

## FIFTH AMENDATORY AGREEMENT

**THIS FIFTH AMENDATORY AGREEMENT** is by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter, the "**City**"), and the **STATE OF COLORADO JUDICIAL DEPARTMENT**, whose address is 1300 Broadway, Denver, Colorado 80203 (the "**Contractor**"). The City and Contractor are collectively referred to as the "Parties."

### WITNESSETH:

**WHEREAS** the Parties entered into that certain agreement dated **February 19, 2019**, an Amendatory Agreement dated **April 23, 2019**, a Second Amendatory Agreement dated **March 4, 2020**, a Third Amendatory Agreement dated **April 8, 2021**, and a Fourth Amendatory Agreement dated **March 23, 2022** regarding, among others, the provision of services for the benefit of the Denver Juvenile Probation (DJP) to enhance the Denver Youth and Family Treatment Court and support probation efforts to address substance abuse (collectively, "Agreement");

**WHEREAS** rather than enter into a new contract, the Parties desire to revise and amend the term of the Agreement, amend the amount payable under the Agreement, as well as add and/or revise certain references in the Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

**1.** Article 3 of the Agreement entitled "**TERM**" is hereby amended by deleting it in its entirety and replacing it with the following:

**Colo. Judicial Dept.**  
**Youth and Family Treatment Court Program**  
SAFTY-202265503-05  
01/01/2019 - 12/31/2023

**"3. TERM:** The Agreement will commence on January 1, 2019 and will expire on December 31, 2023 (the "Term"). Subject to the 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 Director."

2. Articles 4a and 4d(1) of the Agreement subsumed under the heading "**COMPENSATION AND PAYMENT**" are hereby amended by deleting them in their entirety and replacing them with the following:

**"4. COMPENSATION AND PAYMENT**

a. **Fee:** The City shall pay and the Contractor shall accept as the sole compensation for services rendered and costs incurred under the Agreement the amount of **ONE MILLION SEVENTEEN THOUSAND DOLLARS AND ZERO CENTS (\$1,017,000.00)** for fees. Amounts billed may not exceed the rates set forth in **Exhibit A-5.**

d. **Maximum Contract Amount:**

(1) Notwithstanding any other provision of the Agreement, the City's maximum payment obligation will not exceed **ONE MILLION SEVENTEEN THOUSAND DOLLARS AND ZERO CENTS (\$1,017,000.00)** (the "**Maximum Contract Amount**"). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibit A-5.** Any services performed beyond those in **Exhibit A-**

5 are performed at the Contractor's risk and without authorization under the Agreement."

3. Article 7 of the Agreement entitled "**EXAMINATION OF RECORDS**" is hereby amended by deleting it in its entirety and replacing it with the following:

"7. **EXAMINATION OF RECORDS/AUDIT**

**REQUIREMENTS**: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Contractor's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Contractor shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Contractor to make

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disclosures in violation of state or federal privacy laws. The Contractor shall at all times comply with D.R.M.C. § 20-276.”

**4.** Article 18 of the Agreement entitled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**” is hereby amended by deleting it in its entirety and replacing it with the following:

**“18. NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT:**

**A.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

**B.** The Contractor certifies that:

**(1)** At the time of its execution of this Agreement, it does not knowingly employ or contract with a worker without authorization who will perform work under this Agreement, nor will it knowingly employ or contract with a worker without authorization to perform work under this Agreement in the future.

**(2)** It will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**(3)** It will not enter into a contract with a subconsultant or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with a worker without authorization to perform work under this Agreement.

**(4)** It is prohibited from using work authorization

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confirmation procedures to undertake pre-employment screening of job applicants while performing its obligations under this Agreement, and it is required to comply with any and all federal requirements regarding work authorization confirmations, all program requirements related to employee notification, and preservation of employee rights.

**(5)** If it obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contracts with a worker without authorization, it will notify such subconsultant or subcontractor and the City within three (3) days. The Contractor shall also terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the worker without authorization, unless during the three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with a worker without authorization.

**(6)** It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment or the City Auditor, under authority of D.R.M.C. 20-90.3.

C. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute

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grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

**5.** Effective upon execution, all references to Exhibits A, A-1, A-2, A-3, and A-4 in the Agreement shall be amended henceforth to read as **Exhibit A-5 (Scope of Work and Budget)** as applicable.

**6.** Exhibits A, A-1, A-2, A-3, and A-4 are hereby deleted in their entirety and replaced with **Exhibit A-5**, which is attached and incorporated herein by reference.

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

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

**[SIGNATURE PAGES FOLLOW]**

**Colo. Judicial Dept.**  
**Youth and Family Treatment Court Program**  
SAFTY-202265503-05  
01/01/2019 - 12/31/2023

**Contract Control Number:** SAFTY-202265503-05/ alf:ENVHL-201846825-05  
**Contractor Name:** STATE OF COLORADO JUDICIAL DEPARTMENT

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:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

SAFTY-202265503-05/ alf: ENVHL-201846825-05  
STATE OF COLORADO JUDICIAL DEPARTMENT

DocuSigned by:  
By: kim Howard  
01CA51914D0844A...

