

## SECOND AMENDATORY AGREEMENT

**THIS SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **COLORADO NONPROFIT DEVELOPMENT CENTER**, dba the Community Reentry Project (CRP), whose mailing address is 789 Sherman Street, Suite 250, Denver, CO 80203 (“Contractor”), collectively “parties”.

The parties entered into an Agreement dated March 10, 2016 and an Amendatory Agreement dated March 14, 2017 (“Agreement”) to provide services to operate and maintain staff for the Community Reentry Project (CRP) to reduce recidivism and improve the quality of life and safety in the Denver community.

The Parties wish to amend the Agreement to extend the term and increase the maximum contract amount.

The Parties agree as follows:

1. All references to “...Exhibit A ...” in the existing Agreement shall be amended to read: “...Exhibits A, A-1 and A-2, as applicable...” The scope of work marked as Exhibit A-2 is attached and incorporated by reference. Exhibit A-2 controls the services going forward.

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

“3. **TERM**: The Agreement will **commence on January 1, 2016, and will expire on December 31, 2017** (“Term”).”

3. Subarticle (a) of Article 4 of the Agreement, entitled “**Fee**”, is amended to read as follows:

“4. **COMPENSATION AND PAYMENT**:

(a) **Fee**: The City shall pay and the Contractor shall accept as sole compensation for services rendered and costs incurred under the Agreement an amount not to exceed **One Million Forty-Five Thousand Seven Hundred Ninety-Three Dollars and 00/100 Cents (\$1,045,793.00)**. Amounts billed may not exceed the budget set forth in **Exhibit A-2**.

4. All references in the Agreement to Exhibit A and A-1 are amended to read as Exhibits A, A-1, and A-2 respectively.

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

**EXHIBIT A-2 - SCOPE OF WORK**

**[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-201525566-02

Contractor Name: COLORADO NONPROFIT DEVELOPMENT CENTER

By: [Handwritten Signature]

Name: CECINDA A HIGGS  
(please print)

Title: PRESIDENT + CEO  
(please print)

ATTEST: [if required] N/A

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 Department of Human Services (DDHS) and Colorado Nonprofit Development Center (CNDC) to operate and maintain staff for the Community Reentry Project (CRP) to reduce recidivism and improve the quality of life and safety in the Denver community. The “jail to community collaborative” connects participants transitioning from jail with supportive skills, resources, and relationships to promote positive community involvement.

**II. Services To Be Provided**

The Community Reentry Project (CRP) and its staff provide services for inmates and recently released persons from the county jail. Offenders have a history of repeated violations at the City level (Ordinance) and are sentenced to jail and/or County Misdemeanor level offenses. This effort is part of Denver's implementation of an evidence-based reentry process: the Transition from Jail to Community (TJC) model of the National Institute of Corrections/Urban Institute. The model calls for a comprehensive reentry process including but not limited to client assessment, transition and case planning, targeted services and evaluation. Reentry work in Denver is a collaborative process between the Denver County Jail management, its reentry staff and community based providers; largely those of the Community Reentry Project. This model is designed to target medium to high risk to reoffend inmates upon entrance into jail and provide services to them through transition into the community, with the goal of reducing recidivism. Staff and programs are co-located and use a common data collection system.

- A. CRP provides services to not less than 150 new and continuing clients per month at their community-based site. This number includes an average of 25 new clients per month that undergo an intake process with CRP staff.<sup>1</sup> The average length of services for those who successfully complete CRP programming is 9 months. Changes in the client population served will be based on data reflecting jail population needs and trends and only with Sheriff and Crime Prevention and Control Commission (CPCC) agreement and approval. Once in the community, clients who are residents of other counties, and/or who are under supervision from other counties and have not served a sentence within the past year at the Denver County Jail are not eligible for services to be paid for from CPCC funds. Other criteria and procedures will be followed as directed through the TJC Model with final approval from CPCC.
- B. As part of the TJC model, CRP staff, in conjunction with Denver County Jail staff, will assess client risks and needs and provide core services (pre-approved, offender specific cognitive-behavioral skills curricula, employment readiness, coaching, and placement, benefit and ID acquisition, and case planning and management) to clients in jail and transitioning from the Denver County Jail to the community. Persons who are fully engaged in core services may be eligible for limited emergency transitional housing, public transportation and related vouchers (i.e. clothing). Depending on budget and availability, services and/or referrals may also include educational supports (i.e. GED preparation), family reunification and parenting, healthy living skills,

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<sup>1</sup> Based on one year of intake completion data (Q3, 2012-Q2, 2013. Intake includes an initial appointment with an assigned case manager and completion of a risk and needs assessment (LSI)

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relapse prevention, mental health, trauma and substance abuse treatment referrals, computer skills and related resources and supportive services.

