

## SECOND AMENDATORY AGREEMENT

**THIS SECOND AMENDATORY AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”) and **WARREN VILLAGE, INC.**, a non-profit corporation whose address is 1323 Gilpin St., Denver, CO 80218 (“Contractor”), collectively “parties”.

The parties entered into an Agreement dated February 25, 2015 and an Amendatory Agreement December 17, 2015 (“Agreement”) to provide housing and supportive services to the homeless; and

The Parties wish to amend the Agreement to revise the scope of work, extend the term, and increase the maximum contract amount.

In consideration of the premises and the mutual covenants and obligations set forth, the Parties agree as follows:

1. All references to “...Exhibit A and A-1...” in the existing Agreement shall be amended to read: “...Exhibits A, A-1 and A-2 as applicable...” The scope of work marked as Exhibit A-2 is attached and incorporated by reference. Exhibit A-2 controls the services provided from January 1, 2017 forward.

2. Article 3 of the Agreement entitled “**TERM**” is amended to read as follows:

“**3. TERM**: The term of this Agreement shall commence on **January 1, 2015**, and expire, unless sooner terminated, on **December 31, 2017**. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Executive Director.”

3. Article 4(d)(1) of the Agreement, entitled “**Maximum Contract Amount**”, is amended to read as follows:

“**4. COMPENSATION AND PAYMENT**:

(d) **Maximum Contract Amount**:

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **Five Hundred Thirty Two Thousand Five Hundred Dollars and 00/100 Cents (\$532,500.00)** (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-2**. Any

services performed beyond those in **Exhibit A-2** are performed at Contractor's risk and without authorization under the Agreement.”

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

**EXHIBIT LIST**  
**EXHIBIT A-2 SCOPE OF WORK**

**[SIGNATURE PAGES FOLLOW]**

**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 \_\_\_\_\_

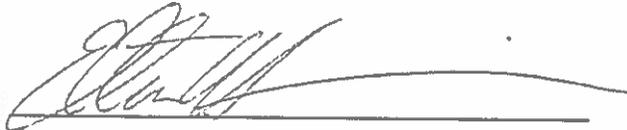
By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: SOCSV-201419878-02

Contractor Name: WARREN VILLAGE INC.

By: 

Name: ETHAN FLEMING  
(please print)

Title: CEO / PRESIDENT  
(please print)

ATTEST: [if required]

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)





**Warren Village  
Scope of Work and Budget  
SOCSV2014-19878 (2)**

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Services between Denver Department of Human Services (DDHS) and Warren Village Inc. (WVI). DDHS, in partnerships with Denver's Road Home, offers housing and supportive services to homeless persons in the City and County of Denver. DDHS is working with qualified housing providers to offer housing units to homeless families with incomes between 0 to 30% Area Median Incomes (AMI).

This contract will assist Warren Village to continue its First Step Program, a project funded by Denver's Road Home since 2007, providing 13 units of transitional housing and intensive support services for six, homeless single women and seven, homeless women with children.

**II. Services**

**In addition to any other services set forth in the Agreement and its exhibits, the Contractor shall:**

- Continue to maintain the collection, security, maintenance and reporting to the City's required documentation. All data will be entered in a timely manner on a weekly basis, and the information will be entered into the HMIS. The Contractor will continue to fully cooperate with the City's point-in-time survey efforts.
- In order to promote client participation in the development of programs and services for the homeless, maintain an advisory board that shall include at least one (1) homeless person receiving services under this Agreement.
- Abide by Fair Housing Laws.
- Maintain all tenant records in an organized and confidential manner and provide reasonable access to DHS as requested.
- Coordinate through the DHS Public Information Office via the DDHS Project Manager any media interview requests regarding the specific program and/or topics directly related to this program or its tenants.
- Provide the identified supportive services for the City under the support of the Denver Department of Human Services using best practices and other methods to effectively manage the funds and programs by fostering a sense of collaboration and communication.

Supportive services will include the following:

- Case Management;
- Assistance with income enhancement, i.e. public benefits and job acquisition;



- Emergency financial assistance;
  - Assistance with household setup, furniture and supplies;
  - Emergency assistance, i.e. food medical and transportation needs;
  - Assistance and referral with family issues i.e. children’s schooling and parenting support, substance abuse, domestic violence.
- Assess families within six weeks of program enrollment. Assess families’ progress toward stabilization at least once per quarter.
  - Assist DHS in maintaining 100% occupancy in designated units.