Name: Kim Howard  
(please print)

Title: Chief Probation Officer  
(please print)

ATTEST: [if required]

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

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

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





**EXHIBIT A-5  
SCOPE OF WORK  
COLORADO JUDICIAL DEPARTMENT  
DENVER JUVENILE PROBATION**

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Services **City and County of Denver's Department of Safety's Denver Public Safety Youth Programs** (hereinafter "DPSYP"), and the **State of Colorado, Judicial Department (CJD)** for the use and benefit of the Denver Juvenile Probation (DJP) to enhance the Denver Youth and Family Treatment Court (YFTC) as well as support the efforts of Probation to address substance abuse through the Marijuana, Youth, Diversion, Funds (MYDF) Program.

**II. Services to Be Provided**

CJD will enhance and support the existing infrastructure of YFTC with services and staff positions critical to marijuana specific education, interventions, and impactful alternatives to those struggling with marijuana use along with other treatment if needed.

Staff positions will include a probation officer to supervise those youth that are found to be best served through the docket of YFTC, and one intervention specialist to provide collaborative service options and interventions to best serve the client needs. One family engagement coordinator to work the client and family through the program. These positions will also assist in data collection, service tracking and referral initiation to community-based treatment interventions as well as in-house evidence-based curricula for families and youth.

The Probation Officers will refer Probation youth at risk of marijuana use and engaging in marijuana using behaviors, as well as those who are actively using marijuana to a program holistically designed to engage and educate the youth and family on the impacts of marijuana. Based upon self-report and urinalysis testing, referred Probation youth will be assessed for substance using behaviors and placed into one of two tracks: Prevention or Intervention. All referred clients will be monitored for mental health concerns or any change in mental health status and when applicable, will be referred out for additional services.

The Intervention Specialist and Family Engagement Coordinator will work to retain hard-to-reach families who have both a history of behavioral concerns and substance abuse issues. This track will offer increased frequency of contact, weekly group sessions, weekly case management services, access to pro-social activities, consistent contact with family and/or youth identified supports, and for those whose substance use has been deemed appropriate for the YFTC problem solving court program, consistent court reviews which will assist in monitoring and addressing substance use. This frequent contact with Probation youth will allow for project staff to consistently assess for risks, services, and need for referrals.

In conjunction with implementing education and intervention services designed to address the use of or risk of marijuana use, the staff within

this project will maintain and build upon its current relationship with MADD (Mothers Against Drugged Driving) and their victim survivor panel. With the expansion of their mission statement to include drugged driving, this national movement would be ideal in helping to facilitate and educate the conversation around marijuana and the dangers it has behind the wheel.

CJD may purchase marijuana educational materials for their clients such as marijuana curriculum and or marijuana goggles.

Based on the ability to divert or impact justice system involvement, CJD may be eligible for multiple year, extended contracts based on performance and availability of funding.

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## Process and Outcome Measures

<b>Goal 1: Prevent further involvement of youth and young adults in the justice system by providing direct intervention services and alternatives to lifestyle choices that would discourage marijuana use</b>				
	<b>Objective/Process</b>	<b>Outcome</b>	<b>Measurement</b>	<b>Timeframe</b>
<b>1.1</b>	Provide intervention services to 75 youth participating in the Youth and Family Treatment Court	100% of youth participating in the Youth and Family Treatment court will receive intervention services to address substance using concerns	Project staff will track and maintain all intervention service referrals throughout youth's participation in the project	Data will be collected quarterly to ensure all youth are receiving intervention services
<b>1.2</b>	Offer pro-social activities and referrals to youth participating in the Youth and Family Treatment court	100% of youth participating in the Youth and Family Treatment court will receive activity opportunities and referrals for pro-social activities  80% of youth participating in the project will engage in a pro-social activity for over 30 days	Project staff will track and maintain all referrals and activities that project participants are engaged in	Data will be collected quarterly
<b>1.3</b>	Provide marijuana education by utilizing the Community Reinforcement and Family Training (CRAFT) an Evidence Base Curriculum provided in English and Spanish	50% of project participants will attend CRAFT group to help family members of loved ones with substance use disorder learn how to steer their loved one away from substance abuse.	Project staff will track and maintain attendance  The groups will occur 3 times within the next year	Data will be collected when the groups occur. It will be reported quarterly.
<b>Goal 2: Create alternative consequences for unlawful marijuana use</b>				
<b>2.1</b>	Create a list of alternative consequences/sanctions that can be utilized in the Youth and Family Treatment Court to address marijuana use	Alternative consequences/sanctions will be utilized for 100% of project participants before utilizing detention.	Project staff will track and maintain the consequences/sanctions provided to each participant	Data will be collected and reported quarterly
<b>2.2</b>	Utilize incentives/rewards for reduction and elimination of marijuana use	Incentives and rewards will be offered to all project participants will demonstrate reduction/elimination of marijuana use as evidenced by drug testing methods (i.e. UAs, sweat patch, etc.)	Project staff will track and maintain the incentives/rewards provided to each participant	Data will be collected and reported quarterly

### III. 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 DPSYP 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 DPSYP policies are being met.

