

**SECOND AMENDATORY AGREEMENT
TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (“TANF”)**

THIS **SECOND AMENDATORY AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **WORK OPTIONS FOR WOMEN**, a nonprofit corporation, with an address of 1200 Federal Blvd., Denver, CO 80204, (the “Contractor”), individually a “Party” and collectively the “Parties.”

The City and Contractor entered into an Agreement dated August 1, 2017, to provide TANF support services, and amended this Agreement on July 19, 2018 (the “Agreement”). The Parties now wish to extend the term of the Agreement for an additional one-year term and make certain other modifications to the Agreement as set forth below.

NOW THEREFORE, the parties agree as follows:

1. All references to “Exhibit A” and “Exhibit A-1” in the existing Agreement shall be amended to read “Exhibit A, A-1, and A-2 as applicable.” The scope of work marked as Exhibit A-2 is attached and incorporated by reference.
2. Section 3 of the Agreement, entitled “**TERM**”, is hereby amended to read as follows:

“3. TERM: The term of the Agreement is from June 1, 2017, to June 30, 2020 (the “Term”). Subject to the Executive 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. Section 4.d.(1) of the Agreement, entitled “**COMPENSATION AND PAYMENT**”, is hereby amended to read as follows:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed the amount of **Six Hundred and Five Thousand Dollars and Zero Cents (\$605,000.00)** (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by Contractor beyond that specifically described in Exhibit A. Any services performed beyond those in Exhibit A are performed at Contractor’s risk and without authorization under the Agreement.”
4. This Second Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

End.
[Signature pages to follow this page.]

Exhibit List:
Exhibit A-2

Contract Control Number:

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:

By _____

By _____

By _____



Contract Control Number: SOCSV-201734824-02

Contractor Name: WORK OPTIONS FOR WOMEN

By: Julie Stone

Name: JULIE STONE
(please print)

Title: EXECUTIVE DIRECTOR
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Denver Human Services (DHS) and Work Options for Women (WOW) to provide intensive case management support to assist TANF participants that may be harder to serve or harder to place in employment, such as those presenting with a disability, substance abuse, mental health, domestic violence, and/or other significant barriers.

Background

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

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

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

II. Services

- A. To support and engage TANF eligible participants to develop strategies that address individual and family needs, DHS will work jointly with WOW to provide case management, assessment, family counseling, and work support programs associated with

the implementation and operation of the TANF Program for the TANF population. Work Options for Women will provide the following:

1. **Pre-enrollment and assessment referral services** – Participants will meet individually with WOW staff to assess level of suitability for the program and identify employment barriers once a referral and comprehensive assessment from DHS has been received.
2. **Core Culinary Skills Training** – Kitchen and safety techniques will be taught using a combination of live instruction from professional chefs, supervised on the job training, small class instruction, and web-based training. Training will include certificates for the ServSafe Food Handlers and Food Allergens and fundamental cooking modules developed by Rouxbe. This training will be completed within 6-9 weeks. Hours for classes will total thirty-five (35) hours per week.
3. **Certifications** - Participants earn the ServSafe Food Handlers Certificate and ServSafe Allergens Certificate (or industry equivalent) within their first two weeks of WOW training. Participants have the option to earn the Prep Cook Certificate that is certified by the American Culinary Federation by completing an additional intensive hands-on training. This hands-on training can last two to three (2-3) weeks in addition to the WOW core training. Participation in the Prep Cook certification program will be determined by student attendance and participation and career goals
4. **Individualized Support Services** – Participants will receive access to a wide range of support services, including: soft skills training, cognitive behavioral education, work ethic fundamental training, and connection to community supports (for example financial health, housing, clothing, ID, job placement) through case management.
5. **Job Search/Employment Services** – WOW staff will assist students in preparing an effective resume and cover letter, interview practice and feedback, and support in searching and applying to jobs, both online and in-person. WOW works with employers to develop job opportunities for WOW students. Students receive job search and employment services until they become employed. WOW provides lifetime re-employment services.
6. **Follow-up support and Referral Services** - WOW will monitor progress and provide additional support for participants. The WOW follow-up process includes contacting students via phone, text, email, and in person each month through their first year after program completion. Participants will be afforded lifelong follow-up services and are encouraged to contact the WOW at any time to seek supportive services, re-employment services, and/ or certification renewal.
7. For the TANF applicant or participant objecting to the religious character of any TANF service provider, that applicant or participant shall be entitled to receive services from an alternative provider to which the individual has no religious objection.
8. This contract allows for any TANF contractor to provide an alternative means for benefits, assistance, or services, if an individual objects to being served by the religious provider chosen as a contractor by the county. Contract agencies can