- C. Clients eligible for services will have a proxy risk to reoffend score between 5 and 8 or according to appropriate assessment tools, scores that fall into medium or high risk and needs categories. Staff will use the Level of Service Inventory (LSI), (training on the LSI is required before administration) or WRNA (Women's Risk and Needs Assessment) or other agreed upon actuarial assessment and other assessments to identify needs of clients. In many cases, especially for cases referred for services by probation, CRP staff may only receive the final risk and needs scores. Case plans shall be based on the needs identified through assessments, as well as information gained from mental health, substance use and trauma assessments, and client history. Clients must have a current sentence for a Denver City Ordinance or Misdemeanor or felony and be residents of Denver.

**III. Contractor responsibilities:**

- A. CRP staff will perform services at the Denver County Jail, and at the Community Reentry Project location. Additional work sites may be identified and approved. Some services may be provided from or by other agencies and sites as appropriate. Staff work includes:
  - 1. Coordinate and implement evidence-based client services (cognitive skill, employment and case management) in compliance with the TJC model, with CPCC staff and related jail and reentry committees.
  - 2. Maintain and ensure fidelity to principles, techniques and curriculum delivered.
  - 3. Ensure that CRP staff attend trainings as scheduled and use training appropriately.
  - 4. Maintain communication and coordination with other vendors as appropriate.
  - 5. Ensure client eligibility for program services. Conduct an intake and assessment on all program participants to identify appropriate interventions that match client needs and risk levels. Provide regular client follow-up and support as appropriate. Make appropriate referrals for internal and external services. Open and discharge cases in a timely fashion, working with clients to successfully complete their assigned case plan wherever possible.
  - 6. Provide case management services and group facilitation and instruction in the jail and community; case managers carry a minimum caseload of 35 at any given time.
  - 7. Complete all required data entry accurately and in the determined timeframe including completion of a quarterly report.
  - 8. Participate in all aspects of the program/process evaluation. Staff must participate in all levels of quality assurance measures including documentation, peer observations, supervision meetings with the CRP Director and other means of monitoring quality, performance and providing feedback.
  - 9. Adhere to client confidentiality laws.
- B. Services to be delivered by staff have already been identified by the CPCC program committee in conjunction with the Denver's Sheriff Department

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Programs Unit. New services or modifications to current approved services shall not be implemented without CPCC approval.

- C. CRP staff agrees to apply motivational interviewing and cognitive-based case management skills according to their level of training. Furthermore, access to incentives, such as bus passes and housing must be coupled with active participation in, or full completion of cognitive behavioral education modules/classes. Addressing the major criminogenic needs of antisocial thinking, attitudes, companions, and personality are proven to reduce recidivism. Enhancing decision making, critical thinking and problem-solving skills, and increasing pro-social supports through targeted interventions using the appropriate frequency, intensity and duration should be considered as part of service delivery to meet these needs.
- D. Supplemental vendors may be selected by CRP staff, under CPCC oversight. The City and County of Denver CPCC and related reentry committee work groups retain the right of approval for said vendors including the type and cost of services.
- E. CPCC Funds contracted through the Colorado Nonprofit Development Center are to be used for staff positions, operational costs and indirect cost for CNDC. All costs are based on 6 months. CPCC will cover the costs and maintenance of computer, phone, fax and internet services. All such equipment and furniture is the property of the City and County of Denver.

**IV. CNDC Areas of Responsibility:**

- A. CNDC is responsible for Human Resources services including benefit enrollment, payroll functions, insurance and billing of payroll costs to CPCC.
- B. Human Resources: CNDC agrees to work with CPCC staff to manage personnel related issues as appropriate. This includes working cooperatively with CPCC and CRP to manage the hiring and release, if necessary, of staff as well as staff management functions in accordance with employment and EEO laws and practices, including:
  - 1. Regular staff performance reviews and staff evaluations as requested.
  - 2. Hiring, firing and discipline of staff in accordance with CNDC's employment policies and its modifications
  - 3. Ensure open hiring practices.
  - 4. Due to staff access to protected client data maintained by the City and County of Denver, staff, volunteers and interns must complete and pass criminal history checks PRIOR to being approved or offered any position within CRP. CPCC and/or the Manager of Safety and/or Denver Sheriff Department have the right to decline/reject staff based on criminal history and/or current system involvement without negotiation. Staff must be willing to work with currently and previously incarcerated persons. Staff must be capable of careful documentation.
- C. Report immediately to CPCC if CRP staff is engaged in unlawful activity.
- D. Financial Management:
  - 1. Work within the set CRP staffing budget; expend funds according to the contract.