#### B. Reporting

The following reports shall be developed and delivered to the City as stated in this section. Payment may be withheld if reports are not complete and submitted.

Report # and Name	Description	Frequency	Reports to be sent to
1. Billing Report	Report shall demonstrate hours of work provided and cost of such work.	Within 45 days following the end of the preceding month	Environmental Public Health Analyst Associate at Charlie.Garcia@denvergov.org
2. Quarterly Report	Report shall demonstrate achievement of Process and Outcomes of this SOW, including the following specific metrics:  Number of UA's and breakdown of results; number of treatment sessions for clients; employment status of client (employed or unemployed); ZIP Codes; education status of client	Quarterly	Environmental Public Health Analyst Associate at Charlie.Garcia@denvergov.org
3. Annual Report	Report shall demonstrate goals and outcomes at the end of the contract term. The annual report will capture all of quarter reports along with restitution after 1 year of completing the program.	Contract End, within 45 days after Term End.	Environmental Public Health Analyst Associate at Charlie.Garcia@denvergov.org
4. Other reports as reasonably requested by the City.	Other reports reasonably requested.	Quarterly	Environmental Public Health Analyst Associate at Charlie.Garcia@denvergov.org

**IV. Background Checks**

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

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

**V. Budget Requirements**

- A. Contractor shall provide the identified services for the City under the support of Denver's Department of Safety's Denver Public Safety Youth Programs using best practices and other methods for fostering a sense of collaboration and communication.

B. Expenditures will be covered for 12 months during the re-contracting period starting January 2023 and ending December 2023.

**C. Budget**

**CY 2019 - \$156,000**  
**CY 2020 - \$156,000**  
**CY 2021 - \$220,000**  
**CY 2022 - \$240,000**  
**CY 2023 - \$245,000**  
**Total Contract - \$1,017,000**

<b>Contractor Name:</b> Colorado Judicial Department – Denver Juvenile Probation		
<b>Contract Term:</b> January 1, 2019 – December 31, 2023		
<b>Program:</b> Marijuana Youth Diversion Funds (MYDF)		
Item	Budget	Budget Narrative Justification
<b>DIRECT COSTS</b>		
<b>Staffing</b>		
Probation Officer 1 – Salary and fringe	\$81,794.00	Includes salary and fringe
Family Engagement Coordinator -Salary and Fringe	\$42,122.00	Includes salary and fringe
Intervention Specialist – Salary and fringe	\$86,652.00	Includes salary and fringe
Treatment, Education, Innovation and upgrades	\$28,432.00	Treatment, education, client materials and program upgrades.
<b>TOTAL DIRECT COSTS</b>	<b>\$239,000.00</b>	
<b>INDIRECT COSTS</b>		
Operating and Overhead Costs	\$6,000.00	Including but not limited to general Office Supplies/ cell phone, mileage and/or staff training
<b>Indirect Costs</b>	<b>\$6,000.00</b>	
<b>TOTAL BUDGET</b>	<b>\$245,000.00</b>	

\*Indirect costs represent the expenses of doing business that are not readily identified with a particular grant, contract, project function or activity, but are necessary for the general operation of the organization and the conduct of activities it performs.

\*\*Leave Stipend explanation - Staff who are employed through grant funds do not accrue paid time off or other similar leave. In place of such leave, contract employees will receive an 8% per differential as compensation in lieu of paid time off.

\*\*\*The 48.50% fringe breakdown is as follows:  
21.40% Public Employees Retirement Association (PERA) retirement plan  
25.50% Health/Dental/Life Insurance Average  
1.45% Medicare  
0.15% Short Term Disability

Invoices and reports shall be completed and submitted on or before the 30<sup>th</sup> of each month 100% of the time. Contractor shall use DHS's preferred invoice template, if requested.

Invoices shall be submitted to: [Charlie.Garcia@denvergov.org](mailto:Charlie.Garcia@denvergov.org)  
or by US Mail to:

Attn: Marijuana Youth Diversion Funds  
Denver Public Safety Youth Program  
303 W. Colfax Ave. Dept. 1000, Denver CO 80204

## **Business Associate Terms – HIPAA/HITECH**

### **1. GENERAL PROVISIONS AND RECITALS**

1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.

1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.

1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.

1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

### **2. DEFINITIONS.**

2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

2.02 "Agreement" means the attached Agreement and its exhibits to which this these terms additional are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

- a. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- b. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a



- result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
- c. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized

access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

**3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.**

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

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

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received

from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

#### **4. SECURITY RULE.**

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.

4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as below and as required by 45 CFR §164.410.

#### **5. BREACH DISCOVERY AND NOTIFICATION.**

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DPSYP 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.