

## FOURTH AMENDATORY AGREEMENT

**THIS FOURTH AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **THRIVING FAMILIES**, a Colorado nonprofit, whose address is 1330 Fox Street, Denver, CO 80204 (the “Contractor”), individually a “Party” and collectively the “Parties.”

**WHEREAS**, the Parties entered into an Agreement dated August 6, 2019, a Revival and Amendatory Agreement dated July 17, 2020, an Assignment and Second Amendatory Agreement dated October 20, 2020, and a Third Amendatory Agreement dated July 19, 2021, to provide targeted early intervention supports to new mothers (the “Agreement”); and

**WHEREAS**, the Parties now wish to modify the Agreement as set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective July 1, 2022, all references to Exhibits A, A-1, A-2, and A-3 in the existing Agreement shall be amended to read Exhibits A, A-1, A-2, A-3, and A-4, as applicable. Exhibit A-4 is attached and will control from July 1, 2022.

2. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The term of the Agreement (“Term”) shall commence on May 1, 2019, and expire, unless sooner terminated, on June 30, 2023. Subject to the Director’s prior written authorization, the Contractor shall complete any work in progress as of the then current expiration date and the Term will extend until the work is completed or earlier terminated.”

3. Subsection 4(E)(1) of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Six Hundred Fifty-Three Thousand Five Hundred Four Dollars (\$653,504.00) (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 **Exhibits A, A-1, A-2, A-3, and A-4**. Any services performed beyond those in **Exhibits A, A-1, A-2, A-3, and A-4** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

4. Section 23(T) of the Agreement, titled “**NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT**,” is amended to read as follows:

“T. **NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THIS AGREEMENT**

(1) 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”).

(2) The Contractor certifies that:

(i) 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.

(ii) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., and confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(iii) 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.

(iv) It is prohibited from using the E-Verify Program 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 related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(v) 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.

(vi) It will comply with a reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

(3) The Contractor is liable for any violations as provided in the Certification Ordinance. If the Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of this Agreement. If this Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying the Contractor from submitting bids or proposals for future contracts with the City.”

5. Section 23(U) of the Agreement, titled “**NO DISCRIMINATION IN EMPLOYMENT (City Executive Order No. 8)**,” is amended to read as follows:

“U. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts.”

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

7. This Fourth 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.

8. The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A-4**, Scope of Work.

**REMAINDER OF PAGE INTENTIONALLY BLANK**

**Contract Control Number:** SOCSV-202262906-04 / Alfresco SOCSV-201948997-04  
**Contractor Name:** THRIVING FAMILIES

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:**

SOCSV-202262906-04 / Alfresco SOCSV-201948997-04  
THRIVING FAMILIES

By:  \_\_\_\_\_  
550A213EA0FE47B...

Name: Galena Rhoades  
(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 purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Thriving Families, to provide targeted early intervention supports to new mothers who recently had a child.

**II. Background**

DHS is allocated funds on an annual basis from the Colorado Department of Human Services (CDHS) for the operation of the Temporary Assistance for Needy Families (TANF)-Colorado Works Program. The TANF County block grant funds are utilized only to support the purposes of the Colorado Works program. Code of Colorado Regulations 9 CCR 2503-6 Income Maintenance (Volume 3.2). Households are determined at application to be either eligible or ineligible for TANF basic cash assistance. Adults who are considered work-eligible are provided with individualized services and supports to promote their family's economic well-being. All TANF eligibility for applicants is determined by DHS. DHS assesses initial work-eligibility to determine which work activities, services and supports available in the program are the best fit for the participant. DHS will also determine which agency might serve the participant best based on their scope of services.

DHS recognizes that even those adults who have been identified as "work-eligible" may need to pursue strategies other than employment to attain economic well-being. Similarly, some families may be experiencing a crisis that needs to be addressed before employment can be pursued. Examples may include families who are living in a shelter, newly involved with child welfare, or those experiencing other immediate safety issues. DHS may determine which individuals in these circumstances are not ready to focus on employment. This is determined through an assessment and addressed through the Individualized Plan or Roadmap, pursuant to Colorado Works regulations at 9-CCR-2503-6.

TANF participants will require in-depth and ongoing assessment of barriers and job readiness levels. From the assessments, Individualized Plans will be developed with the participant that offer intensive supports and services. This may include more extensive monitoring and possibly additional work supports. The intent is to engage and provide opportunities for participants to obtain and maintain employment that support career growth.

