

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 **GUADALUPE PROJECT, INC**, a Colorado corporation, whose address is 837 Sherman Street, Suite 100, Denver, CO 80223 (the “Contractor”), individually a “Party” and collectively the “Parties.”

WHEREAS, the Parties entered into an Agreement dated August 13, 2019, an Amendatory Agreement on November 25, 2019, a Second Amendatory Agreement on June 26, 2020, a Third Amendatory Agreement on June 30, 2021, and a Fourth Amendatory Agreement dated June 17, 2022, to provide targeted intervention services to TANF households that have recently added a child to their home (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, 2019, 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 exceed Six Hundred Seventeen Thousand Five Hundred Sixty-Two Dollars (\$617,562.00) (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 24(T) of the Agreement, titled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THIS AGREEMENT**,” is amended to read as follows:

“**T. 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-202367654-05 / SOCSV-201950317-05
GUADALUPE PROJECT, 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:

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GUADALUPE PROJECT, INC

By:  _____
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Name: Sera Treston-Pastore
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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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 Guadalupe Project, Inc (Contractor) to provide targeted intervention services to Temporary Assistance to Needy Families (TANF) households that have recently added a child into their home.

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. Adults who are considered work-eligible are provided with individualized services and supports to promote their family's economic well-being. All TANF eligibility for applicants is determined by DHS. DHS assesses initial work-eligibility to determine which work activities, services and supports available in the program are the best fit for the participant. DHS will also determine which agency/contractor might serve the participant best based on their scope of services.

DHS recognizes that even those adults who have been identified as "work-eligible" may need to pursue strategies other than employment to attain economic well-being. Similarly, some families may be experiencing a crisis that needs to be addressed before employment can be pursued. Examples may include families who are living in a shelter, newly involved with child welfare, or those experiencing other immediate safety issues. DHS may determine which individuals in these circumstances are not ready to focus on employment. This is determined through an assessment and addressed through the Individualized Plan or Roadmap, pursuant to Colorado Works regulations at 9-CCR-2503-6.

TANF participants will require in-depth and ongoing assessment of barriers and job readiness levels. From the assessments, Individualized Plans will be developed with the participant that offer intensive supports and services. This may include more extensive monitoring and possibly additional work supports. The intent is to engage and provide opportunities for participants to obtain and maintain employment that support career growth.

III. Services

- A.** To support and engage TANF eligible participants to develop strategies that address individual and family needs, DHS will work jointly with Contractor to provide the following:
 - 1.** Identify and provide early intervention services to participants who recently added a child. This program will provide medical supports for healthy development, nutrition, service identification, and connection and a long-term connection to the medical needs of the family.



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2. Contractor will focus their time with participants in the following categories:
 - a. Parent and child health and wellness.
 - b. Home safety.
 - c. Healthy child development.
 - d. Assisting new parents in working towards educational/employment goals.
 3. Contractor will provide services at both a low and high level of services based on the needs of the family.
 - a. Contractor will work with families for approximately two to six (2-6) months in length depending on the level of support and services needed.
 - b. Low level services consist of up to four (4) hours of services per week. This includes administrative and outreach services such as:
 - i. Review of client's information and case file to identify needs.
 - ii. Necessary outreach to offer services.
 - iii. Follow up with client.
 - c. High level services consist of over four (4) hours of services per week.
 4. Contractor will target central and south Denver neighborhoods as the service area.
 5. Contractor will provide a discharge summary for all participants exiting the program.
- B.** Programming offered by the Contractor will have the ability to be offered virtually through online platforms, not just in person.
1. The content of the virtual/online programming can be cross-walked to the in-person services with minimal disruptions and the targeted outcomes may still be achieved
- C.** DHS will remain the assigned case manager of record. As the case manager of record DHS will provide ongoing case management supports including ongoing assessment, development of Individualized Plans (IP) with participant, and engagement into workforce development activities that lead to employment.
1. Contractor will assist in establishing Individual Plans with the participants and ensuring this information is shared with DHS for review, implementation, and compliance with all TANF program requirements.
- D.** Contractor's integrated programs provide solutions to reduce generational poverty in the Metro Denver community, developing an educated and skilled workforce and families that rely less on government assistance.
- E.** DHS TANF participants assigned to Contractor for services will attend an initial one-on-one meeting with their Family Specialist to develop individualized goals for their participation in the program.
- F. Contractor Responsibilities**
1. Hire and manage qualified and trained staff to provide quality services to populations that present with barriers and other needs that are typically beyond the scope of staff at DHS.



