

**A RESOLUTION
OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING A COOPERATIVE AGREEMENT WITH ARAPAHOE COUNTY
DEPARTMENT OF HUMAN SERVICES CHILD PROTECTION SERVICES**

WHEREAS, C.R.S. Section 29-1-203 authorizes governments to cooperate or contract with one another to provide any function, service or facility; and

WHEREAS, Section 13.6 of the Cherry Hills Village Home Rule Charter authorizes the City Council, by resolution or by ordinance, to enter into contracts or agreements with other governmental units or special districts for the use of buildings, equipment or facilities, and for furnishing or receiving commodities or services; and

WHEREAS, C.R.S. Section 19-3-308(5.5) encourages cooperation between local law enforcement and local departments of human services; and

WHEREAS, the attached Cooperative Agreement between the City of Cherry Hills Village ("City") and the Arapahoe County Department of Human Services Child Protection Services ("CPS") ("Cooperative Agreement") establishes consistent terminology and processes by which the City's Police Department and CPS will implement coordinated efforts to deal with children and families involved in child abuse and neglect, to be effective from July 1, 2023 through June 30, 2027; and

WHEREAS, the City Council desires to approve and enter into the Cooperative Agreement according to the terms and conditions set forth therein.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO THAT:

Section 1. The City Council accepts and approves the Cooperative Agreement as set forth in Attachment A, attached hereto and incorporated herein by reference, and authorizes the Chief of Police to execute the same on behalf of the City.


Section 2. This Resolution is effective July 1, 2023, *nunc pro tunc*.

Introduced, passed and adopted at the
regular meeting of City Council this 5th day
of September, 2023, by a vote of 5 yes 0 no.

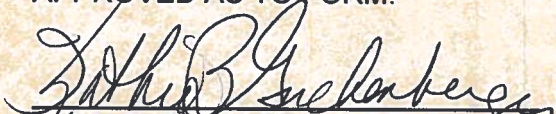
(SEAL)


Kathleen Brown, Mayor

ATTEST:


Laura Gillespie, City Clerk

APPROVED AS TO FORM:


Kathie B. Guckenberger, City Attorney

**ATTACHMENT A TO
RESOLUTION 32, SERIES 2023**

MEMORANDUM OF UNDERSTANDING
2023 - 2027

COOPERATIVE AGREEMENT

BETWEEN

**ARAPAHOE COUNTY DEPARTMENT OF HUMAN SERVICES
CHILD PROTECTION SERVICES**

AND

CHERRY HILLS VILLAGE POLICE DEPARTMENT

This agreement is entered into, by and between the Arapahoe County Department of Human Services, hereinafter "Arapahoe County Human Services", and the Cherry Hills Police Department, referred to as "Law Enforcement".

WITNESSETH

WHEREAS, Colorado law C.R.S. §19-3-308(5.5) encourages cooperation between local departments of Human Services and local Law Enforcement; and

WHEREAS, from time to time, Arapahoe County Human Services and Law Enforcement have the responsibility to investigate allegations of child abuse and neglect; and

WHEREAS, the parties hereto desire to memorialize their cooperative arrangement; and

WHEREAS, by custom, Arapahoe County Human Services has taken the prime responsibility to investigate child abuse and neglect cases, and the parties affirmatively state that this Agreement is not intended to change this custom; and

WHEREAS, while each of the undersigned professionals and agencies have specific responsibilities in the treatment, protection, and investigation of children, it is acknowledged that the multidisciplinary team approach on matters of child abuse and neglect is a more positive approach to the ultimate resolution of the problems related to these most difficult situations; and

WHEREAS, the purpose of this agreement is to enhance the ability of agencies, organizations, and individuals to implement coordinated efforts in dealing with children and families involved in child abuse and neglect,

NOW THEREFORE, the parties agree as follows:

I. PROTOCOL FOR COOPERATION

The following protocol shall apply for cooperation between Arapahoe County Human Services and local Law Enforcement.

