

FIFTH AMENDATORY AGREEMENT

THIS FIFTH AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DENVER HEALTH AND HOSPITAL AUTHORITY**, a body corporate and political subdivision of the State of Colorado, whose address is 777 Bannock, Denver, Colorado 80204 (the “Contractor”), individually a “Party” and collectively the “Parties.”

WHEREAS, the Parties entered into an Agreement dated December 14, 2018, an Amendatory Agreement dated March 10, 2020, a Second Amendatory Agreement dated January 4, 2021, a Third Amendatory Agreement dated July 13, 2021, and a Fourth Amendatory Agreement dated January 19, 2022, to provide medical services for the Denver Human Services’ Child Welfare Division (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, A-3, and A-4 in the existing Agreement shall be amended to read Exhibits A, A-1, A-2, A-3, A-4, and A-5, as applicable. Exhibit A-5 is attached and will control from July 1, 2022.
2. Article 3 of the Agreement, titled “**TERM**,” is amended to read as follows:
 - “3. **TERM**: The term of the Agreement (“Term”) shall commence on January 1, 2019, and expire, unless sooner terminated, on December 31, 2022. 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. Article 4.a of the Agreement, titled “**Budget**,” is amended to read as follows:
 - “a. **Budget**: Subject to the provisions of Article 4(e) below, the Contractor agrees to accept as full compensation from the City under this Agreement, for completion of all the items of work contained in this Agreement and **Exhibits A, A-1, A-2, A-3, A-4, and A-5**, an amount not to exceed Three Million Six Hundred Eighty-Three Thousand Five Hundred Six Dollars (\$3,683,506.00) (the “Maximum Contract Amount”), to be used in accordance with the budget contained in **Exhibits A, A-1, A-2, A-3, A-4, and A-5**. Amounts billed may not exceed the budget set forth in **Exhibits A, A-1, A-2, A-3, A-4, and A-5**.”
4. Except as amended here, the Agreement is affirmed and ratified in each and every particular.
5. This Fifth Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.
6. The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A-5**, Scope of Work.

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Contract Control Number: SOCSV-202262882-05, SOCSV-2018-44199-05 Alfresco
Contractor Name: DENVER HEALTH AND HOSPITAL AUTHORITY

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-202262882-05, SOCSV-2018-44199-05 Alfresco
DENVER HEALTH AND HOSPITAL AUTHORITY

DocuSigned by:

23204C6503F3448...

By: _____

Simon Hambidge

Name: _____
(please print)

Title: Chief Ambulatory Officer

(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 Denver Health and Hospital Authority (DHHA) for medical services for the DHS Child Welfare Division.

II. Services

- Child Abuse and Neglect Medical Evaluations
- Out-of-home Placement Exams
- Consultation Services
- Medical Passport Services
- Nurse Family Wellness Program for Families referred to DHHA by DHS
- Training

III. Process and Outcome Measures

A. Responsibilities

1. Scope of Child Abuse and Neglect Medical Evaluations for City Child Welfare Division.

- a. The Authority will provide a medical team to include at least one licensed physician and other staff as outlined in the agreement to perform the following duties:

(i) Medical examinations.

(1) Provide healthcare services including medical evaluations for children ages 0-21 years being evaluated by DHS due to concerns of abuse and/or neglect. This medical evaluation shall also be considered an Out of Home Placement Exam if examined children are being placed out of the temporary custody of their parent or guardian. Services to be provided will include, but are not limited to, professional medical and nursing services, technical assistance, medical consultation and hospital backup. Services will be provided by a consistent team of medical practitioners with expertise in child maltreatment. After Hours services will be provided via the Denver Health Pediatric Emergency Department and Urgent Care (PEDUC).

(2) The Authority and DHS agree that they will work collaboratively with other agencies and organizations involved with the care of children seen at the clinic including, but not limited to, the Denver Police Department, the District's Attorney's Office and the Denver Children's Advocacy Center. The Authority and DHS will share information with these agencies and organizations as needed for the timely completion of investigative and protective actions following established policies and procedures concerning release of patient medical information;



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b. The parties agree that a signed consent form is necessary before any child can receive healthcare services unless the situation is emergent as determined by the professional judgment of the medical staff.

c. The parties agree that all staff providing health care services at the clinic shall adhere to all the Authority and DHS policies and procedures with respect to confidentiality.

d. As a separate, continuing obligation under the Denver Interagency Child Abuse, Child Sexual Abuse and Drug Endangered Children Protocol and without charge to the City, the Authority will maintain a clearly defined structure to provide access to emergency medical evaluation and consultation outside of ordinary business hours.

