

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, (hereinafter referred to as the “City”), and **MILE HIGH MONTESSORI EARLY LEARNING CENTERS**, a non-profit corporation, with an address of 1780 Marion Street, Denver, Colorado 80218 (the “Contractor” and together the “Parties”).

The Parties entered into an Agreement dated August 25, 2015 and an Amendatory Agreement dated August 26, 2016 (the “Agreement”); and

The Parties wish to amend the Agreement to amend the term, revise services, and increase the compensation to the Contractor; and

In consideration of the premises and the mutual covenants and obligations, the Parties agree as follows:

1. All references in the Agreement to Exhibit A and A-1 are amended to read “Exhibits A, A-1, and A-2, as applicable”. The scope of work included as Exhibit A-2 is attached and incorporated herein.

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

“**3. TERM:** The term of this Agreement shall commence on **July 1, 2015**, and shall terminate on **June 30, 2018** (the “Term”). Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

3. Article 4(a) entitled “**Compensation and Payment,**” “**Budget**” is hereby amended to read as follows:

“**4. COMPENSATION AND PAYMENT:**

a. Budget: Subject to the provisions of Article 3.C. of the original Agreement, the Contractor agrees to accept as full compensation from the City under this Agreement, for completion of all the items of work contained in this Agreement and **Exhibit A-2**, an amount not to exceed **Six Hundred Eighteen Thousand and 00/100 Dollars (\$618,000.00)** (the “Maximum Contract Amount”), to be used in accordance with the budget contained in **Exhibit A-2**. Amounts billed may not exceed the budget set forth in **Exhibit A-2**. The Contractor certifies the budget line items in **Exhibit A-2** contain reasonable allowable direct costs and allocable indirect costs in accordance with 2 C.F.R. 200, Subpart E.

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

[SIGNATURE PAGES AND EXHIBIT 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-201522525-02

Contractor Name: MILE HIGH MONTESSORI EARLY LEARNING
CENT

By: Pamela Harris

Name: Pamela Harris
(please print)

Title: President & CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



SCOPE OF WORK
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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 Mile High Montessori Early Learning Centers (MHM) d.b.a. Mile High Early Learning (MHEL). Under this agreement MHM will provide drop-in, short term child care at the Good Beginnings Child Care Center (GBCCC) located on the first floor of the Richard T. Castro Human Services building, 1200 Federal Blvd., Denver, Colorado 80204.

II. Services To Be Provided

A. The GBCCC is an on-site, drop-in or scheduled, no-cost facility specifically available to Denver Department of Human Services clients while they are participating in programs, classes, job search workshops, interviews, and orientations primarily for Temporary Assistance to Needy Families (TANF) eligible families.

MHM is responsible for the daily operations of the GBCCC and will provide the following services:

1. Provide care for up to 10 infants, 7 toddlers and 10 preschoolers daily, on a scheduled referral basis.
2. The ratio for teacher to infant is kept at 1:5. The toddler room ratio is 1:7 with the ability to send the older toddlers to the preschool room if necessary. The preschool class has a capacity for 15 children but the ratio is kept at 1:10. A floater employee is utilized when ratios are at risk of being exceeded.
3. Hours of operation are 7:30 a.m. to 4:00 p.m., except for weekends, city holidays, furlough and building closure days.
4. Child care is provided to parent(s) who are attending job search workshops, interviews, orientations, or other planned activities at DDHS. Parents are informed of the availability of the GBCCC services through their DDHS case worker as well as through fliers that are distributed to the community. Referrals will continue until the daily capacity for the Center has been reached.
5. Children served range from 6 weeks through 6 years of age.
6. The GBCCC Director shall be responsible for the general oversight of the Center's operations including staffing, maintaining ratios, ensuring that report statistics are in line with DDHS expectations, submission of all required reports and information requested by DDHS, working with parents who have special circumstances or issues, and working with the DDHS GBCCC supervisor to ensure expectations are being met.
7. All GBCCC assistant teachers will work under the supervision of the Center Director. Each assistant teacher has completed core courses to work in a licensed child care center.
8. An assistant teacher is assigned to work in the infant room, toddler room and preschool room. A full-time floater is assigned to assist the assistant teachers in the coverage of these areas.

