

THIRD AMENDATORY AGREEMENT

THIS THIRD 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 **POINT B(E) STRATEGIES, LLC**, a Colorado limited liability company with an address of 445 N. Broadway, Suite 605, Denver, CO 80203 (the “Contractor”), jointly “the Parties” and individually a “Party.”

WHEREAS, the City and the Contractor entered into an Agreement dated **September 10, 2020**, an Amendatory Agreement dated **October 28, 2020**, and a Second Amendatory Agreement dated **July 28, 2021**, to develop funding, selection, and management practices for a mini projects fund that reimburses community partners for projects that combat isolation, loneliness, and disengagement from critical services for people with intellectual and developmental disabilities in Denver (the “Agreement”).

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 agree as follows:

1. Effective upon execution, all references to **Exhibits A, A-1, and A-2** in the existing Agreement shall be amended to read **Exhibits A, A-1, A-2, and A-3**, as applicable. **Exhibit A-3** is attached and will control from and after the date of execution.

2. Section 4 titled “**TERM**” is deleted and replaced as follows:

“**TERM**: The Term of this Agreement (“Term”) shall commence on **August 1, 2020**, and expire, unless sooner terminated, on **October 31, 2023**. Subject to the Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Director.”

3. Subsection 5.4.1 within subsection 5.4 titled “**Maximum Contract Amount**” is deleted and replace as follows:

“**5.4.1.** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **ONE MILLION THREE HUNDRED THIRTY-SIX THOUSAND THREE HUNDRED THIRTY DOLLARS AND ZERO CENTS (\$1,336,330.00)** (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. Any services

performed beyond those in **Exhibit A-3** 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 Third 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-3

Contract Control Number: SOCSV-202160190-03; 202055724-03
Contractor Name: Point b(e) Strategies, LLC

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

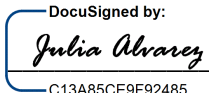
By:

By:

By:

Contract Control Number:
Contractor Name:

SOCSV-202160190-03; 202055724-03
Point b(e) Strategies, LLC

By:  _____
C13A85CE9F92485...

Name: Julia Alvarez
(please print)

Title: CEO and Senior Catalyst
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



Point b(e) Strategies, LLC
SCOPE OF WORK
Jaggaer No. 202160190-03

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Point b(e) Strategies (“Point b(e)” or “Contractor”).

II. Mill Levy Program Requirements

In addition to the eligibility, residency, and permitted use requirements outlined in the Developmental Disabilities Mill Levy, § 53-550, D.R.M.C. and referenced in this agreement, all contractors shall adhere to the following program requirements:

Fund of last resort. Mill Levy dollars must be used as the fund of last resort. Point b(e) may already receive federal and state funds to provide or purchase authorized services and supports to individuals with intellectual and developmental disabilities, or other additional grant monies. It is incumbent upon Point b(e) to utilize those other funding sources to provide services whenever possible before seeking reimbursement through mill levy funded agreements.

Mill levy contracts. It is anticipated that contractors may be awarded multiple contracts pursuant to the Mill Levy. It is the responsibility of Point b(e) to ensure that expenses, including payroll, are tracked and submitted on a per contract basis. Failure to do so may result in a determination that Point b(e) has breached the terms and conditions of one or more of the contracts.

Public meeting. Point b(e) shall conduct at least one meeting that is open to the public in accordance with the contract terms. Point b(e) will present a general overview of the progress or completion of service delivery based on the use of mill levy funding and ensure they have opportunities to receive feedback and recommendations from residents of the City and County of Denver, which may be factored in to future contracts for services of a similar nature.

Grievance process. Point b(e) must develop a grievance process for mill levy services delivered through this contract, to be reviewed and approved by DHS. This process will be made known to the public, and will be tracked and reported to DHS.

Branding. DHS branding, including the DHS logo, may be included on curricula, deliverables, and promotional materials produced under this contract subject to written approval by the DHS Marketing and Communications Director, provided that Point b(e) works with the DHS Program Manager and DHS Marketing and Communications team in advance to determine opportunities to include attributions to DHS or the mill levy funds and ensure that all components of the deliverables meet DHS standards. Any materials that use DHS branding must be provided to the DHS Marketing and Communications team for review and approval at least two weeks prior to production deadline.