1.1 Scope of Consultation Services for the City's Department of Human Services Child Welfare Division.

a. Consultation on medically complex and medically fragile cases with Child Welfare workers, including attendance and participation in multidisciplinary team meetings, such as RED team or Family Team Meetings, on such cases.

b. Provide basic medical consultation for DHS Child Welfare Division staff or referring the staff to an appropriate medical specialist as needed.

c. Hospital consultations within Denver Health with other hospitals as needed and to the extent allowable, and After-Hours services through PEDUC.

d. Provide consultation on the Denver Child Fatality Review Team (CFRT).

e. Intake/Assessment consultation under the cooperative agreement.

f. Provide expert testimony related to Dependency and Neglect cases in required locations at the request of the City Attorney and DHS. This includes the expectation that the experts will cooperate with legal staff of the City Attorney's office and will make themselves available to discuss testimony in preparation for deposition, hearing, trial or other proceedings.

g. The Authority will provide medical staff to support DHS administration at the Child Abuse Response Improvement Team (CARIT).

h. Professional development through Denver Health Medical Center to include Systems Management.



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1.2 Scope of Medical Passport Services for the City's Department of Human Services-Child Welfare Division.

a. The Authority will provide staff to ensure Medical Passports are compiled for all children entering out-of-home care in Denver County per child welfare rules.

b. Identify special/high risk medical needs cases based upon the available case information, identifying medical treatment plans for children/youth in these cases, and communicating the plans to the out-of-home placement providers within the scope of the available funding. Additionally, when appropriate, the caseworker and/or regular medical provider shall be informed of the information and plan.

1.3 Scope of Services for Families Referred to the Authority by the City's Denver Human Services - Child Welfare Division through the Nurse Family Wellness Program.

a. The Authority will provide healthcare screening and assessment and nursing evaluations for pregnant women, children ages 0-12 years, and their families referred for services to assist in the mitigation of risk factors of abuse and neglect. Families will be referred by DHS based on their assessment of a family's and/or child's need for these services. The services to be provided include, but are not limited to:

- Professional nursing services;
 - Technical assistance; Consultation; and
 - Service referral.
- (i) The target population will be:
 - (ii) A) Pregnant women and parents with children ages 0-12, when concerns with medical, dental, or developmental health are reported and of concern.
 - (iii) B) Pregnant women and parents of infants with prenatal substance exposure who are known to Child Welfare through a referral, prevention services case, or open in an active Child Welfare assessment or case, to provide assistance, consultation and support in the development of a Plan of Safe Care for the infant and their family/caregiver to ensure the safety and well-being of infants.
 - (iv) C) Families known to DHS through a Child Welfare Referral, Prevention Services Case, or open in an active Child Welfare Assessment or Case. This includes children placed in kinship or foster care.
 - (v) C) Families referred to DHS with infants 12 months or younger, to provide Safe Sleep outreach, education and resources.



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The anticipated monthly referral rate will be up to 35 families. The nurse home visitors will provide services with expertise in in-home assessment of children and families and will work closely with the established Authority and DHS collaborative medical team. Staffing hours will be contingent on the needs and schedules of the participating family. The nurse home visitor will assess for the following:

- General health and wellbeing (physical, dental, and emotional);
- Social isolation;
- School readiness;
- Child growth and development;
- Positive parenting practices;
- Assess parent-child attachment;
- Environmental safety; and
- Clothing, Shelter (Maslow's Hierarchy).

Additionally, the medical team shall maintain all recognized practice standards that are in accordance with the Authority and licensing, state and federal standards, policies and procedures.

- (iii) The purpose of the nurse home visitor is to provide supporting parenting intervention and referral, health and environmental education, assistance in obtaining access to healthcare and healthcare insurance, and assistance in obtaining access to community-based services. These services may include, but are not limited to, those that address mental health, domestic violence, drug use issues and other needs such as food, housing and employment services. The primary goal is to help families support their children's wellbeing and reduce rates of future maltreatment

b. The Authority will help coordinate and administer home visitation services for children and families referred by DHS in their individual residence(s).

- (i) The Authority shall provide nurse home visitors as required to visit families.

- (ii) The Nurse Family Wellness program will offer a minimum of a one-time home visit to families referred to the Authority by DHS. The frequency of visitation shall be based on a determination of need in the home or at a location convenient for the family. The nurses will meet with families



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for a period of time up to 10 home visits based on mutually developed goals established jointly by the family and nurse.

- (iii) Nurses shall identify any special needs and/or medical risk based on the information obtained during the home visit. Nurses shall be responsible for communicating their findings, recommendations and action plans to DHS and the participant. Additionally, when appropriate, the Primary Care Provider (PCP) shall be informed of the information and plan when at all possible.

DHS will notify the Nurse Family Wellness Program that the family would benefit or is interested in consultation or support.