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9. Each of the three (3) classroom assistant teachers are responsible for planning age-appropriate activities which are included in the lesson plans and daily schedule. The lesson plan and daily schedule are posted in each classroom. A part-time teacher will assist in the classroom during breaks and lunch time for staff members.
10. Since GBCCC does not have a full-service kitchen, the Center Director will purchase a variety of fruits, grains, meats, vegetables and milk for the center. The Child Adult Colorado Food Program (CACFP) guidelines are used as a model to ensure that appropriate nutrients are being provided for the children.
11. The children are provided with a light breakfast and two snacks daily, most of which contain two or more of the food groups in the food pyramid.
12. Diapers and wipes can be provided to children; however, due to the limited supply of these items parent(s) are encouraged to provide these supplies for their child(ren).
13. Parents are responsible for providing lunch for children who are in the center over the lunch hour. If a child does not have lunch, food will be provided.
14. Separate areas are maintained for children of different ages, with different types of equipment such as cribs for infants, napping mats, desks and storage cubicles filled with instructional play items for older children.
15. A secure outdoor play area is available which includes age-appropriate play structures.
16. Specific policies are in place regarding the health of children allowed to utilize GBCCC services.
17. There are emergency evacuation procedures in place for GBCCC.
18. A minimum of one staff member will be bilingual. MHM shall maintain a current business license issued by the State of Colorado, and must meet or exceed all requirements for safety, cleanliness, staff training, and ratios of staff to children. Staff ratios varies with the age of the child.
19. MHM does not maintain Center licensing through the State of Colorado at the GBCCC because it is not required by law. GBCCC follows all other State of Colorado licensing requirements regarding the health and safety of children in care, training and education requirements of staff.
20. General and Professional liability insurance and Sexual Abuse and Molestation insurance are required by the contract with the City and County of Denver.

III. Process and Outcome Measures

A. Process Measures

1. MHM will provide developmentally appropriate care for 10 infants, 7 toddlers and 10 preschoolers daily between 7:30a.m. and 4:00p.m. Monday thru Friday (excludes weekends, city holidays, furlough and building closure days).
2. MHM will inform and educate DDHS staff/administration about the referral process to GBCCC.

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3. On a weekly basis parents who leave children in the GBCCC will have the opportunity to complete client satisfaction surveys regarding the nature and quality of care received. Responses will be summarized quarterly and submitted to DDHS Program Administrator.

B. Outcome Measure

1. Approximately 4,500 – 5,500 children will receive care at the GBCCC throughout the term of this agreement.
2. A minimum of 10,000 individual teacher/child contact hours will be provided at GBCCC throughout the term of this agreement.
3. 1200 DDHS approved fliers (available in English and Spanish) will be distributed to TANF workers, specifically intake and case workers annually.
4. Satisfaction surveys (available in English and Spanish) will be completed by parent(s) of child(ren) attending GBCCC on multiple days. An average goal of 80% satisfaction will be achieved.
5. Invoices and reports shall be completed and submitted by the end of the month following the month of service 100% of the time. Contractor shall use DDHS preferred invoice template, if requested.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area and Contracting Services. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and City and County regulations, and DDHS policies are being met.

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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. Monthly Report- Mile High Montessori Early Learning Centers/ Good Beginnings Child Care Center	Reports will describe the number of children served each day by age group; total hours of service per day; numbers of children turned away due to the unavailability of child care slots; numbers of unduplicated children served; numbers of flyers distributed, and other outreach techniques.	Monthly report will be submitted with the monthly invoice by the last day of the month following the month of service.	FAAD Division Director and Deputy Director
2. Semi-annual Reports: Client Satisfaction Survey and Numbers Served	On a weekly basis, parents of children attending multi-day care will be surveyed regarding their satisfaction with services provided. The contractor will maintain backup documentation. Questionnaires in both English and Spanish will be approved by the DDHS program representative.	The survey is summarized quarterly. Survey results to be submitted by October 20, 2017, January 20, 2018, April 20, 2018, and July 20, 2018.	FAAD Division Director and Deputy Director
4. 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.	FAAD Division Director and Deputy Director And DHS_Contracting_Services_Documents@denvergov.org
5. Other reports as reasonably requested by the City.	As requested by the FAAD Division Director, provide data for Peak Performance division updates.	At semi-annual reporting	FAAD Division Director and Deputy Director

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V. Background Checks

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

A. Contractor Employees and Subcontractors

1. The person's employment is conditional upon a satisfactory criminal background check and subject to the same grounds for denial or dismissal as outlined in 26-6-104(7), C.R.S., including:
 - a. Checking records and reports; and
 - b. Individuals who have not resided in the state for two years shall be required to have Federal Bureau of Investigation (FBI) fingerprint-based criminal history.
2. Payment of the fee for the criminal record check is the responsibility of the Contractor or at Contractor's option individual being checked. In either case, DHS will not reimburse any of the costs associated with background checks.