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2. Payroll, check disbursement, and administration of funds including financial management, invoicing/billing, budget reconciliation and financial reports.
  3. Prepare and provide monthly financial reports to the CPCC and/or its designees. Provide verification of expenditures with payroll back-up.
  4. Work with CPCC regarding any audits. Keep in their original form ALL CRP records and documents for a minimum of 3 years.
- E. Additional human resources functions:
1. Provide and maintain appropriate staff liability insurance including Professional Liability Insurance.
  2. Provide a copy of CNDC's employee handbook and policies to the CPCC and the CRP staff. The CNDC will conduct an orientation for all CRP staff (both existing and subsequent new hires) on CNDC's employment policies (including payroll policies, holiday, vacation and sick leave, professional conduct, etc.) within the first month of the transition or new employment.

## **V. Process and Outcome Measures**

### Process Measures

1. Case management services and group facilitation and instruction will be provided to a minimum of 125 clients in the jail and community with 25% of those served in the jail transition to community base CRP services. Report the % of those who transferred to the community who complete CRP services.
2. Contractor shall submit accurate and timely invoices in accordance to the requirements of this Agreement.

### Outcome Measure

1. Case managers and direct client staff will carry a minimum caseload of 35 clients 100% of the time.
2. Invoices and reports shall be completed and submitted on or before the 15th of each month 100% of the time. Contractor shall use DHS' preferred invoice template, if requested.

## **VI. 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. **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, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.



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2. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and City and County regulations, and DDHS 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	Reports to be sent to:
1. Quarterly Report	<p>CRP staff, under the oversight of CPCC and its agents are responsible for implementation of the program. CNDC is responsible for ensuring that CRP is submitting reports.</p> <p>a. Quarterly Performance Reports will be submitted to OBHS/CPCC Executive Director by CRP staff no later than the last day of the first month following the respective quarter. Designated CRP staff will generate reports to include at a minimum the following information, and any currently requested information by quarter (reports will also show a history of previous 3 quarters in addition too current in order to provide trend information by reporting area):</p> <ol style="list-style-type: none"> <li>1. Number of clients referred to the program for services</li> <li>2. Number of new clients enrolled and completed intakes and by referral type</li> <li>3. Number of continuing clients by number and type of service</li> <li>4. Average length of stay in services by type of discharge; number and percentage previously served in jail; number continuing for community-based service.</li> <li>5. General profile of clients served (age, ethnicity, gender)</li> <li>6. Number of classes/groups provided, attendance and completion rates by type of class; definition of completion</li> <li>7. Number of clients met with on a one-to-one basis, number of sessions</li> <li>8. Number of individual services by type and number of persons served; number of referrals by type of referral and level of follow-through with engagement</li> <li>9. Average client caseload per case manager (must maintain a caseload minimum of 35)</li> <li>10. Track recidivism rates (new arrests) for Denver and statewide using respective online court data systems.</li> <li>11. Number of persons completing employment services by type, placed in jobs and length of maintaining employment as available.</li> </ol>	Quarterly	Director of OBHS



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	11. Other reported items that are not captured through data entry may include: a. Client narratives b. Accomplishments, areas for improvement, missing process or data items c. To ensure accurate monthly reporting, CRP staff must enter data in an accurate and timely manner and a process for regular data integrity checks must be established and maintained.		
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 45 days after Term End.	Supervisor Contracting Serveries
3. Other reports as reasonably requested by the City		Monthly	Director of OBHS
<p>This list of reporting items may be modified as agreed upon by authorized CPCC and CNDC staff. CNDC will track and report expenditures per month and cumulatively including those covered by Medicaid and those costs allocated to this contract. The Contract number will be included on invoices. The Colorado Nonprofit Development Center will maintain all CRP related financial and non-operational employee related records for up to 3 years. Agency will accommodate CPCC with on-site visits and/or audit requests as appropriate.</p> <p>Appropriate program records that are pertinent to grant management requirements will be accessible. CPCC will provide for the costs of rent, operations, phones, fax, Internet, and access to City data systems.</p>			

**VII. Budget Requirements**

- A.** Contractor shall provide the identified services for the City under the support of the Denver Department of Human Services using best practices and other methods for fostering a sense of collaboration and communication.

