

**SECOND AMENDATORY AGREEMENT  
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (“TANF”)**

**THIS SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”), for and on behalf of the DENVER DEPARTMENT OF HUMAN SERVICES, (“County” or “DHS”) and JEWISH FAMILY SERVICE OF COLORADO, INC., a nonprofit corporation, with an address of 3201 South Tamarac Drive, Denver, CO 80231 (the “Contractor”), individually a “Party” and jointly the “Parties.”

**RECITALS:**

**A.** The Parties entered into an Agreement dated July 24, 2017, and amended it on August 8, 2018, to provide TANF support services (the “Agreement”).

**B.** The Parties wish to amend the Agreement to extend its term, amend the scope of work and budget, and increase the Maximum Contract Amount.

**NOW THEREFORE**, the parties agree as follows:

**1.** All references to “Exhibit A and A-1” in the existing Agreement shall be amended to read: “Exhibits A, A-1, and A-2, as applicable”. The scope of work and budget marked as Exhibit A-2 is attached and incorporated by reference. Effective as of July 1, 2019, Exhibit A-2 will govern and control the services to be provided from July 1, 2019, until June 30, 2020.

**2.** Article 3 of the Agreement, entitled “**TERM**”, is hereby amended to read as follows:

**“3. TERM:** The term of the Agreement is from June 1, 2017, to June 30, 2020 (the “Term”). Subject to the Executive 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 by the Executive Director.”

**3.** Article 4.d.(1) of the Agreement, entitled “**Maximum Contract Amount**”, is hereby amended to read as follows:

**“d. Maximum Contract Amount:**

**(1)** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed One Million Nine Hundred Fifty Four Thousand Three Hundred Eleven Dollars and Zero Cents (\$1,954,311.00) (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 Contractor beyond that specifically described in Exhibits A, A-1, and A-2. Any services performed beyond those in Exhibits A, A-1, and A-2 are performed at Contractor’s risk and without authorization under the Agreement.”

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

5. This Second 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.

**End**

**Signature Pages and Exhibit A-2 follow this page.**

**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-201734826-02

**Contractor Name:** JEWISH FAMILY SERVICE OF COLORADO,  
INC.

By: Linda P. Foster

Name: Linda P. Foster  
(please print)

Title: President & CEO  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and the Jewish Family Service of Colorado, Inc. (JFS), to provide intensive case management support to assist TANF participants that may be harder to serve or harder to place in employment, such as those presenting with a disability, substance abuse, mental health, domestic violence, and/or other significant barriers.

Further, Jewish Family Service of Colorado, Inc. is identified as a subrecipient for the purposes of this agreement and is therefore subject to all terms, conditions and regulatory requirement required of federal funding subrecipients per 2 CFR Part 200, as well as specific rules and regulations for Colorado Works/TANF program.

**II. Background**

DHS is allocated funds on an annual basis from the Colorado Department of Human Services (CDHS) for the operation of the Temporary Assistance for Needy Families (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 JFS to provide the following:
- 1.** In depth assessment, family counseling, and work support programs associated with the implementation and operation of the TANF Program for the TANF populations assessed at Job Readiness Level II Job Ready Transition and Level III Employability Stabilization.
    - a.** Job Readiness Level II - Job Ready Transition is the TANF population that require basic skills and/or marketable skill set. The Job Readiness Level III Employability Stabilization focuses on the TANF Population that may not initially be able to meet full participation due to long-term, but time-limited barriers.
- B.** JFS will be assigned as the case manager of record. As the case manager of record JFS Case Managers 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.
- C.** JFS will provide extensive case management and additional barrier resolution for Denver TANF participants in Job Readiness Level III. JFS will provide individuals with work experience and case management to obtain additional employment skills and marketability. This may include, but is not limited to, internships and/or referrals to short-term industry-recognized certifications.
- D.** JFS will maintain targeted cases in the following categories:
- a.** TANF households with a timeclock at 48+ months or above that are not actively engaged in a holistic plan with DHS or other contracted partner.
  - b.** TANF households that have been discharged by Bayaud Enterprises as not likely for services. These households will be evaluated for connection to the Division of Vocational Rehabilitation (DVR) or other supported employment opportunities.
  - c.** Shared TANF cases with Bayaud Enterprises in which Bayaud is not the case manager of record.
  - d.** TANF households in need of ongoing case management services.
- E.** JFS will also provide targeted, short term trainings for TANF households. The short-term trainings will be pre-scheduled on a weekly/monthly basis for not more than three (3) hours in length per topic. Topics include, but are not limited to:
- a.** Career mapping
  - b.** Interview techniques
  - c.** resume building
  - d.** individual values