B. Volunteers and Students:

1. If volunteers or students are used by Contractor, Contractor shall define specifically the services to be given by that individual.
2. Volunteers and students who are assigned to work directly with the children shall:
 - a. Be subject to reference checks similar to those performed for employment applicants.

C. Volunteers and students shall be:

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

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

VI. 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.

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B. In accordance with Welfare Reform legislation, the costs allocated for efforts expended on Federal programs must be documented using a statewide cost allocation method. Denver Department of Human Services is responsible for assuring the proper allocation of costs regarding Federal programs. Therefore, County Financial Management System (CFMS) coding is now required to be documented in the contract budget regarding expenditures and must be documented monthly on the billing invoice. Contractor shall use the DDHS preferred invoice template.
CFMS Code: I851, 4195 TANF Child Care

C. Budget

Contractor Name:	Mile High Montessori Early Learning Centers d.b.a. Mile High Early Learning	
Contact Name:	PAMELA HARRIS, PhD	
Program Name:	GOOD BEGINNINGS CHILD CARE CENTER	
Contract Number:	SOCSV 2015-22525-02	
Term:	7/1/2017 – 6/30/2018	
Expenditure	Amount	Budget Narrative Justification
DIRECT COSTS		
<u>General Operating</u>		
Curriculum Supplies	\$875.00	Curriculum supplies (art supplies, toys, puzzles, etc.) are budgeted at \$218.75 per quarter for 4 times per year. Adjusted to fit within the budget.
Office Supplies	\$500.00	Office supplies are budgeted at \$125.00 per quarter. Adjusted to fit within the budget.
Insurance	\$4,200.00	Insurance costs include \$350 per month
Business License Fee Renewal	\$100.00	Renewal Fee for MHM GBCCC business license. Adjusted to fit within the budget.
Food	\$2,100.00	Food costs are budgeted at \$175.00 per month for 12 months. Adjusted to fit within the budget.
Equipment	\$100.00	\$100 per year for needed equipment. Adjusted to fit within the budget.
Sub-Total General Operating	\$7,875.00	
<u>Staffing</u>		
Salary – Assistant Teacher – Infant Room	\$25,709.00	\$12.36/hr X 2080 hrs = \$25,709 salary
Salary – Assistant Teacher – Toddler Room	\$25,709.00	\$12.36/hr X 2080 hrs = \$25,709 salary
Salary – Assistant Teacher – Preschool Room	\$25,709.00	\$12.36/hr X 2080 hrs = \$25,709 salary
Salary – Assistant Teacher – Floater	\$25,709.00	\$12.36/hr X 2080 hrs = \$25,709 salary

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Salary-Substitute Assistant Teacher	\$3,893.00	\$12.36/hr X 315 hrs = \$3893 Adjusted to fit within the budget.
Salary-Program Director	\$38,480.00	\$18.50/hr X2080 hrs = \$38,480 salary
Sub-Total Salaries	\$145,209.00	
<u>Taxes & Fringe Benefits</u>		
Employer Social Security/Medicare Tax	\$10,629.00	Taxable salaries are computed as \$145,209 less tax exempt deductions of \$6,275. Social Security = \$138,934 X 6.2% = \$8,614 Medicare = \$138,934 X 1.45% = \$2,015 Adjusted to fit within the budget.
Worker's Compensation Insurance	\$1,860.00	\$155.00/month X 12 months. Adjusted to fit within the budget.
Health Insurance Premiums	\$27,233.00	\$540 X 6 Months x 4 staff, \$595 x 6 months x 4 staff Adjusted to fit within the budget.
Life and Disability insurance	\$600.00	\$50.00/month X 12 months. Adjusted to fit within the budget.
Employer 401k Match	\$4,356.00	3% of \$145,209 Adjusted to fit within the budget.
Physicals/Fingerprints/First Aid	\$300.00	\$25/month X 12 months Adjusted to fit within the budget.
Unemployment	\$120.00	\$30 quarter X 4 quarters Adjusted to fit within the budget.
Sub-Total Taxes & Fringe Benefits	\$45,098.00	
Total (Direct Services):	\$198,182.00	
Total Indirect Costs	\$19,818.00	INDIRECT COSTS (not to exceed 10% of total direct budget):
TOTAL BUDGET	\$218,000.00	

VII. 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.

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- 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.

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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.

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- 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.

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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

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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.

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- 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.

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- 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:

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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

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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.