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III. Services

Point b(e) will continue to develop funding, selection, and management practices for a \$600,000 fund (“mini projects fund”) that reimburses community partners for projects that combat isolation, loneliness, and disengagement from critical services for people with intellectual and developmental disabilities (I/DD) in Denver. Because inclusion is an essential aspect of this project, Point b(e) will consider and incorporate community engagement processes in the delivery of their work. This includes facilitating work through an equity lens and active inclusion of people with intellectual and developmental disabilities throughout fund management processes.

Community partners eligible to participate as subcontractors with the mini project fund include, but are not limited to, State-approved I/DD service providers, local Denver businesses, and otherwise qualified entrepreneurs or professionals. Reimbursement for individual projects through the mini projects fund is limited to a maximum of \$20,000 per project, allowing for at least 30 potential projects to be funded throughout the contract term. Point b(e) should ensure project selection processes include criteria that reasonably assure selected community partners can provide quality services to people with I/DD and which center the voices and needs of the community in their proposed project as well as other related work.

Fund management services include, but are not limited to, staffing, promotion of the fund in the community to target audiences, capacity building strategies, project monitoring practices, and delivery of funds to community partner projects. Point b(e) shall ensure the fund management process is accessible, transparent, inclusive, and equitable.

Point b(e) will assign at least one staff member (aka ‘Catalyst’) to serve as the primary project manager. This individual will be responsible for the following:

- Managing communications around the funding announcement and distribution;
- Communicating with subcontractors about their proposals prior to the submission deadline and answering all Q & A requests;
- Scheduling regular check-ins and touchpoints with subcontractors;
- Managing the invoicing and reimbursement processes with oversight from Point b(e) CEO;
- Overseeing and managing the evaluation of mini projects under the fund; and
- Scheduling and managing all ongoing capacity building supports for subcontractors.

The primary project manager’s work will be supported by additional Point b(e) staff throughout the contract term, as defined in the budget under this agreement. Point b(e) should leverage collaborations and community partnerships to manage the fund.

Community advisory council

Point b(e) shall assemble a Community Advisory Committee (CAC) comprised of project team members and community members who have personal and/or professional



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knowledge of I/DD. At least one third of the CAC will consist of community members, with at least one member being a person with I/DD. Point b(e) shall consult their CAC in the development of the funding announcement, application, and scoring criteria, with careful consideration of accessibility, inclusivity, equity, and transparency throughout the funding process. CAC guidance should inform the development of the fund application and support Point b(e) work to ensure all elements of the selection process are equitable and promote a diverse pool of applicants.

Point b(e) will subcontract with a collaborative partner to consult on inclusion of people with I/DD and accessibility of fund management processes including, but not limited to:

- Identification and selection of qualified individuals to participate on the CAC;
- Training and education for CAC participants on their role in advising best practices for the implementation of the mini project fund; and
- Facilitation of CAC communications, meetings, and advisory activities

The members of the CAC may be further engaged throughout fund management to ensure community voice continues to be central to the work completed in service of Denver residents. Additionally, the Inclusivity & Accessibility consultant may be asked to consult on the actual selected mini projects, as needed, upon selection.

Application and project selection process

Point b(e) shall prioritize the selection of projects that seek to adapt and innovate services to secure continued access to essential supports and resources, as well as develop virtual, remote, or otherwise safe opportunities for healthy living and social engagement that are inclusive of or created for people with I/DD. The application process developed for the fund must capture each project's connection to the purpose of the fund, the goal or outcome of the project, and the target population, if any, within the I/DD community along with the estimated number of people to be served. Applications of selected mini projects must clearly demonstrate how a project would provide opportunities for direct impacts to Denver residents with I/DD.