- A. Child abuse reporting laws C.R.S §19-3-304 and §19-3-307 allow reports to both Law Enforcement and Arapahoe County Human Services. This makes cooperation essential to assure prompt action, protection for the child and the responses required by law. The decision regarding who investigates a suspected child abuse/neglect case shall be made jointly by the referring agency and the receiving agency. Joint investigation may also be requested by the receiving agency if there *is* a determination of that need.
- B. Arapahoe County Human Services has an assigned worker on call twenty-four hours per day, seven days per week. Any referrals should be made through the Colorado Child Abuse and Neglect Hot Line during regular working hours. Outside of business hours, the swing shift and on call staff will take referrals. All referrals from Arapahoe County Human Services will be made to the officer on duty.
- C. Cases of minor and medium physical abuse/neglect will not require immediate referral to local Law Enforcement by the staff of Arapahoe County Human Services. All cases of a more severe nature require immediate contact with local Law Enforcement depending on jurisdiction.
- D. Third-party abuse or neglect cases investigated by Law Enforcement as provided in Section 19-3-308(5.3)(a) shall not require immediate notification to Arapahoe County Human Services. In such cases, Law Enforcement shall submit a copy of its investigative report to Arapahoe County Human Services in order that Arapahoe County Human Services may submit a report to the states automated system if the case is substantiated, and may order to have the local Child Protection Team review the case.
- E. All reports of confirmed child abuse/neglect shall be forwarded by the County Department to the District Attorney's office and the local Law Enforcement agency.
- F. In Joint investigations, as a general rule, Arapahoe County Human Services will take the lead in interviewing the victim; and Law Enforcement will take the lead in interviewing the alleged perpetrator. Joint interviews shall be preceded by a planning session to outline the conduct of the interview prior to the investigation. However, some investigations will proceed according to a standard plan of action, while others will require a unique approach. Upon completion of the joint investigation:
 - 1. Law Enforcement continues criminal investigation without the involvement of Arapahoe County Human Services. This shall include the submission of the information to the District Attorney for

disposition.

2. Arapahoe County Human Services shall be responsible for determining what measures are necessary for the protection of the children, which may include, but not necessarily be limited to, the removal of the child(ren) from the home, the filing of a Petition for Dependency and Neglect, and appropriate notification to the Court if removal has occurred.
3. Appropriate sharing of reports must occur. Law Enforcement shall provide Arapahoe County Human Services with copies of incident reports when requested.

II. LANGUAGE AND CRITERIA FOR IDENTIFICATION OF SUSPECTED ABUSE

This section is intended to ensure that all parties are using the same language and criteria for identification of suspected abuse and neglect cases.

ABUSE

- Minor - Excessive or inappropriate force used resulting in a superficial injury.
- Medium - Excessive or inappropriate force used resulting in an injury which may require medical attention.
- Severe - Excessive or inappropriate force used resulting in a serious injury which requires medical attention and/or hospitalization.
- Near fatal - Involves an incident in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse and/or neglect.
- Fatal - Physical or emotional needs of child are not met, resulting in death.

NEGLECT

- Minor - Physical or emotional needs of child are marginally or inconsistently met, but little or no impact on the child's functioning.
- Medium - Physical or emotional needs of child are inadequately met resulting in some impairment in the child's functioning.
- Severe - Physical or emotional needs of child are not met resulting in serious injury or illness.
- Near fatal - Physical or emotional needs of the child are not met in an incident in which a physician determines that a child is in serious, critical, or life-threatening condition as the result of sickness or injury caused by suspected abuse and/or neglect.
- Fatal - Physical or emotional needs of child are not met, resulting in death.

SEXUAL ABUSE

- Severity of sexual abuse should be determined based upon the type of contact, duration of contact, and the emotional impact upon the child.

III. RESPONSIBILITY FOR INVESTIGATION

A. The following are applicable cases, or types of cases, where it is expected that the sole investigation will be conducted by Arapahoe County Human Services (Law Enforcement may be called at any time there may be a safety risk to any worker):

1. Minor physical abuse
2. Substance exposed newborn
3. Organic Failure to Thrive
4. Medical neglect (including failure to provide medically indicated treatment to disabled infants with life threatening conditions and drug affected babies).
5. Sexual abuse when perpetrator is under age 10. Exception, if there is indication that the under age 10 perpetrator is the victim of someone over 10.
6. Educational neglect. In truancy cases, after charges have been filed by the school district.
7. Emotional abuse.
8. Medium neglect, lack of supervision.
9. Physical or sexual abuse in a daycare home or center, foster home, group home or institution. (Another county department may need to investigate to avoid a conflict of interest).

