

## SECOND AMENDATORY AGREEMENT

**THIS AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”), and **SAVIO HOUSE**, with an address of 325 King Street, Denver, Colorado 80219 (the “Contractor”), who may individually be called a “Party” and collectively the “Parties.”

The City and the Contractor entered into an Agreement dated **August 16, 2019** and an Amendatory Agreement dated **July 16, 2020**, to provide services (the “Agreement”). The Parties now wish to modify the Agreement as set forth below.

The Parties agree as follows:

1. Effective upon execution, all references to **Exhibits A** and **A-1** in the existing Agreement shall be amended to read **Exhibits A, A-1, and A-2**, as applicable. **Exhibit A-2** is attached and will control from and after the date of execution.

2. Section 3 of the Agreement, titled “**TERM**,” is amended by deleting and replacing it with the following:

“**3. TERM**: The term of the Agreement (“Term”) shall commence on **July 1, 2019**, to **June 30, 2022**. Subject to the Executive Director’s prior written authorization, Contractor shall complete any work in progress as of the then current expiration date and the Term will extend until the work is completed or earlier terminated.”

3. Section 4.D.1 of the Agreement, titled “**Maximum Contract Amount**,” is amended by deleting and replacing it with the following:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **SIX HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$650,000.00)** (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-2**. Any services performed beyond those in **Exhibit A-2** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

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

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

**End.**  
**Signature pages and Exhibits follow this page.**

**Exhibit List**  
**Exhibit A-2**

**Contract Control Number:** SOCSV-202158760-02, SOCSV-201950813-02 Alfresco  
**Contractor Name:** SAVIO HOUSE

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:**

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SAVIO HOUSE

DocuSigned by:  
*Norma Aguilar-Dave*  
819EF6429F4149F...

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

Norma Aguilar-Dave

Name: \_\_\_\_\_

(please print)

Title: Executive Director  
\_\_\_\_\_

(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_

(please print)

Title: \_\_\_\_\_

(please print)



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**I. Purpose of Agreement**

The Child Welfare Divisions (Youth and Community Support Services) of Denver Human Services (DHS) are part of a collaboration known as The Denver Collaborative Partnership (DCP). The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Savio House (SH) under which SH will provide monthly fiscal oversight to DCP and the implementation of the Family Strong Program. Family Strong is a collaborative effort among Denver's youth-service agencies aimed at keeping youth with their own families and in their own communities. Family Strong is a full spectrum program with multiple opportunities to prevent further system involvement and promote earlier intervention and/or prevention. Effective and efficient operation of the DCP may lead to the provision of more appropriate and effective delivery of services to the children and families of Denver County.

**II. Services**

Family Strong will practice principles that incorporate the values and principles of teaming approaches to engage youth and their families; bring the perspective of the family into case planning and assessment process and in monitoring the success of plans; equip parents with the tools they need to manage challenging behaviors; and develop capacity of parents to support each other and build system supports that promote and help sustain the role of parents as a resource.

The key components of Family Strong are immediate intervention when requested by the family, active engagement of youth and families, and timely access to effective services and support. Services are community-based and ensure community safety to meet the youth and family's level of need (low, moderate, high) and are a multi-system collaboration in the community.

**A. Family Strong Program Coordinator**

- To work 100% of their time on the Family Strong program.
- Provides oversight and final approval of the Family Strong referrals and program selection.
- Facilitates the hand off of clients to the providers for service.
- Provides reporting and information to the 5 referring partner agencies.
- Supervises the Family Strong Screener
- Provides oversight of ongoing service delivery and coordinating with providers and referral sources

**B. Family Strong Screener**

- To work 100% of their time on the Family Strong program.
- Responsible for evaluating fit for programs by clients and families.
- Support information sharing between referral sources and referral partners.



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### **III. 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.
  - b.** Be directly supervised by Contractor's paid and qualified staff member shall be present at all times when the volunteer or student is working directly with or having direct contact with any child or children.
  - c.** Be 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.
- 3.** 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".



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#### IV. Process and Outcome Measures

##### A. Process Measures

- Service provision to the target population of youth between the ages of 10 and 17 years old who are at risk of out-of-home placement.
- Provide collaboration to prevent further system involvement and promote earlier intervention and/or prevention.

##### B. Outcome Measures

- Contractor shall submit accurate and timely invoices in accordance to the requirements of this Agreement.
- The Family Strong Program will serve 145 youth and their identified family and kin participants.
- Out of the 145-projected youth to participate in a Family Strong service, no more than 10% (14 youth) will be placed in out-of-home placement through Denver Human Services as indicated by removal data in the Trails database.

#### V. Performance Management and Reporting

##### A. Performance Management

Monitoring will be performed by the program area and other designated DHS staff throughout the term of the agreement. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.



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4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

**B. Reporting**

The following reports shall be developed and delivered to the City as stated in this section.