- (iv) The Authority will accept a maximum of thirty-five (35) and a minimum of ten (10) referrals per month from DHS. Children above target population of 0-12 could be served upon agreement by both partners.
- (v) The Nurse Family Wellness Program will attempt to contact the client by phone, text or in person twice during a one-week period. If the client does not have a working phone number, the nurses will mail to the home and provide information on how to contact them to schedule a home visit. If the client has an open assessment, a nurse will coordinate with the caseworker.
- (vi) Nurse home visitors will make every effort to complete the home visit within 14 working days of receiving the referral from DHS.
- (vii) Clients who are not at home for more than three (3) scheduled visits will not be offered additional home visits. If the client refused to have a home visit, the nurse will offer to provide resources over the phone and send additional resources in the mail if necessary.
- (viii) . The Nurse Family Wellness Program will provide DHS designated staff access to data related to service provisions.

c. The parties agree that they will work collaboratively with one another regarding care of the child(ren). Information will be shared with agencies and organizations as needed for the timely completion of the assessment and evaluation services following established policies and procedures concerning nurse home visitation including releases of information from families who are receiving preventive nurse visitation services.



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D. DHS shall:

- (i) Provide information as necessary or reasonably requested by the Authority to enable the Authority's performance under this agreement.
- (ii) Provide Prevention Service Navigators to support the linkage to needed services for engaged families.
- (iii) Provide assistance and direction on reporting specifications and metrics.
- (iv) Provide support for program development and evaluation to include data collection and analysis to assess outcomes.
- (v) Provide onsite office space at the Castro Building, 1200 Federal Blvd, Denver, CO 80204 and, 405 S. Platte River Dr. Denver, CO 80223 and other DHS sites as added.

1.4 Agreement to Provide Training for the City's Department of Human Services Child Welfare Division (DHS)

a. The Authority will partner with the Child Welfare Division in defining the target population and types of issues for which consultation, evaluation, training and referral services will be provided to Child Welfare workers and other community partners as approved by the DHS Child Welfare Division Director.

b. The Authority will train Child Welfare on child abuse and neglect, terminology, investigation, available healthcare services, and other related subjects (as requested) in order to increase their knowledge base. Training may be provided to individual caseworkers, groups of workers and community partners, as scheduled.

1.5 Payment and Related Requirements.

The Authority will provide additional healthcare providers and support staff for the medical clinic as funded by DHS to evaluate children for abuse and neglect. The Authority, upon submission of a written budget modification request approved by DHS, may change healthcare providers and support staff positions in the medical clinic throughout the year as needed provided the positions are already included in the budget. Creation of a new position would require a contract amendment. The number and level of staff assigned by the Authority to the clinic will be determined in consultation with DHS administration based on the needs of DHS for medical evaluation. Anticipated staff roles include medical provider, nurse, medical assistant, clinical clerk, coordinator, and child life specialist.



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- a. The Medical Director provided by the Authority and the DHS Child Welfare Division Director assigned to this program will meet a minimum of one (1) time per month to evaluate the program and determine the effectiveness of the individual parts as well as the program in its entirety.

B. Outcome Measures

Performance Criteria: Assessment and Evaluation of children in the home by the Nurse Family Wellness Program.

- (i) All pregnant women and parents with children between the ages of 0-12 referred to the nurse visitation program will be assessed for risk and wellbeing within the home environment by a consistent team of nurse home visitors who would also support the establishment or maintenance of a medical home for the provision of prenatal care and/or episodic care for children (dependent upon ability to make contact and engage family). The Authority will track the number of pregnant women and parents with children seen for nurse home visitation, evaluations, assessments, consults, referrals, discharge plans, and Plans of Safe Care.
- (ii) The Authority will track the length of time of engagement with the family.
- (iii) The Nurse will partner with engaged families to set mutual goals, then will provide resources and referrals to assist families in achieving those goals.
- (iv) The Authority will report on the following output indicators monthly:
1. Number of referrals received;
 2. Number of consults;
 3. Number of home visits attempted, and made;
 4. Number of unsuccessful attempts; and
 5. Number and type of resource connections made.
 6. Number of Safe Sleep outreach visit made.
- and
7. Number of Plans of Safe Care developed.

Performance Criteria: Child Abuse and Neglect Medical Evaluations.



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- (i) The Authority will report on the following output indicators monthly:
1. Number of medical visits for physical abuse, sexual abuse, and neglect completed and of those, the number involved with Denver Child Welfare and the number of those who are not.
 2. Number of medical visits for out-of-home placement completed
 3. Names and dates of birth of all children who received medical visits who are involved with Denver Child Welfare.
 4. The Authority and DHS will work with staff to identify and track appropriate outcome measures.