B. The following are examples of cases where it is expected that the sole investigation will be conducted by Law Enforcement (Arapahoe County Human Services may be called when determined by both parties to be in the best interest of the safety of the child).

1. Third-party physical abuse.
2. Third party sexual abuse, when the alleged perpetrator is over 10 and it can be determined that the perpetrator is not an abused child.
3. Report of immediate danger to a child when proximity and speed of Law Enforcement response is needed, when Child Protective Services are not available, and risk to the child indicates immediate evaluation is needed (e.g., welfare check).

C. The following cases shall be jointly investigated by Arapahoe County Human Services and Law Enforcement when abuse or neglect is suspected:

1. Death of a child.
2. Medium to severe physical abuse or risk of this. Joint investigation by Arapahoe County Human Services and Law Enforcement is recommended to evaluate the need for immediate medical evaluation, protective custody of the child and appropriate civil and criminal action.
3. All head trauma injuries (i.e., subdural hematoma).
4. All injuries involving ruptured organs, unjustifiably explained abdominal injuries or any injury consistent with abuse. (The history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence).

5. All fractures which are unjustifiably explained, or multiple fractures or in various stages of healing. (The history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence).
6. All second or third degree burn, including cigarette burns or other burns consistent with abuse (such as immersion burns).
7. All lacerations to the face, external genitalia or extremities which are unjustifiably explained. (The history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence).
8. All lesions on different parts of the body.
9. Intra familial and third-party sexual abuse.
10. Injurious Environment. (May require Code Enforcement).
11. Sexual abuse when the alleged perpetrator may be a child victim, or the perpetrator may have his/her own children under the age of 18, or any other child may be at risk.
12. When a suspected perpetrator who is a parent, custodian, guardian or a child may flee.
13. When a parent, custodian, or guardian of a child refuses access to the child(ren) by Arapahoe County Human Services or Law Enforcement, or refuses medical examination of the child(ren). It is recognized that it may be necessary for Arapahoe County Human Services to obtain a Court Order for access to said child(ren).
14. Conditions suggesting suspicion that a law has been broken.
15. Any case in which a child is subjected to human trafficking of a minor for sexual servitude.

IV. GENERAL PROVISIONS OF COOPERATIVE AGREEMENT

- A. The intent of this Agreement is to clarify and enhance cooperation between agencies to protect children. It is recognized there may be differing opinions regarding some case decisions. In those cases, referral to supervisory levels would be appropriate. Child Protection Teams also may be used for consultation, feedback, and direction regarding cases which have become problematic between agencies. The District Attorney may provide guidance as well. In extreme circumstances, the Court may be requested to intervene to resolve issues related to the legal responsibility of each agency.
- B. Because agencies and communities are changing entities, annual review for modification or evaluation is accepted as a part of this cooperative agreement. The parties shall set a mutually convenient annual meeting to review and discuss issues directly related to the fulfillment of this Agreement.
- C. This Agreement shall be effective from **July 1, 2023** and shall expire on **June 30, 2027**. The Parties will renew this Agreement every four years. This Agreement may be modified or amended only by a duly authorized written instrument executed by

the parties hereto. Human Services will modify or amend the Agreement as needed to ensure compliance with revisions made to Section 7.601.2A during the current contract term. Human Services will provide the Colorado Department of Human Services with a copy of the signed cooperative agreement with Law Enforcement Agencies within thirty (30) days of signature.

V. USE OF CONFIDENTIAL INFORMATION

- A. The Law Enforcement Agency acknowledges and agrees that the Law Enforcement Agency shall not at any time, during or after the term of this Agreement with the County, purposely access, use, reveal or disclose Patient Health Information ("PHI") to any persons outside of the Law Enforcement Agency, or the Law Enforcement Agency's employees, except as may be required in the course of providing the services under the terms of this Agreement, or as required by federal, state or local law.
- B. The Law Enforcement Agency shall take reasonable steps to insure that the employees of the Law Enforcement Agency comply with the provisions of this Section II, and the various Federal and State laws regulating the disclosure of PHI.
- C. This PHI is subject to protection under state and federal law, including the Health Insurance and Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"). The Law Enforcement Agency specifically agrees to safeguard and protect the confidentiality of PHI consistent with applicable law, including currently effective provisions of HIPAA and the Regulations. The attached HIPAA Business Associate Addendum and Attachment A are both incorporated herein and made a part of this agreement.