- F.** JFS will place Denver TANF participants in their retention program once participants obtain employment. This will include monthly and quarterly follow-up with participants to address any barriers that may be presented.
- G.** For the TANF applicant or participant objecting to the religious character of any TANF service provider, that applicant or participant shall be entitled to receive services from an alternative provider to which the individual has no religious objection.
- H.** This contract allows for any TANF contractor to provide an alternative means for benefits, assistance, or services if an individual objects to being served by the religious provider chosen as a contractor by the county. Contract agencies can directly refer TANF clients to an alternative provider with reasonable accessibility to services and the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State or county. Alternately, the contractor shall refer the TANF applicant or recipient back to the county department for appropriate rereferral.
- I. Contractor Responsibilities**
- 1.** Hire and manage qualified and trained staff to provide quality TANF case management to populations that present with barriers and other needs that are typically beyond the scope of staff at DHS.
  - 2.** Provide intensive case management services and support to TANF participants who need additional and more intensive specialized assistance to prepare them to find and keep employment.
  - 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, Work Participation Rate and other State requested reporting)
    - b.** Participate in training and policy development activities.
    - c.** Participate in Denver's Welfare Reform Board meetings as needed.
  - 6.** JFS 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 and procedures. Each staff person will be given the minimum access required to perform their specific role under the Contract. JFS agrees to abide by and require all staff users to abide by the City and County of Denver data confidentiality and security agreements.

- a. 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.
  7. Protect DHS client data, by complying with the Health Insurance Portability and Accountability Act (HIPAA).
  8. Protect data by complying with all provisions of 42 C.F.R. Part 2, relating to substance abuse treatment and records.
- J. Audits.** JFS 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 JFS. JFS 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 JFS is responsible for administering pursuant to this agreement. DHS will notify JFS in advance of every TANF related audit and JFS will have a representative present at such audit. JFS will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

**K. Secondary Stage Supervisory Case File Reviews**

In accordance with the regulations at 45 CFR 261.63 – Colorado’s Work Verification Plan requirements, JFS will be required to review a random sample of cases each month with an approved review tool. The number of cases vary and are based upon Denver’s share of a five percent (5%) statewide sample of work-eligible individuals. The Secondary Stage Supervisory Review will be conducted by the case management supervisor. All case reviews will be completed via County technology (WMS) and adhere to all applicable timeframes for completion at minimum, the following shall be subject to verifications through this process:

1. Proper work activity utilization based on federal regulatory definitions and per Colorado’s approved Work Verification Plan
2. Monthly timesheet or other allowable work hour documentation included in the case record
3. Where applicable, progress is documented for each month of participation for work eligible individuals in education requiring such progress
4. Excused absences and holidays are being applied consistently per state and county policy
5. The Fair Labor Standards Act is properly applied to community service and community work experience
6. Proper supervision of work activities is occurring as per Colorado’s Work Verification Plan
7. Proper coding for the case in the automated system, including relationships, disability, and others related to work eligibility



8. Proper documentation and attendance verification for job search/job readiness work activities

**L. 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, 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, JFS will provide accurate and complete case files within the DHS timeline requirements. JFS 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 JFS. JFS will be responsible for following up on auditor findings, providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor JFS's response to audit related matters to ensure ongoing compliance. DHS and JFS will work with State and Federal auditors as requested. JFS will provide a designee as a point of contact for monthly quality meetings and for audits.