directly refer TANF clients to an alternative provider with reasonable accessibility to services and has the capacity to provide comparable services to the individual. Such services shall have a value that is not less than the value of the services that the individual would have received from the program participant to which the individual had such objection, as defined by the State or County. Alternately, the contractor shall refer the TANF applicant or recipient back to the County department for appropriate rereferral.

B. Contractor Responsibilities

1. Manage qualified and trained staff to provide culinary training and job readiness services to TANF participants. Many TANF participants present barriers to employment.
2. Provide culinary training and supportive services to TANF participants to find and keep employment.
3. Provide budget oversight of TANF funding to ensure incurred costs follow State and Federal statutes and regulations.
4. Provide administration of TANF program and ensure State and Federal statutes and regulations are implemented and followed.
5. Work closely with DHS on collaboration efforts related to TANF goals, outcomes, policies and procedures.
 - a. Provide regular reporting (financial and other State requested reporting)
 - b. Participate in training and policy development activities.
 - c. Participate in Denver's Welfare Reform Board meetings as needed.
6. WOW will report client participation including hours of engagement, progress and other related information to the designated case manager on at least a monthly basis. This information will be provided to the case manager of record via email no later than the 5th of the following month (the month after service rendered).
7. Protect DHS client data, by complying with the Health Insurance Portability and Accountability Act (HIPAA).
8. Protect data by complying with all provisions of 42 C.F.R. Part 2, relating to substance abuse treatment and records.
9. WOW will establish and distribute a participant service survey to solicit feedback on the program and make changes as appropriate.
10. WOW will ensure that program Chefs and other leadership supports are visible and available during high traffic timeframes for participant support and assistance.

C. Audits. WOW and DHS will work collaboratively to collect and retain all Colorado Works/TANF program information necessary to ensure compliance with the requirements of any applicable State or Federal law and program regulations. This includes all case management records (paper and automated) for TANF participants, which includes, but is not limited to: all assessments, Individual Plans (IPs), workforce

development activities, participation tracking sheets, contracted services, and workforce counseling administered by WOW. WOW and DHS will cooperate with each other in responding to inquiries that either agency may receive from State or Federal authorities regarding any programs that WOW is responsible for administering pursuant to this agreement. DHS will notify WOW twenty-four (24) hours prior to every TANF related audit and WOW will have a representative present at such audit. WOW will participate in all audit coordination as appropriate, including meeting all DHS timeline requirements.

D. Management Site Visits and other Audits

Denver County and/or the State of Colorado may conduct regular on-site reviews of Colorado Works contracts and related services. These on-site reviews are meant to provide service providers with direct feedback on the implementation of their program and include a summary of the findings from the ongoing case file reviews. Denver County and/or State staff will analyze and review contractor policies, plans, procedures, contracts/sub-contracts, and other relevant documents and administrative data that describe and inform program implementation, strengths and opportunities for improvement. The focus of the site visit is primarily one of information sharing, technical assistance, and training with County and/or State staff representing various areas of program operations (finance, budget, policy, program, training and technical assistance). WOW will be provided at least a seventy-two (72) hour notice prior to any management site visit or audit, to ensure responsible staff are present.