VI. MISCELLANEOUS

- A. Responsibility for Liability: Each party agrees to be responsible for all liability, losses, damages, claims, or causes of action, and related expenses, (including determinations related to utilization review), which result from its acts or omissions, and those of its directors, employees or agents or representatives arising from their duties and obligations under this contract.
- B. Governmental Immunity. All activities performed under this Agreement are hereby declared to be governmental functions. The parties to this Agreement, and their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be deemed to be operating within the scope of their duties and responsibilities and in furtherance of said governmental functions.
- C. No Waiver Under CGIA. Nothing in this Agreement shall be construed as a waiver by either party of the protections afforded them pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S. ("CGIA") as same may be amended from time to time. Specifically, neither party waives the monetary limitations or any other rights, immunities or protections afforded by the CGIA or otherwise available at law. If any waiver by the Law Enforcement Agency results in a waiver of protections afforded to

the County, the Law Enforcement Agency, to the extent allowed by law, shall indemnify and hold harmless the County for such actions. If any waiver by the County results in a waiver of the protections afforded to the Law Enforcement Agency, the County shall, to the extent allowed by law, indemnify and hold harmless the Law Enforcement Agency for such actions.

- D. Background Checks. The Law Enforcement Agency ☒ shall ☐ shall not conduct, or cause to be conducted, criminal background checks of at least a seven year period on all of its employees, agents or subcontractors who may, while performing work under this Agreement, come into contact with persons receiving services by or from the County. If the Law Enforcement Agency is required to conduct, or cause to be conducted, background checks pursuant to this paragraph, any of the Law Enforcement Agency's employees, agents or subcontractors with a record indicating felony violations, questionable character or possible security risk shall not be placed in any work activity under this Agreement that may result in contact with persons receiving services by or from the County.
- E. Severability. In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein.
- F. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
- G. Survival. The rights and obligations of the parties shall survive the term of this Agreement to the extent that any performance is required under this Agreement after the expiration or termination of this Agreement.
- H. Notices. Any notice to be given hereunder by any party to another party may be effected in writing by personal delivery, or by mail, certified with postage prepaid, or by overnight delivery service. Notices sent by mail or by an overnight delivery service shall be addressed to the parties at the addresses appearing following their signatures below, but either party may change its address by written notice in accordance with this paragraph.
- I. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without regard to the conflict of laws of such State.
- J. Good Faith. The parties agree to work together in good faith in performing their obligations hereunder.
- K. Counterparts. This Agreement may be executed in counterparts.

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IN WITNESS WHEREOF, the parties have caused this Cooperative Agreement Memorandum of Understanding to be executed by its duly authorized representative as of July 1, 2023.

SIGNED BY:

Director Cheryl Ternes
Arapahoe County Department of Arapahoe County Human Services
14980 E. Alameda Drive
Aurora, CO 80012

Date

Jason J. Lyons

09/06/2023

Chief Jason Lyons
Cherry Hills Village Police Department
2450 E. Quincy Avenue
Cherry Hills Village, CO 80113

Date

HIPAA BUSINESS ASSOCIATE ADDENDUM

The parties to this Business Associate Addendum are the County (hereinafter referred to as the "County", "Covered Entity" or "CE") and the Contractor (hereinafter referred to as the "Contractor" or "Associate"). This Addendum takes effect along with the Agreement or at the time of the compliance date of the Privacy Rule as defined below, whichever first occurs (the "Addendum Effective Date").

RECITALS

- A. Associate entered into the Agreement with CE and, as a contractor for CE, has access to certain information, some of which may constitute Protected Health Information ("PHI") as defined below.
- B. CE wishes to disclose certain information to Associate pursuant to the terms of the Agreement, some of which may constitute PHI.
- C. As a contractor with access to PHI, Associate is subject to obligations with respect to PHI under HIPAA in the same manner as CE.
- D. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d – 3120d-8 ("HIPAA") and its implementing regulations thereunder by the U.S. Department of Health and Human Services (the "Privacy Rule") and other applicable laws, as amended.
- E. As part of the HIPAA regulations, the Privacy Rule requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

The parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Privacy Rule at 45 C.F.R. Parts 160 and 164, as amended. In the event of any conflict between the mandatory provisions of the Privacy Rule and the provisions of this Addendum, the Privacy Rule shall control. Where the provisions of this Addendum differ from those mandated by the Privacy Rule, but are nonetheless permitted by the Privacy Rule, the provisions of this Addendum shall control.

b. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

c. "Protected Information" shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf. To the extent Associate is a covered entity under HIPAA and creates or obtains its own PHI for treatment, payment and health care operations, Protected Information under this Addendum does not include any PHI created or obtained by Associate as a covered entity and Associate shall follow its own policies and procedures for accounting, access and amendment of Associate's PHI.