- M. Records.** JFS will comply with written State and DHS policies and processes provided to JFS by DHS related to case file maintenance, case retention and storage. At a minimum, JFS will maintain all client documentation in client case files according to stated case order policy provided by DHS. No client case information will be maintained outside of the client's hard back and/or automated case files. JFS will have complete access to and control over active client case files within its work area required to perform case management functions. Client documentation will be sent to the scanning department for electronic filing no more than five (5) days after the document was created. DHS will provide JFS with a copy of all currently existing written case file storage policies within thirty (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. JFS will meet all state metrics required for the Colorado Works/TANF program. JFS will be responsible for their proportionate share of cases assigned to their organization.

- a. Work Participation Rate (WPR): JFS will maintain a monthly WPR rate of forty percent (40%). This will represent the portion of their cases in a countable activity with verified hours of participation.
    - i. This metric will be verified using the All Families case report provided by CDHS each month.
  - b. Entered Employment Rate: JFS will maintain a monthly employment rate of ten percent (10%). This will represent the portion of their cases in a verified employment activity as documented in CBMS and the case file.
    - i. This metric will be verified by the Case Activities report provided by CDHS each month.
  - c. Quality Accuracy Rate - five percent (5%) state sample: JFS will maintain an average monthly quality score of ninety percent (90%) or above on the randomized five percent (5%) case review sample as determined by CDHS.
    - i. This metric will be verified by the Quality report available in WMS monthly.
    - ii. This metric is applicable once an initial quarterly review of performance has been conducted.
  - d. Case data entry: All cases assigned to JFS as the case manager of record will have corresponding data entry on all cases in all activities by the 5<sup>th</sup> of each month. Should the 5<sup>th</sup> of the month fall on a weekend, the due date will roll forward to the next business day but not to exceed close of business on the 8<sup>th</sup> of the month.
    - i. Activities excluded from data entry include:
      1. AS: Assessment
      2. CM: Case Management
      3. CN: Conciliation
      4. CU: Cure
      5. SA: Sanction Requested
      6. SS: Serving Sanction
    - ii. The metric will be verified by the Case Activities report or the All Families case report provided by CDHS monthly.
2. Reporting metrics
- a. JFS will track and report out monthly on:
    - i. # of TANF participants that attended training
    - ii. # of TANF participants connected with DVR
    - iii. # of TANF participants that gain employment
    - iv. # of TANF participants that retain employment for thirty (30) days
    - v. # of TANF participants that retain employment for ninety (90) days

**B. Outcome Measures**

1. JFS will continuously serve and support three-hundred (300) participants each month. This caseload shall be made up of existing TANF JFS referrals as well as new TANF JFS referrals for services sent over monthly.
2. Thirty-five percent (35%) of participants will gain employment within six (6) months of referral to JFS for employment services.
3. Ninety percent (90%) of participants that gain employment will retain the employment for at least thirty (30) days.
4. Seventy-five (75%) of participants that gain employment will retain the employment for at least ninety (90) days.

## V. Performance Management and Reporting

### A. Performance Management

Monitoring will be performed as necessary by the program area and other designated DHS staff throughout the term of the agreement. As a subrecipient, monitoring is required per 2 CFR Part 200 Subpart D 200.331 and DHS policy 1809-506. Subrecipient monitoring includes but is not limited to the following:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program's daily operations.
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 to include sub recipient requirements.
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 DHS as stated in this section.

Report # and Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	Total number of clients served and activity report that details the activity and monthly hours spent in each activity.  CBMS data entered and reporting on monthly services goals.	Due Monthly, on or before the 15 <sup>th</sup> of each month.	Colorado Works/TANF Program Administrator
2. 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:**

Per Uniform Guidance CFR 200.331 we are clearly identifying to the subrecipient the following information:

- A. Program Name: Colorado Works/Temporary Assistance to Needy Families (TANF)
- B. Subrecipient DUNS#: 07-835-2200
- C. Name of Federal Awarding Agency: United States Department of Health and Human Services, Administration for Children and Families
- D. Period of Performance: July 1, 2019 to June 30, 2020
- E. Additional sub awards by subrecipients:  Yes  NO
- F. Names of subcontractors or sub awardees: N/A

**VII. Budget**

- A. Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> 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.