IV. Performance Management and Reporting

A. Performance Management

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

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services, in conjunction with the DHS program area and other designated DHS staff, will provide performance monitoring and reporting reviews. DHS staff will manage any performance issues and will develop interventions to resolve concerns.
3. **Compliance Monitoring:** Will ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.
4. **Financial Monitoring:** Will ensure that contracts are allocated and expended in accordance with the terms of the agreement. Contractor is required to provide all invoicing documents for the satisfaction of Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

B. Reporting



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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. Output Indicators	The Authority will report on the following output indicators monthly” indicators for both the Nurse Family Wellness section, as well as the Medical Exams section DHHA SAFE Center to address three areas:	Monthly	Deputy Executive Director-Prevention & Protection
2. Nominal Lease Annual report	1. The continued public purpose and benefit to the City of your operations on the leased property. 2. Description of your use of the property in 2021. 3. Operational / Program Plans for 2022.	January 31, 2022	DHS Contract Administrator

V. DHS funding information:

- A. **Program Name: Child Welfare Services**
- B. **Funding Source: 13005/5533110**

VI. Budget

Invoices and reports shall be completed and submitted on or before the last day of each month following the month services were rendered 100% of the time. Contractor shall use DHS’ preferred invoice template, if requested. Contractor shall supply Time and Effort Reporting-Monthly Certification for each person.

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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Contractor: Denver Health and Hospital Authority		
Contract Number: Alfresco 2018-44199-05, Jaggaer 2022-62882-05		
Fiscal Term: July 1, 2022 – December 31, 2022		
Program: Child Welfare Services		
Budget Categories	Budget Amount	Narrative
Direct Costs		
Salaries		
Medical Director	\$82,484	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Pediatrician	\$31,641	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Clinic Clerk 1	\$22,014	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Medical Assistant	\$ 26,426	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Passport Assistant	\$26,555	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of



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		leave when an employee separates from their job.
Child Life Specialist	\$13,000	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Nurse 1	\$ 44,594	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Program Manager	\$ 44,326	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Nurse 2	\$27,626	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Nurse 3	\$ 44,594	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
NP/Physician Assistants	\$22,687	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of



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		leave when an employee separates from their job.
Clerk	\$9,448	Salary and wages are reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job.
Total Salaries	\$ 395,395	
Fringe Benefits		
Fringe	\$111,501	Fringe calculation is based on Federally Approved fringe rate of 28.2%
Total Fringe	\$111,501	
Sub-total Salaries & Fringe	\$ 506,896	
Other Direct Costs		
Office Supplies and Medical Equipment	\$3,342	Supplies must be identifiable, trackable and directly related to the program function and may include medical supplies.
Staff Transportation (Local)	\$3,500	Reimbursement of personal vehicle mileage (not to exceed the standard IRS rate at the time of travel), public transportation and ride share services. This includes parking and toll costs associated with program-related travel. Tips are capped at 20% and expenses should follow IRS guidelines regarding travel.
Staff Training (Local or On-Site)	\$3,750	Program-related training materials and registration fees. Transportation costs



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		will be reimbursable for approved off-site training. (please see Staff Transportation Expense Types).
Total Other Direct Costs	\$ 10,592	
Sub-Total Program Costs	\$517,488	
Revenue	\$(57,500)	Medicaid Reimbursement to the Authority
Total Program Costs	\$459,988	
Indirect Costs		
Indirect Cost	\$ 23,000	Calculated at a rate up to 5% of Total Direct Costs.
Fiscal Contract Amount	\$482,988	
DHS and DHHA have agreed that individual salary lines may be overspent as long as there are enough funds remaining in the total of all salaries to cover it.		

Contract Summary of Amounts:

Contract Version	Fiscal Term	Previous Amount	Additional Amount	New Contract Total
Base	1/1/2019-12/31/2019		\$868,693	\$868,693
1st Amendment	1/1/2020-12/31/2020	\$868,693	\$865,032	\$1,733,725
2nd Amendment	1/1/2021-6/30/2021	\$1,733,725	\$479,032	\$2,212,757
3rd Amendment	7/1/2021-12/31/2021	\$2,212,757	\$490,580	\$2,703,337
4th Amendment	1/1/2022-6/30/2022	\$2,703,337	\$ 497,181	\$3,200,518
5th Amendment	7/1/2022-12/31/2022	\$3,200,518	\$482,988	\$3,683,506

VII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS



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



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

2.03.1 Breach excludes:

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

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



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- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.



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- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any 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.



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- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY 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.



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- 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.
- 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;



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- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY



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for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
- 6.03.1 The Disclosure is required by law; or
- 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

- 7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.



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- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
 - 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
 - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
- 8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.
 - 8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.
 - 8.02.2 CONTRACTOR shall retain no copies of the PHI.
 - 8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.
- 8.03 The obligations of this Agreement shall survive the termination of the Agreement.