**III. Process and Outcome Measures**

- Please refer to the Outcome Evaluation Plan located in section VI for all measures and outcomes related to this contract.
- Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month 100% of the time. Contractor shall use the DDHS’ preferred invoice template, if requested.

**IV. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area and Contracting 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 & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular 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 that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and City and County regulations, and the DHS annual plan & policies are being met.

**B. Reporting**

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

<b>Report # and Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Report to be sent to:</b>
1. Quarterly Report	This report will include the demographics and status of families enrolled in the project, rental history, number of families on the waiting list, the number of referrals from (DHS), and	Quarterly	Denver’s Road Home Program Manager &  Contract Administrator



	the reasons for acceptance and rejection of referrals.		
2. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	TBD

**V. Budget**

- A. Contractor shall provide the identified services for the City under the support of the Denver Department of Human Services using best practices and other methods for fostering a sense of collaboration and communication.
- B. Budget line items that exceed 10% of the approved budget by the City must be submitted in writing to DHS Contracting Services detailing the requested change and must demonstrate the need. Budget modifications must be approved by the Executive Director or his/her designee in writing prior to Contractor expending any funds.

Contractor Name: <b>Warren Village</b>		
Contract Term: <b>1/1/2017 - 12/31/2017</b>		
Program Name: <b>Homeless Housing Services</b>		
Contract Number: <b>SOCSV-2014-19878 (2)</b>		
	<b>BUDGET</b>	<b>Budget Narrative Justification</b>
<b>ADMNISTRATION</b>		
<b>Staffing</b>		
Administrative – Fees	\$6,827.00	Payroll administration, accounts payable, financial reporting, corporate management, DDHS invoice preparation. Based on a portion of staffing salaries.
<b>Total Costs(Admin)</b>	<b>\$ 6,827.00</b>	
<b>Direct Costs</b>		
Office Expense – Supplies	\$800	Office supplies (paper, toner, pens, pencils, similar expenses)
Office Expense – Phone Charges	\$2,000.00	2 fire alarm monitoring lines, 1 office line including 1 fax line, internet
Professional Service Expenses	\$2,000.00	Computer Technical Support, legal consultation for matters related to lease violation and evictions, after-hours phone answering service and other similar expenses.
<b>Sub-Total (Other Costs)</b>	<b>\$ 4,800.00</b>	
<b>Facilities</b>		
Facilities	\$26,408.00	Rent for First Step Facility
Facilities – Utilities	\$12,000.00	Electric, Gas, Water, Trash Pick-Up, Fire Alarm Monitoring and similar expenses.
Facilities – Maintenance	\$6,000.00	Operations and maintenance expenses, including minor repairs, supplies for repairs and general upkeep of property, landscaping, cleaning supplies, snow



		removal, pest control, and other similar expenses
Insurance	\$720.00	Liability and Property Insurance
<b>Sub-Total (Facilities)</b>	<b>\$45,128.00</b>	
<b><u>Staffing</u></b>		
Salary – Program Manager	\$44,252.00	Working up to a portion of their time, salary to be reimbursed at cost
Salary – Family Advocate	\$37,700.00	Working up to a portion of their time, salary to be reimbursed at cost
Salary – Specialist	\$4,000.00	On-Call Hourly Staff
Salary – Taxes	\$6,575.00	FICA and SUI
Salary – Fringe	\$13,840.00	Employer paid benefits excluding life insurance
<b>Sub-Total (Staffing)</b>	<b>\$106,367.00</b>	
<b><u>Client Services</u></b>		
Client Exp – Client Support Services	\$5,119.00	Fuel gift cards, background checks, cleaning items, laundry assistance, medication assistance, diapers, wipes, hygiene items, ID (driver’s license, birth/death certificates), moving expense, storage unit expense, supplies for activities (crafts, plates, utensils, cups, napkins etc.), entertainment items (movies, games, music), other items not identified elsewhere.
RTD bus passes/tickets	\$600.00	Average of (15) 10-pass booklets & 6 monthly bus passes as needed
Client Exp – Food	\$3,135.00	Groceries and supplies to provide up to 32 residents with a meal up to 4 times/month
Client Exp – Education, Employment and Training Support	\$100.00	Costs associated with education, training and employment preparation support (books, licensing and/or testing fees, materials, vocational equipment and tools, uniforms, union dues. Excludes tuition costs and client clothing.)
Client Exp – Gift Cards	\$700.00	Limited assistance to residents (e.g. Safeway, King Soopers, Target, Wal-mart, etc.)
Client Exp – Incentives	\$200.00	Incentives given to residents and resident children for positive results within program (e.g. rewards for good services, prizes for exceptional program participation)
Client Exp – Substance Abuse Treatment	\$1,200.00	Weekly and monthly (based upon reasonable suspicion) urinalysis for up to 13 adult residents
Client Exp – Childcare Services	\$500.00	Childcare costs for clients (includes on or off site)
Client Exp – Telephones	\$2,224.00	Resident telephone line and internet expenses
Mileage Expense	\$600.00	Mileage reimbursement for staff