<b>Report Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Reports to be sent to:</b>
<b>1. Contract Summary Report</b>	<b>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.</b>	<b>Contract End, within 45 days after Term End.</b>	<b><u>Erin.stremming@denvergov.org</u> <u>dhs_contracting_services_documents@denvergov.org</u></b>
<b>2. Other reports as reasonably requested by the City.</b>	<b>To be determined (TBD)</b>	<b>TBD</b>	<b>TBD</b>

**VI. DHS funding information:**

- A. **Program Name: Child Welfare Initiative**  
B. **Funding Source: Child Welfare Services Block Grants 13005-5533000**

**VII. Budget**

Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month following the month services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.

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

Attn: Financial Services  
Denver Human Services





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1200 Federal Boulevard  
Denver, Colorado 80204

<b>Program Name: Family Strong</b>		
<b>Term: 7/1/2021 - 6/30/2022</b>		
<b>Budget Categories</b>	<b>Budgeted Amount</b>	<b>Budget Narrative Justification</b>
<b>Direct Costs</b>		
<b>Salaries</b>		
Program Coordinator	\$62,735	Salaries and wages for the Program Coordinator to work 100% of their time on the Family Strong and to be reimbursed at cost. DHS will not pay for bonuses or severance payments.
Screeener	\$48,341	Salaries and wages for the Screeener to work 100% of their time on the DCP and to be reimbursed at cost. DHS will not pay for bonuses or severance payments.
<b>Total Salaries</b>	<b>\$111,076</b>	
<b>Fringe Benefits</b>		
Program Coordinator Fringe and Payroll Taxes	\$19,917	Program Coordinator fringe benefits and payroll taxes (Fringe) will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), cost of leave (PTO, vacation, sick, holidays, including payout at end of employment), insurance (medical, dental, vision, disability, and workers comp), pension or retirement plans. Leave payouts when an employee separates from their job will only be allowed if an employee was hired specifically for this program and all of their accrued leave was from this program.
Screeener Fringe and Payroll Taxes	\$14,713	Screeener fringe benefits and payroll taxes (Fringe) will be reimbursed at cost.



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		Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), cost of leave (PTO, vacation, sick, holidays, including payout at end of employment), insurance (medical, dental, vision, disability, and workers comp), pension or retirement plans. Leave payouts when an employee separates from their job will only be allowed if an employee was hired specifically for this program and all of their accrued leave was from this program.
<b>Total Fringe</b>	<b>\$34,630</b>	
<b>Client Support Costs</b>		
Client Support Cost	\$700	Items provided to clients for the Family Strong including school supplies, equipment, food supplies, gift cards for grocery stores, child care supplies, housing support, house hold items, clothing costs, recreation expenses, and automotive costs, gas cards, bus passes or other transportation costs, utilities.
Subcontractor Services	\$55,690	Services provided to clients as recommend by Family Strong partners. All subrecipients must be identified but subcontractors should be named (if known). A description of program-related services (Wraparound, Multisystemic therapy (MST), Functional Family therapy (FFT), Tutoring, Mentoring, Substance Abuse Counseling, Mental Health Counseling, Anger Management, Translation Services, High Fidelity Wrap Services, Community Based Services, GED preparation services, Sex Offense Specific Treatment) should be included



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		with the names. Subrecipients are responsible to adhere to all applicable rules/regulations and performance standards that DHS follows and the same applies to any additional subrecipients. Reimbursement is based on paid invoices of services provided to clients.
<b>Total Client Support Cost</b>	<b>\$56,390</b>	
<b>Other Direct Cost</b>		
Contractor & Staff Transportation (LOCAL)	\$2,300	Reimbursement of personal vehicle mileage (not to exceed the standard IRS rate at the time of travel), public transportation and ride share services. This includes parking, toll costs and one prepaid parking pass which will be paid for at actual use. A monthly log will be required to be submitted monthly with the invoice and must have: Log date, time parked, time leaving, cost for time of space, and amount left on the card associated with program-related travel. Tips are capped at 20% and expenses should follow IRS guidelines regarding travel.
Office Supplies and Office Expenses	\$150	These supplies must be identifiable, trackable and directly related to a program function. Office expenses must be identifiable and associated with delivery of service. Cell Phones: Cell phone use. BUSINESS CARDS: Business cards will be paid for staff that spend 100% of their time on a contract. If an employee does not spend 100% of their time on a contract, then their business cards should be an Indirect Cost.



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<b>Total Other Direct Costs</b>	<b>\$2,450</b>	
<b>Total Direct Costs</b>	<b>\$204,546</b>	
<b>Indirect Cost</b>		
Indirect Cost	<b>\$20,454.00</b>	Indirect Cost Rate of 10% of direct costs not to exceed \$20,454.00
<b>Total Costs</b>	<b>\$225,000</b>	

## **VIII. HIPAA/HITECH (Business Associate Terms)**

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

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.



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

**2. DEFINITIONS.**

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there



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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.



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- 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



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or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.





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- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

**4. SECURITY RULE.**

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

**5. BREACH DISCOVERY AND NOTIFICATION.**

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
  - 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
  - 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any



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person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.

5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.

5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.



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- 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



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- 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.



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8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 The obligations of this Agreement shall survive the termination of the Agreement.

**9 SUBSTANCE ABUSE (42 C.F.R., Part 2)**

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.