Point b(e) shall include eligibility requirements and associated application scoring criteria as part of defining and recording the project selection process. Point b(e) may incorporate additional parameters or criteria by which applications would be evaluated. Examples of these types of parameters include:

- Project award minimum (i.e. \$2,000 minimum fund for subcontract awards);
- Application deadlines;
- Funding cycles;
- Amount available for award (per cycle);
- Reporting criteria;
- Inclusion or engagement requirements; and
- Additional eligibility or selection requirements that serve the intended scope of projects requested, and meet requirements outlined in this Exhibit A.



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All funding requirements, including additional parameters identified by Point b(e), will be clearly documented in a funding policy or in project funding announcements. In the policy, Point b(e) should outline the funding process in full, and attach the current funding cycle's drafted announcement, application form, and scoring criteria. The funding policy and related documents shall be submitted to DHS for review and approval prior to public announcement.

Outreach & communication

Point b(e) will leverage their role in the Denver community, along with collaborations, partnerships, and subcontractor outreach, to support a varied and diverse population served by funded subcontractor projects. Point b(e) should maximize their existing networks to recruit members for the CAC and broadly share announcements and updates related to fund management. This includes the production of a funding announcement (referenced above) and outreach to connect relevant stakeholders with subcontractors/projects. This is considered an essential aspect of managing the fund and meets stated goals for accessibility, transparency, inclusion, and equity. Work related to outreach and communication may be captured in the Final Evaluation as appropriate (see Section V, Reporting).

Project management and capacity building

Once community partners have been selected and are under subcontract, Point b(e) will:

- Monitor projects as they are implemented;
- Provide guidance and support to subcontractors in the execution of their work;
- Request and maintain appropriate supporting documentation for subcontractor invoices as defined in their subcontracts; and
- Record outcomes that demonstrate the positive impact of the work on Denver residents with I/DD and their families or caregivers.

Point b(e) shall incorporate strategies that support capacity building actions such as providing community partners with tools and skillsets needed to engage funding opportunities in service of people with I/DD. Point b(e) will extend any needed capacity building or technical assistance support to subcontractors upon award notice so that selected organizations are equipped to begin work quickly. This includes advising on the requirements for receiving dedicated I/DD mill levy funds under this agreement, such as residency and required insurance.

In the event a subcontractor is unable to secure insurance on their own, Point b(e) will provide support in the following ways:

- Consult with the subcontractor on the barriers and options they may have in acquiring insurance independently;
- Prioritize connecting subcontractor with an insurance broker to work on acquiring insurance; or
- Should all else fail, Point b(e) will provide insurance coverage on behalf of the subcontractor in question.



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Point b(e) may offer capacity building trainings to subcontractors throughout the term of the agreement as needed. These opportunities should be open to all subcontractors and Point b(e) may choose to require attendance depending on the training topic.

Point b(e) will collect, analyze, and report on data from subcontractor projects in addition to reporting on their performance in managing the fund. Point b(e) staff should quantitatively analyze all output data from subcontractors to capture the breadth and reach of projects and qualitatively analyze data to understand the impact of projects on individuals with I/DD in Denver and their community. Point b(e) will provide a comprehensive report to DHS at the end of the contract term, known as the Final Evaluation report, which shall include data captured in progress reports as well as full reporting on outcomes achieved by subcontractors with funding (see Section V, Reporting).

Subcontractor Invoicing

All subcontractor invoices are required to specify the following:

- Date span covered by the invoice;
- Itemization of expenses consistent with the project budget; and
- Number of individuals served per applicable line item on the budget/invoice.

Point b(e) should request support documentation from subcontractors that satisfy their review of project invoices for payment in accordance with any existing Point b(e) policies and monitoring practices, as well as this agreement. Documentation may include any of the backup documentation described below, or other documentation designated by Point b(e) as defined in the subcontract. Point b(e) will consult with DHS as needed to ensure sufficient monitoring practices.

It is expected that Point b(e) and its subcontractors will maintain the appropriate backup documentation to support invoices for services rendered via subcontractor projects. This could include:

- Receipts for items/services purchased/invoiced;
- Timecards for staff/contractor costs incurred/invoiced;
- Rosters including names of individuals served, date(s) served, service(s) provided;
- Self-attestations or signatures may be required, depending upon the service and details in the subcontractor agreement; and
- Established processes detailing how eligibility requirements (I/DD, delayed under 5, or seeking eligibility; and Denver residency) are met for individuals served.