For other formal Federal, State, and County audits, WOW will provide accurate and complete case files within the DHS timeline requirements. WOW will be responsible for repayment to DHS of any disallowed costs resulting from a final audit action imposed by CDHS or other regulatory authority pertinent to the work at WOW. WOW will be responsible for following up on auditor findings, providing for refunds and implementing approved final corrective action plans, if any. DHS will monitor WOW's response to audit related matters to ensure ongoing compliance. DHS and WOW will work with State and Federal auditors as requested. WOW will provide a designee as a point of contact for monthly quality meetings and for audits.

- E. Records.** WOW will comply with written State and DHS policies and processes provided to WOW by DHS related to case file maintenance, case retention and storage. WOW will not have access to client case files as they are not the case manager of record for the TANF program. No client case information will be maintained outside of the client's hard back and/or automated case files. WOW will supply DHS and the case manager of record with any and all client documentation received that impacts their participation and engagement in the TANF program. This documentation will be provided to the case manager of record within five (5) days of receipt. DHS will provide WOW with a copy of all currently existing written case file storage policies within 30 days after the execution of this contract. Upon termination of this contract, all relevant case files will be provided to DHS in a DHS approved format.

III. Process and Outcome Measures

A. Process Measures

WOW agrees to meet all state metrics as required for the Colorado Works/TANF program. WOW will be responsible for their proportionate share cases assigned to their organizations. WOW will be responsible for demonstrating their performance and compliance in the following areas:

- a. Initial Engagement (WOW will contact one hundred percent (100%) of referrals a minimum of three (3) times and provide contact attempts and results to the case manager of record within thirty (30) days of referral. WOW will provide Individual Plan associated activities that support the assessment within thirty (30) days of application to WOW.
- b. Hours of participation sent to the case manager of record by the 5th of every month for the previous month's activities.

Report shall include information on:

1. Number of Denver TANF clients referred to the WOW program in Program Year 2019.
2. Number of Denver TANF clients enrolled in Program Year 2019 to date.
3. Number of Denver TANF clients obtaining employment thirty (30) or more hours per week.
4. The average starting wage for employment.
5. Number of Denver TANF clients retaining employment at thirty (30) days.
6. Number of Denver TANF clients retaining employment at ninety (90) days.

All reports will be submitted to the TANF Program Administrator.

B. Outcome Measures

1. WOW has capacity to enroll up to one hundred and fifty (150) individuals into the Culinary Skills Training Programs. TANF participants will be prioritized over alternate program referrals.
2. Fifty-five percent (55%) of students will earn their ServSafe Food Handlers Certificate (or industry equivalent)
3. Forty-five percent (45%) of students will earn their ServSafe Allergen Certificate (or industry equivalent).
4. Forty-five percent (45%) of students will complete culinary training.
5. Forty percent (40%) of students will obtain employment.
6. Average entry-level wage for the Core Culinary job skills training completers will be \$12.75 per hour.
7. Seventy-six percent (76%) will remain employed for six (6) months.
8. Sixty-two percent (62%) will remain employed for twelve (12) months.

9. A WOW representative will attend at least seventy-five percent (75%) of Denver TANF Contractor/ Case Manager meetings.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area, Contracting Services, and Financial Services. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Contracting Services will provide performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, 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

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

Report # and Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	Total number of clients served and other agreed upon information.	Due Monthly, on the or before the 15 th of each month.	TANF Program Administrator

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2. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Contract End, within forty-five (45) days after Term End.	TANF Program Administrator
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V. DHS funding information:

- A. Program Name: COLORADO WORKS-Temporary Assistance to Needy Families
- B. Funding Source: TANF Allocation

VI. Budget

Invoices and reports shall be completed and submitted 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.

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

- A. Contractor shall provide the identified services for the City under the support of the Denver Human Services using best practices and other methods for fostering a sense of collaboration and communication.