**III. Services**

- A.** To support and engage TANF eligible participants to develop strategies that address individual and family needs, DHS will work jointly with Thriving Families to provide the following:

*Intensity, frequency, and duration of services.* Overall, the MotherWise program engages women for approximately three (3) months, prior to or soon after the birth of a baby.



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Mothers participate in a core workshop with twenty-four (24) hours of content and approximately six hours of one-on-one case management services (i.e., family support) during their engagement with the program. In addition to these core services, Thriving Families also offers other services, including workshops on parenting and infant care, postpartum depression prevention, and for couples (as appropriate), as well as trauma-informed therapy.

*Initial intake/case management meeting.* The first step after indicating interest in the MotherWise program is to attend an intake appointment with a case manager, called a Family Support Coordinator. The client will meet with the same Family Support Coordinator throughout the program for case management. This intake appointment lasts approximately 1.5 hours. She and the Family Support Coordinator complete a conversational, semi-structure intake interview about her background, family, pregnancy and health, and resource needs. She also set goals for herself and enrolls in a workshop series at this appointment.

*Core workshop series.* As part of the MotherWise program, mothers attend classes on healthy relationships. This workshop series uses an evidence-based curriculum, *Within My Reach*. These classes also include information on self-care and caring for and connecting with a newborn that were developed by a neonatal pediatrician.

*Ongoing case management.* The current model at Thriving Families is for mothers to meet with their Family Support Coordinator for case management four times during the time they are engaged in the MotherWise program. These case management meetings have two central purposes: to reinforce the curriculum and to make/follow up on referrals for other services the family may need. Some of the most common referrals include options regarding housing, items she may need for the baby, mental health, or DHS. Some families need additional family support/case management meetings, which may be provided by Thriving Families or referrals may be made to other specific agencies that can provide longer-term case management when they are a fit, e.g., to DHS or Nurse-Family Partnership. Partners and fathers are welcome to attend these case management meetings.

*Mental health support.* Family Support Coordinators may refer some participants in MotherWise to Thriving Families' WiseWellness program. This program provides counseling (individual, family, and group) to those who require longer-term support for mental health-related needs.

Thriving Families will provide services to women and teens who are pregnant or have recently had a baby. Thriving Families has the ability to provide services to clients who speak English or Spanish.

*Program location and transportation.* Located in downtown Denver near public transportation and Denver Health. In addition, there are office and workshop space in the



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Rose Andom Center, Denver's Family Justice Center, a collaborative center that provides a range of services for victims of domestic violence and their families.

*Early Intervention Services.* Identify and provide early intervention services to participants who recently had a child. This program will provide medical supports for healthy development, nutrition, service identification and connection and a long-term connection to the medical needs of the family.

- B.** DHS will remain the assigned case manager of record. As the case manager of record DHS will provide ongoing case management supports including ongoing assessment, development of Individualized Plans (IP) with participant, and engagement into workforce development activities that lead to employment.
  - 1.** Thriving Families will work cooperatively with DHS to share information and documentation to support the participant's engagement in the TANF program as appropriate.
  
- C.** Thriving Families' integrated programs provide solutions to reduce generational poverty in the Metro Denver community, developing an educated and skilled workforce and families that rely less on government assistance.
  
- D.** DHS and Thriving Families will work collaboratively to ensure services are available to participants in a variety of fashions. Programming offered via Thriving Families' service menu have the ability to be offered virtually and online, not just in person. In the event the service requires in person components, Thriving Families will work with DHS and other partners to ensure these in person services are appropriate, safe, and compliant. The content of all virtual/online programming can be cross-walked to the in-person services with minimal disruption to participants and the targeted outcomes to be achieved.
  
- E. Thriving Families Responsibilities**
  - 1.** Hire and manage qualified and trained staff to provide quality services to populations that present with barriers and other needs that are typically beyond the scope of staff at DHS.
  - 2.** Provide services and supports to TANF participants who are pregnant or have recently had a child. Services include but are not limited to,
    - a.** Referrals for needed medical services.
    - b.** New parenting and relationship support.
    - c.** Mental health supports.
  - 3.** Provide budget oversight of TANF funding to ensure incurred costs follow State and Federal statutes and regulations.
  - 4.** Provide administration of TANF program and ensure State and Federal statutes and regulations are implemented and followed.
  - 5.** Work closely with DHS on collaboration efforts related to TANF goals, outcomes, policies and procedures.