Invoices shall be submitted to: **DHS\_Contractor\_Invoices@denvergov.org** or by US Mail to:

Attn: Financial Services  
 Denver Human Services  
 1200 Federal Boulevard

Jewish Family Service of Colorado, Inc.  
 SCOPE OF WORK  
 SOCSV-201734826-02

Denver, Colorado 80204

## B. Budget

<b>Contractor Name:</b>	<b>Jewish Family Services of Colorado, Inc.</b>	
<b>Contract Term:</b>	<b>July 1, 2019 – June 30, 2020</b>	
<b>Contract Number</b>	<b>SOCSV-201734826-02</b>	
<b>Budget Categories</b>	<b>Budgeted Amount</b>	<b>Narrative</b>
<b>Salaries</b>		
Case Management Staff (6.00 FTE positions)	<b>\$279,133</b>	Salaries and wages to be reimbursed at cost. Up to 6 full-time employees spent working on CW program. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
CW Program Manager	<b>\$60,313</b>	Salaries and wages to be reimbursed at cost. Full-time program manager position for oversight and monitoring of the CW program. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
<b>Total Salaries</b>	<b>\$339,446</b>	
<b>Fringe Benefits</b>		
Case Management Staff (6 FTE) Fringe Benefits	<b>\$83,245</b>	Fringe benefits and payroll taxes (Fringe) will be reimbursed at cost or at the Federally Approved Fringe Rate. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), cost of leave (PTO, vacation, sick, holidays), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans. This list is not all inclusive and any Fringe not included on this list would require written preapproval from the Program Manager and Financial Services Division (FSD).
CW Program Manager Fringe Benefits	<b>\$9,014</b>	Fringe benefits and payroll taxes (Fringe) will be reimbursed at cost or at the Federally Approved Fringe Rate. Fringe includes employer portion of the following items:

Jewish Family Service of Colorado, Inc.  
 SCOPE OF WORK  
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		payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), cost of leave (PTO, vacation, sick, holidays), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans. This list is not all inclusive and any Fringe not included on this list would require written preapproval from the Program Manager and Financial Services Division (FSD).
<b>Total Fringe</b>	<b>\$92,259</b>	
<b>Other Direct Costs</b>		
Staff Mileage	<b>\$2,300</b>	Reimbursement of personal vehicle mileage (not to exceed the standard IRS rate at the time of travel), public transportation and ride share services. This includes parking and toll costs associated with program-related travel. Tips are capped at 20% and expenses should follow IRS guidelines regarding travel.
Cell Phone	<b>\$180</b>	Includes cost of cell phone for CW Program Manager to provide program related direct client services. Cell phone cost will be \$15.00 per month.
Background Checks	<b>\$2,700</b>	Background checks for 145 clients at \$17.00 each plus \$250.00 in program related staff background checks.
Office Supplies	<b>\$7,943</b>	Office supplies related directly to clients served for this program and include items such as: paper, use of printer/scanner, pens, binder clips, files, highlighters, toner, outreach material. Business cards will be reimbursed for staff that spend 100% on the program. Actual costs must be documented.
<b>Other Direct Costs</b>	<b>\$13,123</b>	
<b>SUM OF DIRECT COSTS:</b>	<b>\$444,828</b>	
<b>INDIRECT COSTS</b>	<b>\$44,483</b>	Indirect Cost Rate of 10% of direct service Costs

<b>TOTAL COSTS:</b>	<b>\$489,311</b>
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**Contract Summary of Amounts:**

<b>Contract Version</b>	<b>Term</b>	<b>Previous Amount</b>	<b>Additional Amount</b>	<b>New Contract Total</b>
<b>Base</b>	6/1/2017 to 6/30/2018	N/A	N/A	\$990,000
<b>1<sup>st</sup> Amendment</b>	7/1/2018 to 6/30/2019	\$990,000	\$475,000	\$1,465,000
<b>2<sup>nd</sup> Amendment</b>	7/1/2019 to 6/30/2020	\$1,465,000	\$489,311	\$1,954,311

**A. JFS Contact Information:**

Sara Leeper  
 2498 W. 2<sup>nd</sup> Avenue  
 Denver, CO 80204  
[sleeper@jewishfamilyservice.org](mailto:sleeper@jewishfamilyservice.org)  
 303-623-0251

**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.

## **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
- 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 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 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:
- 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.

**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.