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2. Provide intensive family services and supports to TANF participants who have recently added a child to their home. Services include but are not limited to:
 - a. Referrals for needed medical services.
 - b. New parenting support.
 - c. Mental health support.
 3. Provide budget oversight of TANF funding to ensure incurred costs follow State and Federal statutes and regulations.
 4. Provide administration of TANF program and ensure State and Federal statutes and regulations are implemented and followed.
 5. Work closely with DHS on collaboration efforts related to TANF goals, outcomes, policies, and procedures.
 - a. Provide regular reporting (financial and other State requested reporting).
 - b. Participate in training and policy development activities.
 - c. Participate in Denver's Welfare Reform Board meetings as needed.
- G.** Contractor agrees to use City/DHS issued email addresses for all TANF related communication with DHS participants. This includes complying with all City prescribed privacy requirements related to communication and information sharing.
- H.** 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.
- I. 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.
- J. Management Site Visits and other Audits**
 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,



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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 Contractor. 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.

K. Records

Contractor will comply with written State and CCD/DHS policies and processes provided to Contractor by DHS related to case file maintenance, case retention and storage. No client case information will be maintained outside of the client's automated case files established by DHS. Contractor will not maintain a separate case file that contains TANF documentation that should be housed with DHS. 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

1. Contractor agrees to meet all State metrics as required for the Colorado Works/TANF program. This includes but is not limited to, sharing all applicable engagement information and documentation to demonstrate the family is actively engaged in services and making the appropriate levels of progress.
2. All reports will be submitted to the Colorado Works/TANF Program Administrator.



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B. Outcome Measures

1. Contractor will successfully connect seventy percent (70%) of participants to the appropriate services for ongoing support and assistance.

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.



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Report Name	Description	Frequency	Reports to be sent to:
1. Early Intervention Report	Total number of client Individual Plans developed, number of clients that received support in the following categories: High and Low-level support for that month, and activity report that details the activity with monthly hours spent in each. Report will include narrative on presenting issues, interventions, goals, and outcomes. The monthly contractor's spreadsheet will be completed to report out on program services and outcomes.	On or before the 15 th of each month following the month services were rendered. To be submitted with invoice.	Colorado Works/TANF Program Administrator
2. Monthly Activity Report	Activity report that details the monthly client activity with monthly hours spent in each.	On or before the 5 th of each Month following the month services were rendered.	DHS TANF Contractor Inbox AND/OR Colorado Works/TANF Program Administrator
3. Contract 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 forty-five (45) days after Term End.	Colorado Works/TANF Program Administrator

VI. DHS Funding Information:

- A. Program Name: TANF Gap Services
- B. Funding Source: 13008-5528050



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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: Guadalupe Project, Inc		
Fiscal Term: 7/1/2023-6/30/2024		
Contract Number: SOCSV-201950317-05 & SOCSV-202367654-05		
Fee for Service	Rate	Narrative
High Level Service	\$1,980/Month/Per Client	High-Level services include any supplies, materials, and salaries necessary to provide services.
Low Level Service	\$990/Month/Per Client	Low-Level services include any supplies, materials, and salaries necessary to provide services.
Total Fiscal Amount:	\$117,612	

***Rates will be prorated by dividing the number of days in the month, multiplied by the number of days of service provided.**

Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	5/1/2019-6/30/2020	\$0	\$137,214	\$137,214
1st Amendment	5/1/2019-6/30/2020	\$137,214	\$0	\$137,214



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2nd Amendment	7/1/2020- 6/30/2021	\$137,214	\$117,612	\$254,826
3rd Amendment	7/1/2021- 6/30/2022	\$254,826	\$117,612	\$372,438
4th Amendment	7/1/2021- 6/30/2023	\$372,438	\$127,512	\$499,950
5th Amendment	7/1/2023- 6/30/2024	\$499,950	\$117,612	\$617,562

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.
- 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.



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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:

- 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



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- 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



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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.



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- 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).
- 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



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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 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:



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- 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.



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- 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.



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- 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.

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.