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- a. Provide regular reporting (financial, Work Participation Rate and other State requested reporting).
- b. Participate in training and policy development activities.
- c. Participate in Denver's Welfare Reform Board meetings as needed.
6. The contractor agrees to ensure all electronic communication referencing TANF participants will follow all privacy requirements, including but not limited to, encrypting emails to recipients outside of the City network.
7. The contractor agrees to use City/DHS issued email addresses for all TANF related communication with DHS participants. This includes complying with all City prescribed privacy requirements related to communication and information sharing.

**F. Audits**

Thriving Families and DHS will work collaboratively to collect and retain all Colorado Works/TANF program information necessary to ensure compliance with the requirements of any applicable State or Federal law and program regulations. This includes all case management records (paper and automated), which includes, but is not limited to, all assessments, Individual Plans (IPs), workforce development activities, participation tracking sheets, contracted services, and workforce counseling administered by Thriving Families. Thriving Families and DHS will cooperate with each other in responding to inquiries that either agency may receive from State or Federal authorities regarding any programs that Thriving Families is responsible for administering pursuant to this agreement. DHS will notify Thriving Families in advance of every TANF related audit and Thriving Families will have a representative present at such audit. Thriving Families will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

**G. Management Site Visits and other Audits**

Denver County and/or the State of Colorado may conduct regular on-site reviews of Colorado Works contracts and related services. These on-site reviews are meant to provide service providers with direct feedback on the implementation of their program and include a summary of the findings from the ongoing case file reviews. Denver County and/or State staff will analyze and review Thriving Families policies, plans, procedures, contracts/sub-contracts, and other relevant documents and administrative data that describe and inform program implementation, strengths and opportunities for improvement. The focus of the site visit is primarily one of information sharing, technical assistance, and training with County and/or State staff representing various areas of program operations (finance, budget, policy, program, training and technical assistance).

For other formal Federal, State, and County audits, Thriving Families will provide accurate and complete case files within the DHS timeline requirements. Thriving Families will be responsible for repayment to DHS of any disallowed costs resulting from a final audit action imposed by CDHS or other regulatory authority pertinent to the work at Thriving Families. Thriving Families will be responsible for following up on auditor findings,



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providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor Thriving Families' response to audit related matters to ensure ongoing compliance. DHS and Thriving Families will work with State and Federal auditors as requested. Thriving Families will provide a designee as a point of contact for monthly quality meetings and for audits.

**H. Records.**

Thriving Families will comply with written State and City/DHS policies and processes provided to Thriving Families by DHS related to case file maintenance, case retention and storage. No client case information will be maintained outside of the client's automated case files established by DHS. Thriving Families will not maintain a separate case file that contains TANF documentation that should be housed with DHS. Documentation obtained to support specific contracted programmatic services not associated with the TANF program shall be retained by Thriving Families as this information does not pertain to the Colorado Works/TANF Workforce program. At a minimum, Thriving Families will maintain all client documentation in client case files according to stated case order policy provided by DHS. Thriving Families agrees to work with DHS to provide information from these files should a documented request, audit or need arise for the information. Client documentation will be sent to the scanning department for electronic filing no more than five (5) days after the document was created. Thriving Families will provide a copy of their current record retention and destruction policy as required by House Bill 18-1128 within 30 days after the execution of this contract. Upon termination of this contract, all relevant case files will be provided to DHS in a DHS approved format.

**IV. Process and Outcome Measures**

**A. Process Measures**

1. Thriving Families will complete outreach services to successfully schedule 60% of all referred TANF clients for Intake Appointment for the MotherWise program.
2. Thriving Families will enroll referred TANF clients for the MotherWise program.
3. Thriving Families agrees to meet all State metrics as required for the Colorado Works/TANF program. This includes but is not limited to, sharing all applicable engagement information and documentation to demonstrate the family is actively engaged in services and making the appropriate levels of progress.

**B. Outcome Measures**

1. After Intake Meeting, Thriving Families will screen and connect seventy-five percent (75%) of DHS TANF clients to appropriate medical services (e.g., perinatal, pediatric care).
2. After Intake Meeting, Thriving Families will successfully enroll seventy-five percent (75%) of DHS TANF clients to appropriate new parent supports through group workshops (e.g., MotherWise).



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3. After Intake Meeting, Thriving Families will successfully screen and connect (as needed) seventy-five percent (75%) DHS TANF clients to appropriate mental health services (some of which may be provided by Thriving Families).

