHS shall be provided in progress reports within one month of notification by DDHS of the requirements.
- 10. Therapeutic Staffing: The contractor shall ensure that reasonable efforts are made to coordinate with UM staff to arrange monthly staffing/professional meetings as outlined by State rule where all involved parties are invited to attend.
- 11. Youth Movement within Provider's programs: The contractor shall notify UM staff when planning to move a youth into another milieu within the contractor's programs and will ensure that a Value of Individual & Community Engagement Services (VOICES) meeting has been arranged and the UM or VOICES staff have been requested to facilitate.
- 12. Transportation: The Contractor shall provide or pay for reasonable transportation fees associated with, e.g., a child's family visitation, appearances in court, and interaction with other necessary services (such as medical visits). Note reimbursement would not apply when a DDHS staff or probation officer agree to provide such transportation, although they shall not be required to provide such transportation.
- 13. Discharge Coordination:
 - a. Discharge plans for all youth shall be developed and provided to DHS staff (and probation officers if applicable) at least three weeks prior to a planned discharge or within one week after an unplanned discharge.
 - b. Youth shall leave with a sufficient quantity of any needed medications to cover until the youth is able to see a practitioner who may prescribe the medications in the community. In this regard, the Contractor shall verify that a practitioner has been identified and an appointment date is set to provide such service.
 - c. There shall be a clear educational transition plan identified at the time the discharge plan is developed. (The plan shall be developed in cooperation with DDHS staff and Probation Office staff, if applicable). At the time of discharge the DDHS staff shall receive copies of transcripts related to educational credits a child earned while in the facility, if any were earned.

IV. Background Checks

Contractor shall provide background checks for all current and prospective employees of Contractor, and/or any subcontractor who has any direct contact with a child involved in any phase of an open child welfare case including, without limitation, those in the process of being placed and those who have been placed in out of home care. Each employee, prospective employee and/or subcontractor shall submit a complete set of fingerprints to the Colorado Bureau of Investigation (CBI) that were taken by a qualified law enforcement agency to obtain any criminal record held by the CBI.

A. Contractor Employees and Subcontractors

- 1. The person's employment is conditional upon a satisfactory criminal background check and subject to the same grounds for denial or dismissal as outlined in 26-6-104(7), C.R.S., including:
 - a. Checking records and reports; and

- b.** Individuals who have not resided in the state for two years shall be required to have Federal Bureau of Investigation (FBI) fingerprint-based criminal history.
- 2.** Payment of the fee for the criminal record check is the responsibility of the Contractor or at Contractor's option individual being checked. In either case, DHS will not reimburse any of the costs associated with background checks.

B. Volunteers and Students

- 1.** If volunteers or students are used by Contractor, Contractor shall define specifically the services to be given by that individual.
- 2.** Volunteers and students who are assigned to work directly with the children shall:
 - a.** Be subject to reference checks similar to those performed for employment applicants.
 - b.** Be in good general health. City & Provider have the right to contact the individual's physician.

C. Volunteers and students shall be

- 1.** Directly supervised by Contractor's paid and qualified staff member who shall be present at all times when the volunteer or student is working directly with or having direct contact with any child or children.
- 2.** Oriented and trained in the culture of the Family to Family site, confidential nature of their work, and the specific job which they are to do, prior to assignment.

Provisions for employment and volunteer/student related background check inquiries will be followed as outlined in Section 7.701.32 "Use of Reports and Records of Child Abuse or Neglect for Background and Employment Inquiries."

V. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and Contracting Services. 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 & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DDHS program area, will manage any performance issues and will develop interventions that will resolve concerns.

- 3. Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and City and County laws and regulations, and the DDHS annual plan & policies are being met.

B. Reporting

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

Report # and Name	Description	Frequency
1. Progress Reports	Report shall demonstrate information as stated above in Section III. B. 9.a This will include numbers of children served and types of services provided.	Within each calendar month for services provided in the preceding month.
2. Major incidents, including state defined "critical incidents" Reports	Report shall demonstrate information as stated above in Section III. B. 9.b	Within one (1) business day of incident.
3. Discharge Plan	Report shall demonstrate information as stated above in Section III. B. 11.a. b. and c.	3 Weeks prior to a planned discharge or within one week after an unplanned discharge.
4. Quarterly Report	Report shall demonstrate achievement of the Goals of this SOW	Quarterly
5. Contract Closeout and Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within 45 days after Term End.
6. All medical and dental reports (Denver Human Services Health Visit Report)	Completed DDHS Health Visit Report or documentation from alternative provider of physicals, medical and dental procedures.	Within one (1) business day of medical/dental appointment or of receipt of documentation.
7. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD

VI. Budget Requirements

Contractor shall provide the services for the City under this agreement using best practices. Only State funds will be used to pay for care and services. Applicable rates effective 7/1/2014 shall be determined as follows:

Child Maintenance	Administrative Maintenance	Services	Total
\$110.70	\$20.15	\$51.52	\$182.37

VII. Business Associate Terms – HIPAA/HITECH

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 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.

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 this these terms additional 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:

- a. 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.
- b. 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.
- c. 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:

- 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.

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.

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 subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

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, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, 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).

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, 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 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 known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by 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 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 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.

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.