2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under and as permitted by the terms of this Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE,

except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to this Addendum; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 C.F.R. Section 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement from such third party to notify Associate within two business days of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.

c. Appropriate Safeguards. Associate shall implement appropriate safeguards to prevent the use or disclosure of Protected Information otherwise than as permitted by this Addendum. Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information other than as provided for by this Addendum within five (5) business days of becoming aware of such use or disclosure.

e. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under this Addendum, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate shall implement and maintain appropriate sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524.

g. Amendment of PHI. Within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) business days of the receipt of the request.

h. Accounting Rights. Within ten (10) business days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528. As set forth in, and as limited by, 45 C.F.R. Section 164.528, Associate shall not provide an accounting to CE of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 C.F.R. Section 164.506; (ii) to individuals of Protected Information about them as set forth in 45 C.F.R. Section 164.502; (iii) pursuant to an authorization as provided in 45 C.F.R. Section

164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 C.F.R. Section 164.510; (v) for national security or intelligence purposes as set forth in 45 C.F.R. Section 164.512(k)(2); (vi) to correctional institutions or law enforcement officials as set forth in 45 C.F.R. Section 164.512(k)(5); (vii) incident to a use or disclosure otherwise permitted by the Privacy Rule; (viii) as part of a limited data set under 45 C.F.R. Section 164.514(e); or (ix) disclosures prior to April 14, 2003. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) business days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the Privacy Rule. Associate shall also provide concurrently to CE a copy of any Protected Information that Associate provides to the Secretary.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule including, but not limited to, 45 C.F.R. Sections 164.502(b) and 164.514(d).

k. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

l. Retention of Protected Information. Except as provided in Section 4(e) of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of this Addendum and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years after termination of the Contract.

m. Notification of Breach. During the term of this Addendum, Associate shall notify CE within two business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

n. Audits, Inspection and Enforcement. Within ten business (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Addendum.

o. Safeguards During Transmission. Associate shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of Protected Information transmitted to CE pursuant to this Addendum, in accordance with the standards and requirements of the Privacy Rule, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.

p. Restrictions and Confidential Communications. Within ten (10) business days of notice by CE of a restriction upon uses or disclosures or request for confidential communications pursuant to 45 C.F.R. 164.522, Associate will restrict the use or disclosure of an individual's Protected Information, provided Associate has agreed to such a restriction. Associate will not respond directly to an individual's requests to restrict the use or disclosure of Protected Information or to send all communication of Protected Information to an alternate address. Associate will refer such requests to the CE so that the CE can coordinate and prepare a timely response to the requesting individual and provide direction to Associate.

3. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Associate pursuant to this Addendum, in accordance with the standards and requirements of the Privacy Rule, until such PHI is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Changes. CE shall provide Associate with a copy of any notices of changes that it receives from the State pursuant to the State Addendum, including the following: 1) notice of privacy practices produced in accordance with 45 CFR Section 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information; 2) Any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures; and 3) To the extent that it may affect Associate's permitted use or disclosure of PHI, any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR Section 164.522. CE may effectuate any and all such notices of non-private information via posting on CE's web site. First Transit shall monitor CE's designated web site for notice of changes to CE's HIPAA privacy policies and practices.