## 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. Thriving Families 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 Thriving Families is 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.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Thriving Families 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.

Report Name	Description	Frequency	Reports to be sent to:
1. Monthly Roster Reports	Total number of clients served and activity report that details client activity.  CBMS data to be entered by TANF Case Manager on monthly services goals.  Thriving Families' monthly spreadsheet will	Due Monthly submitted on or before the 15 <sup>th</sup> of each month following the month services were rendered. To be included with monthly invoice	Colorado Works/TANF Case Manager  AND  Colorado Works/TANF Program Administrator



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	be completed to report out on program services and outcomes.		
2. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within forty-five (45) days after Term End.	Colorado Works/TANF Program Administrator

**VI. DHS funding information:**

- A. Program Name: TANF Gap Services**  
**B. Funding Source: 13008-5521050**

**VII. Budget**

- A.** Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month following the month services were rendered 100% of the time. Thriving Families shall use DHS' preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.
- B.** The funds allocated under this Agreement are from the Federal TANF block grant and shall be used solely for TANF purposes and eligible participants. These funds shall not be used to supplant existing funding for a non-TANF program.

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

Attn: Financial Services  
Denver Human Services  
1200 Federal Boulevard  
Denver, Colorado 80204

<b>Contractor: Thriving Families</b>		
<b>Fiscal Term: 7/1/2022-6/30/2023</b>		
<b>Contract Number: SOCSV-201948997-04 &amp; SOCSV-202262906-04</b>		
<b>Budget Categories</b>	<b>Budgeted Amount</b>	<b>Narrative</b>
<b>Direct Costs</b>		
<b>Salaries</b>		



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Program Services Staff	\$85,000	Program Services Staff all performing the same duties, working up to a portion of their time, salaries and wages to be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances or payouts of leave when an employee separates from their job. Includes cost of leave (PTO, vacation, sick holidays).
Program Services Staff Fringe	\$15,000	Fringe benefits and payroll taxes (fringe) at cost. This includes the employer portion of payroll taxes (Social Security, Medicare, Federal and State unemployment), insurance (medical and health savings account, dental, long term disability and life, and workers comp), and 401(k) (retirement plan).
<b>Total Salaries</b>	<b>\$100,000</b>	
<b>Subcontracted Services</b>		
Subcontracted Program Manager	\$22,000	Multiple subcontracted Program Managers will work a portion of their time on the program, to be reimbursed at cost.  Contractor will submit invoice and proof of payment.
Therapy Services Subcontracted Services	\$20,809	Subcontracted Therapy Services to be reimbursed at cost. Contractor will submit invoice and proof of payment.
<b>Total Subcontracted Services</b>	<b>\$42,809</b>	
<b>Total Direct Costs</b>	<b>\$142,809</b>	
<b>Indirect Costs</b>		
Indirect Costs	\$14,281	To be calculated at 10% of direct costs being reimbursed.
<b>Total Costs</b>	<b>\$157,090</b>	

**Contract Summary of Amounts:**

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	5/1/2019 – 6/30/2020	\$0	\$182,234	\$182,234
1 <sup>st</sup> Amendment	7/1/2020 – 6/30/2021	\$182,234	\$157,090	\$339,324



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<b>2<sup>nd</sup> Amendment</b>	7/1/2020 – 6/30/2021	\$339,324	\$0	\$339,324
<b>3<sup>rd</sup> Amendment</b>	7/1/2021 – 6/30/2022	\$339,324	\$157,090	\$496,414
<b>4<sup>th</sup> Amendment</b>	7/1/2022 – 6/30/2023	\$496,414	\$157,090	\$653,504

**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 THRIVING FAMILIES and the CITY to the extent that THRIVING FAMILIES performs, or delegates to THRIVING FAMILIES to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to THRIVING FAMILIES 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 THRIVING FAMILIES in the same manner as they apply to a covered entity. THRIVING FAMILIES agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the



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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 THRIVING FAMILIES' 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 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES 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;



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- 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 "THRIVING FAMILIES" 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 "THRIVING FAMILIES" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect THRIVING FAMILIES' 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.