Point b(e) will define required project documentation in their subcontracts and is responsible for reviewing subcontractor invoices in full before making payment. DHS may request or audit additional backup documentation the Point b(e) has on file in accordance with this agreement.



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Remote/virtual work

DHS expects Point b(e) to commence or continue work in remote environments as needed. The goal is to administer funds for local community partner services, projects, or innovations in service delivery that promote remote access and inclusion for people with I/DD in Denver while also adhering to public health and safety requirements, guidelines, and associated best practices related to COVID-19. This includes all aspects of fund management as described above. Point b(e) may use, but is not limited to, the following tools and strategies to successfully manage the fund in a remote environment:

- Video platforms, e.g., Zoom, Skype, for virtual meetings and planning sessions;
- Online facilitation and visual collaboration tools, e.g., MURAL;
- Online survey and polling tools, e.g., Survey Monkey and Doodle Poll, to schedule meetings and collect feedback and information;
- Web and mobile project management software, e.g., Asana;
- Secure online storage to maintain confidential subcontractor information;
- Online billing and invoicing systems for subcontractors to expedite reimbursement; and
- Any additional platforms that support I/DD accessibility.

Other obligations

Point b(e) shall attend scheduled meetings with DHS and provide regular updates on the work completed along with overall progress toward goals outlined in this Services section. Meetings can occur either virtually, by phone, or in person, and will follow best practices for public health and safety and take into account the health needs of the individuals to meet. In the event a representative is unable to attend a scheduled meeting, Point b(e) will send notification to DHS staff liaison. Point b(e) will keep DHS apprised of any hurdles to success, and will leverage opportunities to collaborate with DHS mill levy partners where appropriate to ensure equitable access to projects and services.

IV. Process and Outcome Measures

A. Process Measures

- Point b(e) will seat a Community Advisory Council with a minimum of one active Denver community member with I/DD.
- Point b(e) will devise and submit a funding policy and related documents for DHS approval.
- Point b(e) will execute subcontracts for and manage a minimum of 20 projects through the mini projects fund.
- Point b(e) will provide capacity building tools and resources to subcontractors.
- Point b(e) will conduct initial outreach and continue contacts with the community throughout the contract term.



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- Point b(e) will create a reporting format and will collect outcome and progress data for all subcontractors. Additionally, Point b(e) will require all subcontractors to submit this report and collect data.
- Point b(e) will develop funding goals in partnership with Council , e.g. 50% of subcontractors will have BIPOC or IDD leadership or employ people with I/DD.

B. Outcome Measures

- Point b(e) will successfully distribute a minimum of 75% of the mini project funds (minimum \$450,000) understanding that the ideal goal is to maximize the amount of funds distributed.
- Point b(e) will provide training to 100% of the CAC members on their advisory role in the application development and selection processes.
- Point b(e) will support subcontractor projects in providing services to a minimum of 150 Denver residents with I/DD and/or their families.

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. Point b(e) may be reviewed for:

1. **Program or Managerial Monitoring:** Review 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:** 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:** Ensure that contracts are allocated and expended in accordance with the terms of the agreement. Point b(e) 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.