**B. BUDGET**

<b>Contractor Name:</b>	<b>Colorado Nonprofit of Development Center</b>	
<b>Program Name:</b>	<b>Community Reentry Project</b>	
<b>Contract Term:</b>	<b>January 1, 2017 to December 31, 2017</b>	
<b>Contract Number:</b>	<b>SOCSV-2015-25566-02</b>	
<b>ITEM OF EXPENDITURE</b>	<b>Amount</b>	<b>DESCRIPTION</b>
<b>COSTS</b>		
1. Director FTE	\$27,000.00	Director of Programs
1a. Director Fringe	\$7,019.00	Fringe will be based on the percent of time spent on the program to include FICA, worker's compensation, paid leave, health insurance and/or group-term life insurance coverage

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2. Management Analyst/ Client Services FTE	\$20,593.00	Data Analyst/Front Desk Reception, Client Support
2a. Management Analyst/ Client Services Fringe	\$5,364.00	Fringe will be based on the percent of time spent on the program to include FICA, worker's compensation, paid leave, health insurance and/or group-term life insurance coverage
3. Case Managers FTE \$22,602.00 x 5	\$113,010.00	Case manager positions that may include case load, facilitating cognitive behavioral education, job readiness, and other interventions as necessary/directed by CPCC in the jail and community
3a. Case Managers Fringe	\$29,329.00	Fringe will be based on the percent of time spent on the program to include FICA, worker's compensation, paid leave, health insurance and/or group-term life insurance coverage
<b>Total Salaries</b>	<b>\$202,315.00</b>	
<b>CLIENT SERVICES</b>		
Treatment Incentives	\$750.00	*May include tools, specialty clothing, etc
Emergency housing	\$5,000.00	For Clients currently and actively engaged in CRP as a core service and/or actively engaged in job readiness and seeking activities
Group refreshments and graduations:	\$750.00	Program participants' celebrations
Transportation/RTD:	\$5,000.00	Monthly bus passes and/or bus vouchers for clients. Expenses for Bus Passes /Tokens will not be reimbursed prior to client issuance. Copies of Bus passes, receipts for passes and logs must accompany invoices.
Client specific treatment:	\$1,250.00	Urine Analysis, Breath Analysis, Domestic violence, trauma management, job certifications and other specific treatment modalities that require licensure or specialized expertise
<b>Total Client Services</b>	<b>\$12,750.00</b>	
<b>OTHER</b>		
Staff training and development	\$300.00	Funds are not to be used to attend general conferences
Office Supplies	\$2,780.00	Paper, pens, client file folders, toner, etc. copier lease; assessments
Background Check Reimbursement	\$150.00	Reimbursement for background checks for interns
Parking	\$975.00	For case managers who travel from Various sites
Mileage Cost	\$1,125.00	CRP direct service staff will be traveling to and from the jail and community locations on a daily or weekly basis. Mileage to be billed at the current federally approved IRS rate
<b>Total Other</b>	<b>\$5,330.00</b>	
<b>INDIRECT COSTS</b>		
CNDC INDIRECT COSTS	\$22,040.00	
<b>Total Indirect</b>	<b>\$22,040.00</b>	Indirect Costs not to exceed \$22,040.00



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<b>Total budget</b>	<b>\$242,435.00</b>	Total Budget not to exceed
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**VIII. Other:**

**A. Contractor Contact Information:**

Melinda Higgs, President/CEO  
 789 Sherman Street, Suite 250  
 Denver, CO 80203  
 mhiggs@cndc.org  
 www.cndc.org  
 Telephone: 720-855-0501  
 Cell phone: 303-520-3193

**B. Time frame**

January 1, 2017 to December 31, 2017

**C. Revenue Source:**

Crime Prevention and Control Commission

**IX. 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 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.

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- 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

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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.

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- 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.**

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- 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.

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- 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

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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;

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- 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.**

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- 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.

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- 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.

**VIII. Limitations/ Notes:**

Program will be evaluated. Results will be used to determine future funding of the program past December 2017. Funds can only be spent on the Community Reentry Project functions as directed by the Crime Prevention and Control Commission.