4. Termination.

a. Without Cause. Either of the parties shall have the right to terminate this Addendum by giving the other party 30 days notice. If notice is given, the Addendum will terminate at the end of 30 days, and the liabilities of the parties hereunder for further performance of the terms of the Addendum shall thereupon cease, but the parties shall not be released from duty to perform up to the date of termination.

b. Material Breach. In addition to any other provisions in the Agreement regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Agreement and this Addendum and shall provide grounds for immediate termination of the Agreement and this Addendum by CE pursuant to the provisions of the this Addendum and the Agreement covering termination for cause, if any. If the Agreement contains no express provisions regarding termination for cause, the following terms and conditions shall apply: 1) Default. If Associate refuses or fails to timely perform any of the provisions of this Addendum or the Agreement, CE may notify Associate in writing of the non-performance, and if not promptly corrected within the time specified, CE may terminate this Addendum and the Agreement. Associate shall continue performance of this Addendum and the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere, (2) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this Addendum and the Agreement had been terminated for convenience.

c. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Addendum pursuant to Section 4(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end

such violation are unsuccessful, CE shall either (i) terminate this Addendum, if feasible or (ii) if termination of this Addendum is not feasible, CE shall report Associate's breach or violation to the Secretary of the U.S. Department of Health and Human Services.

d. Judicial or Administrative Proceedings. Either party may terminate this Addendum, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

e. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Addendum, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5. Injunctive Relief. CE shall have the right to injunctive and other equitable and legal relief against Associate in the event of any use or disclosure of Protected Information in violation of this Agreement or applicable law. Associate acknowledges and agrees that in the event of such impermissible use or disclosure of Protected Information, CE may seek injunctive relief if: (1) CE will suffer real, immediate, and irreparable injury which will be prevented by injunctive relief; (2) that CE has no plain, speedy, and adequate remedy at law; (3) that the granting of a preliminary injunction will promote the public interest in privacy rather than disserve the public interest; (4) that the balance of equities always favors the injunction in such cases; (5) that the injunction will preserve the status quo pending a trial on the merits; and (6) that CE shall not be required to demonstrate a reasonable probability of success on the merits in order to obtain injunctive relief.

6. No Waiver of Immunity. No term or condition of this Addendum shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS 24-10-101 *et seq.* or the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.* as applicable, as now in effect or hereafter amended.

7. Limitation of Liability. Any limitation of Associate's liability in the Agreement shall be inapplicable to the terms and conditions of this Addendum.

8. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.

9. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

10. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for

procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, the Final HIPAA Security regulations at 68 Fed. Reg. 8334 (Feb. 20, 2003), 45 C.F.R. § 164.314 and other applicable laws relating to the security or privacy of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate the Addendum upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Addendum when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

11. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy of PHI, except where Associate or its subcontractor, employee or agent is a named adverse party.

12. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

13. Interpretation. The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Addendum. Together, the Agreement and this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule. This Agreement supersedes and replaces any previous separately executed HIPAA addendum between the parties.

14. Survival of Certain Terms. Notwithstanding anything herein to the contrary, Associate's obligations under Section 7(d) ("Effect of Termination") and Section 14 ("No Third Party Beneficiaries") shall survive termination of this Addendum and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

15. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals listed below are hereby designated as the parties' respective representatives. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses as set forth in paragraph 6 of Exhibit A of the Agreement.

16. Availability of Funds. Payment pursuant to this Addendum, if in any part federally funded, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If any of said federal funds become unavailable, as determined by the CE, either party may immediately terminate or seek to amend this Addendum.

17. Audits. In addition to any other audit rights in this Addendum, Associate shall permit CE and any authorized federal agency to monitor and audit records and activities which are or have been undertaken pursuant to

this Addendum.

18. No Assignment. Except as otherwise provided, the duties and obligations of Associate shall not be assigned, delegated or subcontracted except with the express prior written consent of CE. Any subcontractors or agents used by BA to perform any services in connection with this Addendum shall be subject to the requirements of this Addendum.

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ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum between the County/Covered Entity and the Associate/Contractor ("Addendum"). This Attachment may be amended from time to time as provided in Section 12(b) of the Addendum.

1. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows: None except as otherwise directed in writing through the County or the State.

2. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows: None except as otherwise directed in writing through the County or the State.

3. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the Addendum: None.

4. Receipt. Associate's receipt of Protected Information pursuant to the Addendum shall be deemed to occur as follows, and Associate's obligations under the Addendum shall commence with respect to such PHI upon such receipt: Associate's receipt of PHI pursuant to the Agreement or Addendum shall be deemed to occur and their obligations shall commence with respect to such PHI received upon the effective date of the Addendum.

5. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information: The County is a Business Associate of other covered entities and, pursuant to such obligations of those Covered Entities, the County shall comply with restrictions on the use and disclosure of PHI as may be directed in writing by the State.

6. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*
None

[Remainder of page intentionally left blank.]