		transporting clients, food and supply pick-up, meetings at Warren Village Main Office, and other mileage, reimbursable up the current Federally approved IRS standard mileage rate at the time that the expense occurs.
<b>Sub-Total (Client Services)</b>	<b>\$14,378.00</b>	
<b>TOTAL DIRECT COSTS</b>	<b>\$170,673.00</b>	
<b>TOTAL ADMINISTRATIVE COSTS</b>	<b>\$6,827.00</b>	
<b>TOTAL BUDGET</b>	<b>\$177,500.00</b>	

**VI. Outcome Evaluation Plan**

**Program: Warren Village First Step**

<b>Goals</b>	<b>Objectives</b>	<b>Measurement</b>	<b>Time Frame for Data Collection</b>	<b>Outcomes</b>
#1. To provide housing for the three targeted populations of chronic or episodic homeless single women and homeless families.	#1 Provide transitional housing for 28 very low-income households (. a combination of single women and single women with children to start 2017, with a transition to all women with children by the end of 2017)	Data sources include HMIS database, Warren Village eLogic database, monthly occupancy and vacancy rate reports.	End of each month. Reports generated on a monthly and quarterly basis.	Warren Village First Step will house 28resident households in 2017.
	#2 Ensure efficient use of First Step property with a 95% occupancy rate, monthly in 2017.	Data sources include HMIS database, Warren Village eLogic database, monthly occupancy and vacancy rate reports.	End of each month. Reports generated on a monthly and quarterly basis.	Warren Village First Step will maintain a 95% occupancy rate, monthly.
	#3 70% of exiting residents will move to permanent housing or long-term transitional housing programs in 2017. Long-term transitional housing will be defined as opportunities of one year duration or longer.	Data sources include residence at time of exit, data on client exit interview forms, HMIS exit paperwork, HMIS database and Warren Village eLogic database.	End of each month. Reports generated on a monthly and quarterly basis.	70% of exiting Warren Village First Step households will move to permanent housing or transitional housing programs.
#2. To provide intensive support services	#1 75% of exiting residents will show measurable gains in	Data sources include monthly status reports completed by residents,	Data gathered at program entry, through monthly	75% of exiting clients will have increased



to the residents of Warren Village First Step.	income with either increased wages or mainstream benefits in 2017. The goal to increase income will be established at program intake.	information gained through case management meetings and case notes, client self-evaluation on self-sufficiency indicators included in eLogic database, HMIS database and the Warren Village Self-Sufficiency Matrix.	contact with case manager and at program exit. Reports generated on a monthly and quarterly basis.	income.
	#2 75% of 15 exiting residents will show measurable gain with an activity of part-time (or greater) work or school or combination of both in 2017. The goal to establish or to increase activity will be established at program intake.	Data sources include monthly status reports completed by residents, information gained through case management meetings and case notes, HMIS database, client self-evaluation on self-sufficiency indicators included in Warren Village eLogic database, and the agency Self-Sufficiency Matrix.	Data gathered at program entry, through monthly contact with case manager and at program exit. Reports generated on a monthly and quarterly basis.	75% of exiting clients will have a part-time (or greater) activity of work, school or a combination of both.
	#3 75% of 15 exiting residents will show measurable growth in at least three measured categories of the Warren Village eLogic indicators or Self-Sufficiency Matrix in 2017. Client's personal goals will be established through case management services.	Data sources include information gained through client self-evaluation on self-sufficiency indicators included in Warren Village eLogic database, and the agency Self-Sufficiency Matrix.	Data gathered at program entry, through monthly contact with case manager and at program exit. Reports generated on a monthly and quarterly basis.	75% of exiting clients will show measurable growth in at least three measured categories of the Warren Village eLogic indicators or agency Self-Sufficiency Matrix.