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- 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 THRIVING FAMILIES.
- 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 THRIVING FAMILIES AS BUSINESS ASSOCIATE.**

- 3.01 THRIVING FAMILIES agrees not to use or further disclose PHI that CITY discloses to THRIVING FAMILIES except as permitted or required by this Agreement or by law.
- 3.02 THRIVING FAMILIES agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to THRIVING FAMILIES or that THRIVING FAMILIES creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 THRIVING FAMILIES 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 THRIVING FAMILIES or that THRIVING FAMILIES creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 THRIVING FAMILIES agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by THRIVING FAMILIES in violation of the requirements of this Agreement that becomes known to THRIVING FAMILIES .



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- 3.05 THRIVING FAMILIES agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that THRIVING FAMILIES becomes aware of. THRIVING FAMILIES must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 THRIVING FAMILIES agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of THRIVING FAMILIES 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, THRIVING FAMILIES 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 THRIVING FAMILIES 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. THRIVING FAMILIES agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES agrees to document any Disclosures of PHI that CITY discloses to THRIVING FAMILIES or that THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES agrees that, to the extent THRIVING FAMILIES carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, THRIVING FAMILIES will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).



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

**4. SECURITY RULE.**

4.01 THRIVING FAMILIES 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 THRIVING FAMILIES or that THRIVING FAMILIES creates, receives, maintains, or transmits on behalf of CITY. THRIVING FAMILIES shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

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

4.03 THRIVING FAMILIES shall immediately report to CITY any Security Incident of which it becomes aware. THRIVING FAMILIES 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, THRIVING FAMILIES 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 THRIVING FAMILIES as of the first day on which such Breach is known to THRIVING FAMILIES or, by exercising reasonable diligence, would have been known to THRIVING FAMILIES.

5.01.2 THRIVING FAMILIES 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 THRIVING FAMILIES, as determined by the Federal common law of agency.

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



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- 5.02.1 THRIVING FAMILIES' initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 THRIVING FAMILIES' 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 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, THRIVING FAMILIES shall have the burden of demonstrating that THRIVING FAMILIES 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.



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- 5.06 THRIVING FAMILIES 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 THRIVING FAMILIES 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 THRIVING FAMILIES' initial report of the Breach to CITY.
- 5.08 THRIVING FAMILIES 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. THRIVING FAMILIES 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, THRIVING FAMILIES 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 THRIVING FAMILIES.**

- 6.01 THRIVING FAMILIES may use or further disclose PHI that CITY discloses to THRIVING FAMILIES 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 THRIVING FAMILIES may use PHI that CITY discloses to THRIVING FAMILIES , if necessary, for the proper management and administration of the Agreement.
- 6.03 THRIVING FAMILIES may disclose PHI that CITY discloses to THRIVING FAMILIES to carry out the legal responsibilities of THRIVING FAMILIES , if:
  - 6.03.1 The Disclosure is required by law; or
  - 6.03.2 THRIVING FAMILIES 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 THRIVING FAMILIES of any instance of which it is aware in which the confidentiality of the information has been breached.



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- 6.04 THRIVING FAMILIES may use or further disclose PHI that CITY discloses to THRIVING FAMILIES to provide Data Aggregation services relating to the Health Care Operations of THRIVING FAMILIES.
- 6.05 THRIVING FAMILIES may use and disclose PHI that CITY discloses to THRIVING FAMILIES consistent with the minimum necessary policies and procedures of CITY.

**7. OBLIGATIONS OF CITY.**

- 7.01 CITY shall notify THRIVING FAMILIES 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 THRIVING FAMILIES' Use or Disclosure of PHI.
- 7.02 CITY shall notify THRIVING FAMILIES 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 THRIVING FAMILIES' Use or Disclosure of PHI.
- 7.03 CITY shall notify THRIVING FAMILIES 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 THRIVING FAMILIES' use or disclosure of PHI.
- 7.04 CITY shall not request THRIVING FAMILIES 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 THRIVING FAMILIES of the requirements of this Contract, CITY shall:
  - 8.01.1 Provide an opportunity for THRIVING FAMILIES to cure the material breach or end the violation within thirty (30) business days; or
  - 8.01.2 Immediately terminate the Agreement, if THRIVING FAMILIES 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, THRIVING FAMILIES shall either destroy or return to CITY all PHI THRIVING FAMILIES received from CITY and any and all PHI that THRIVING FAMILIES 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 THRIVING FAMILIES.
  - 8.02.2 THRIVING FAMILIES shall retain no copies of the PHI.



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8.02.3 In the event that THRIVING FAMILIES determines that returning or destroying the PHI is not feasible, THRIVING FAMILIES 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, THRIVING FAMILIES 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 THRIVING FAMILIES 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.