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Report Name	Description	Frequency	**Reports to be sent to:
1. Progress Reports	<p>Provide a brief update on timelines and milestones along with details about activities relevant to meeting goals outlined in the agreement. Progress Reports should capture high level details on fund management which include, but are not limited to:</p> <ul style="list-style-type: none"> -CAC recruitment -project selection process development, along with the application template and funding announcement -overview of awarded and declined projects -descriptions of awarded projects to include tracked outcomes and impact evaluation measures -development of subcontracts -subcontractor project progress as appropriate -capacity building trainings schedule and attendance count 	<p>3 times, each report is due: February 1, 2022 to report on council recruitment and updated application; July 1, 2022, to report on funded projects in round 1 & 2; February 1, 2023 to report on mid-term project updates</p>	<p>Progress reports will be sent to DHS Program Manager at crystal.porter@denvergov.org.</p> <p>DHS Program Manager will work with Point b(e) on report format to best suit contracted services and nimble progress reporting.</p>
2. Final Evaluation (aka Contract Summary Report)	<p>Final evaluation of fund management and mini projects performance, including collective outcome measures and impact evaluation. This report will also detail findings learned through community feedback mechanisms and capacity building activities, and should include relevant</p>	<p>1 time, due October 15, 2023</p>	<p>Written report along with any resulting subcontractor project deliverables should be packaged and sent to DHS Program Manager at crystal.porter@denvergov.org.</p>



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	observations and analysis related to overall fund management.		
3. Community Forum or Public Presentation	<p>Presentation on fund activities in a community forum, to reflect on work under contract and solicit feedback on projects and fund management.</p> <p>Point b(e) will schedule date with DHS Program Manager.</p>	1 time, delivered by October 31, 2023	<p>Presentation materials to be prepared and sent to DHS Program Manager at crystal.porter@denvergov.org</p>

** DHS may designate additional staff liaison(s) in addition to the DHS Program Manager.

V. DHS funding information:

- A. **Program Name: Mini Projects Fund Management**
- B. **Funding Source: Mill Levy – Special Revenue**

VI. Budget


Invoices may be submitted two (2) times per month (Net 15). If invoices are submitted monthly, they are due, together with reports, on or before the 15th 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.

Unless otherwise instructed, 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



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 <div style="float: right; text-align: right;"> <p>BUDGET (Fee for Service/Cost Reimbursement)</p> <p>Contract Administration – Financial Services Division 1200 Federal Blvd., Fourth Floor Denver, CO 80204-3221 DHS Contracting Services@denvergov.org</p> </div>		
Contractor Name: Point b(e) Strategies		
Contract Term: August 1, 2020 – October 31, 2023		
Fiscal Term: October 1, 2021 – October 31, 2023		
Program Name: Mini Projects Fund/ Fund Management		
Subcontracted services and supports	Cost	Budget Narrative
Mini Projects Fund	\$600,000	Fund for various mini project initiatives and services for people with I/DD under subcontract, to be reimbursed at cost. Backup will include invoice from service providers and proof of payment.
Direct Program Costs	Cost	Budget Narrative
Support Staff (Senior Catalysts)	\$259,500	Fee for service for multiple Senior Catalysts, responsible for the development, management, and subcontractor oversight for the inclusive mini projects fund, including capacity building, evaluation, and reporting, as well as technical assistance for subcontractors. To be reimbursed at \$150 per hour.
Professional Services, Technology, Communications Fees	\$25,250	Professional services, hardware, software, subscriptions, licenses (legal, technology, or communication services) to facilitate, promote, and/or manage the mini projects fund. This line includes funding for the Inclusivity & Accessibility Consultant. Backup will include copies of invoices or receipts and proof of payment.
Community Council I/DD member equity stipends	\$2,800	Stipends for Community Council members with I/DD, based on active Community Council participation. Backup will include a



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		report listing individuals paid, stipend amounts, and proof of payment.
Community Council retention	\$500	Direct cost of refreshments, thank you cards, gift cards, and/or other materials or items purchased for the purpose of expressing appreciation to Community Council members for volunteering their time and to support retention of Community Council members throughout the contract term. Backup will include copies of invoices or receipts and proof of payment.
Total Direct Program Costs	\$288,050	
Contract Total Amount	\$888,050	

Base Agreement	8/1/2020 - 3/22/2021	\$448,280
Amendment #1	8/1/2020 - 9/30/2021	\$0.00
Amendment #2	8/1/2020 - 9/30/2021	\$0.00
Amendment #3	8/1/2020 – 10/31/2023	\$888,050
Total		\$1,336,330

VII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 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.



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- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

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

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
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.



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3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- 2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.



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- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 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.



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



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- 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.
- 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.



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- 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.



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- 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.



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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.