## VII. Other Requirements

### **Homeless Management Information System (HMIS)**

The Contractor agrees to fully comply with the Rules and Regulations required by the US Dept. of Housing and Urban Development (HUD) which govern the Homeless Management Information System (HMIS). HUD requires recipients and subrecipients of McKinney-Vento Act Funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements. These programs include: SHP, S+C, Section 8 Mod Rehab, ESG, and HOPWA. This is a requirement for recipients of City homeless funding through Denver's Road Home.

The Contractor, in addition to the HUD requirements, shall conform to the HMIS policies established and adapted by the Metro Denver Homeless Initiative (MDHI) and the Balance of the State CoC.

Technical assistance and training resources for HMIS are available to the Contractor via the Colorado HMIS Helpdesk based on requests by the Contractor and by periodic assessments of participation, compliance and accuracy of data collection.

### **Security**

The importance of the integrity and security of HMIS cannot be overstated. **All** workstations, desktops, laptops, and servers connected to the Contractor's network or computers accessing the HMIS through a Virtual Private Network (VPN) must comply with the baseline security requirements. The Contractor's HMIS computers and networks must meet the following standards:

- Secure location
- Workstation username and password
- Virus protection with auto update
- Locking password protected screen saver
- Individual or network firewall
- PKI-certificate installed or static IP address

### **HUD Continuum of Care Data Standards**

Revised HMIS Data Standards will go into effect October 1, 2014 and Contractor is required to collect data based on these new standards. For the MDHI Continuum of Care/Balance of the State Continuum of Care, the **City of Denver** and its Contractor's will collect Universal and CoC Program Specific Elements. The Contractor is required to attend the HMIS training on the data collection requirements for these revised standards.

### **MDHI HMIS User Group Meetings**

The Contractor should attend at least three HMIS user group meetings during the contract year. User Group offers valuable and informative information on HMIS and is a forum to ask questions and address issues related to HMIS. Typically, MDHI's HMIS User Group meets at Mile High United Way on Thursdays and the Balance of the State user group meets via webinar every other month. The Colorado HMIS team sends out meeting reminders. Information may be found on the Metro Denver Homeless Initiative web page - <http://mdhi.org> and the meeting schedule may be found their page at - <http://mdhi.org/calendar/>.

### **Data Quality Standards**



- The Contractor must maintain an overall program Data Quality completeness score of 95% or higher.
- The Contractor must enter HMIS data (program enrollments and services) into the system within five business days of the actual enrollment or service provided date.
- Colorado Coalition for the Homeless (CCH) reserves the right to request Data Quality reports from Colorado HMIS for Subrecipient's programs on a monthly basis.
- CCH reserves the right to participate in on-site HMIS audits.
- CCH reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Subrecipient's programs in HMIS.
- CCH reserves the right to request detailed APRs (displaying client-level data) and summary APRs (displaying aggregate-level data) from Colorado HMIS at any time during the project's operating year. APRs are used to review and monitor the Contractor's program data quality and progress toward achieving annual project goals and outcomes per HUD and MDHI requirements. The Contractor's APR data will be consolidated with other Subrecipients and CCH data to fulfill HUD annual reporting requirements.
- CCH reserves the right to access the Contractor's HMIS Web portal to review real-time client data to ensure the Contractor adheres to the data quality standards required by the Metro Denver Homeless Initiative Continuum of Care.

### **Staff Changes**

If the Contractor has changes in staff that may affect the program outcomes or the processing of invoices, the changes must be reported to DHS within 30 days of the change.

## **VIII. GIFT CARDS**

Contractor shall provide the required documentation for the reimbursement of gift cards to include:

- Proof of purchase, payment, and issuance;
- Care Giver information & Copy of ID/Case ID # (DHS will not reimburse if there is no copy of the ID/Case ID#);
- Client Signature (showing receipt of gift card);
- Copy of the gift card front and back;
- Detailed description of what provider intends to purchase with gift card. (DHS will not reimburse for taxes);
- Proof of payment and invoice for every gift card given out (attach a copy and proof of bulk purchase);
- Gift Card log attached for each card given out. Gift Cards to be shown in sequential order.

## **IX. Business Associate Terms – HIPAA/HITECH**

### ➤ **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.

### ➤ **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 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:

- 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.

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:

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.