B. Budget

Contractor Name: Work Options for Women		
Contract Term: July 1, 2019 to June 30, 2020		
Contract Number: SOCSV-201734824-02		
Budget Categories	Budgeted Amount	Narrative
DIRECT COSTS		
Salaries		
Executive Director	\$21,000	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Executive Director (ED) provides overall management of the training program. ED time is allocated to the TANF contract for administration of the program, working directly with students and staff, and preparing, reviewing, reporting and corresponding with TANF personnel and managing submitted invoices to DHS.
Director of Food Services and Culinary Programs	\$21,000	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Director of Food Services and Culinary Programs is responsible for all culinary training, curriculum, restaurant operations and culinary staff management. This position directs all aspects of our training program including classroom, guest instructors, and hands-on kitchen training.
Executive Chef Instructor	\$27,500	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Provides individualized, practical student training in every aspect of the WOW Core Culinary Jobs Training including: cold food preparation, baking and hot food production skills, sanitation and safety, and customer service skills. Maintains overall accountability for the food service operation at DHS including supervision of all WOW staff, students, and volunteers in the kitchen.

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Sous Chef Instructor	\$21,500	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Provides individualized, practical student training in every aspect of the WOW Core Culinary Jobs Training including: cold food preparation, baking and hot food production skills, sanitation and safety, and customer service skills. Maintains overall accountability for the food service operation at DHS including supervision of all WOW staff, students, and volunteers in the kitchen.
Senior Chef Instructor Part-Time	\$10,000	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. Provides student training specifically working with certifications in conjunction with the American Culinary Association for Sous Chef Apprentice program and The Prep Cook certification including: cold food preparation, baking and hot food production skills, sanitation and safety, and customer service skills.
Customer Service Supervisor	\$19,156	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Customer Service Supervisor teaches and supports the students each day as they learn to engage with customers. The Customer Service Supervisor assists with station set up and directs station service and sanitation.

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Line Supervisor	\$17,145	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Line Supervisor teaches and supports the students each day as they learn to engage with customers. The Line Supervisor assists with station set up and directs station service and sanitation.
Program Coordinator	\$22,699	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Program Coordinator provides individualized student support in the WOW Career Center teaching job readiness. The Program Coordinator also tracks student date, facilitates classes, and coordinates student training.
Employment Specialist	\$25,000	Salary and wages will be reimbursed at cost. Denver Human Services (DHS) will not pay for bonuses, severances, or payouts of leave when an employee separates from their job. The Employment Specialist develops an individualized employment plan with each student addressing barriers that allows them to successfully complete the program and be successful at work. The Employment Specialist interacts daily with each student to help them with their case plans, to provide on-going support and positive reinforcement. The Employment Specialist also teaches classes and maintains case files.
SUM OF DIRECT COSTS:	\$185,000	
TOTAL COSTS):	\$185,000	

Contract Summary of Amounts:

Contract Version	Term	Previous Amount	Additional Amount	New Contract Total
Base	6/1/2017 to 6/30/2018	N/A	N/A	\$210,000
1st Amendment	7/1/2018 to 6/30/2019	\$210,000	\$210,000	\$420,000

2nd Amendment	7/1/2019 to 6/30/2020	\$420,000	\$185,000	\$605,000
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C. Other

1. WOW Contact Information:

Julie Stone
 1200 Federal Blvd
 Denver, CO 80204
 julie@workoptions.org

2. Vendor #: 2551

3. Time frame: July 1, 2019 to June 30, 2020

4. Revenue Source: TANF

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.
- 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.
 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:

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- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
 - b. The unauthorized person who used the PHI or to whom the disclosure was made;
 - c. Whether the PHI was actually acquired or viewed; and
 - d. The extent to which the risk to the PHI has been mitigated.
- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

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

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

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- 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.
- 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.
- 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:

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- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to

- meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

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

7. OBLIGATIONS OF CITY.

- 7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

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

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

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.