

REVIVAL AND THIRD AMENDATORY AGREEMENT

THIS REVIVAL AND THIRD AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (hereinafter referred to as the “City”), and **THE COLORADO COALITION FOR THE HOMELESS**, a Colorado nonprofit with an address of 2111 Champa Street, Denver, CO 80205 (the “Contractor”), who may individually be called a “Party” and collectively the “Parties.”

The City and the Contractor entered into an Agreement dated February 7, 2017, an Amendatory Agreement dated March 13, 2018, and a Second Amendatory Agreement dated February 5, 2019, to provide services for Denver’s homeless populations (the “Agreement”). The Agreement expired by its terms on December 31, 2019, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below.

The Parties agree as follows:

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

2. Section 3 of the Agreement, titled “**TERM**,” is amended by deleting and replacing it with the following:

“**3. TERM**: The term of this Agreement shall commence on January 1, 2017, and shall terminate on December 31, 2020 (“Term”). 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 will extend until the work is completed or earlier terminated by the Executive Director.”

3. Section 4.d.1 of the Agreement, titled “**Maximum Contract Amount**,” is amended by deleting and replacing it with the following:

“(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Four Million Seven Hundred Eighty-Eight Thousand Dollars (\$4,788,000.00) (the “Maximum Contract Amount”). The City is not obligated to execute an Agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibits A, A-1, A-2, and A-3**. Any

services performed beyond those in **Exhibits A, A-1, A-2, and A-3** or performed outside the Term are performed at the Contractor's risk and without authorization under the Agreement.”

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

5. This Revival and Third Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

End.

Signature pages and Exhibits follow this page.

Exhibit List
Exhibit A-3

Contract Control Number: SOCSV-201953015-03
ALFRESCO-201631776-03
Contractor Name: THE COLORADO COALITION FOR THE HOMELESS

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at
Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

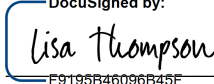
Contract Control Number:

SOCSV-201953015-03

ALFRESCO-201631776-03

Contractor Name:

THE COLORADO COALITION FOR THE HOMELESS

By:  _____
F9195B46096B45F...

Name: Lisa Thompson
(please print)

Title: Chief operating officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work (SOW) between Department of Housing Stability (HOST) and The Colorado Coalition for the Homeless (CCH) to work with community partners that provide services for Denver's persons experiencing homelessness populations. CCH will be the lead agency for the Denver Street Outreach Collaborative (DSOC) and the Behavioral Health Navigator (BHN) program.

II. Programs/Services to be Provided, in the Context of this Contract

A. The contractor is contracting with the city as the lead agency for DSOC. As the lead agency, the contractor will be responsible for:

1. Monitoring the functions related to the DSOC and BHN and working with the city to achieve the collaborative goals
2. Reports, as detailed in this documentation
3. Coordinating and assisting in training functions
4. Central coordination and personnel for the DSOC and BHN
5. Compliance with DSOC policies and procedures
6. Utilize the service decision assistance tool to prescreen and target chronically homeless individuals
7. Participate in coordinated entry and coordinate participation in the Point-In-Time (PIT) survey.
8. Meet quarterly with the homeless street outreach review committee
9. Convene 10-12 meetings annually with all DSOC team members and the BHN team.
10. Coordination with night outreach services.

B. The collaboration includes the following organizations: Colorado Coalition for the Homeless, The St. Francis Center and Urban Peak Denver. Future and additional agency collaborations may emerge under cover of separate contracts. This collaboration is designed to provide coordinated outreach services to youth and adults who are experiencing homelessness in Denver. The contractor will not be responsible for supervising any of the other DSOC agencies or the agencies' personnel. The city will expect the contractor to coordinate efforts in leading the DSOC towards achieving the outlined expectations, goals and outcomes listed in this SOW. It is the contractor's responsibility to ensure that DSOC partners are meeting the required outcomes of the contract.

1. CCH will perform the role of being fiscal steward for HOST funding to administer the DSOC and BHN programs.
 - a. CCH will work within the set budget and expend funds according to the contract. This includes payroll, check disbursement, administration of funds, invoicing/billing, budget reconciliation and financial reports.
 - b. Prepare and provide monthly financial reports to HOST and/or its designees. Provide verification of expenditures.



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- c. Work with HOST regarding any audits. Keep all records in original form and documents for a minimum of three (3) years from the expiration date of the contract.
 - d. HOST funds contracted for the DSOC and BHN programs are to be used for staffing positions, operational costs, client services and Indirect Costs.
- C.** The central premise of the homeless outreach and housing placement program is to move people living and/or sleeping on the streets or public places into shelters and/or other appropriate housing and provide support services necessary to maintain housing. The ultimate goal of the homeless outreach and housing placement program is a decrease in the number of homeless persons who are currently unsheltered and not housed.
- D.** The goals and outcomes of this contract will utilize an outcome and performance-based model to achieve the city of Denver's goals to reduce chronic homelessness. This will help to ensure identified populations remain at the forefront of this program during the contract term.
- E.** DSOC outreach workers perform their jobs by locating, engaging, and cultivating relationships with hard-to-reach homeless individuals by providing face-to-face contact; crisis intervention; needs assessment; and connections with appropriate services. DSOC outreach workers will meet emergency needs directly and provide transportation assistance to service sites when necessary.
- 1. DSOC staff members will adhere to the homeless encampment protocol developed by the contractor and Denver Human Services in August 2005 and will work closely with the Denver Police Department.
- F.** The BHN will be trained in delivering trauma informed care interventions, have knowledge of motivational interviewing, crisis intervention, solution focused interaction and will have knowledge of homeless issues. BHN staff will be a credentialed licensed clinical social worker (LCSW) or a licensed professional counselor (LPC) or be candidates for licensure who are comfortable working as a member of a multi-disciplinary team.
- G.** BHN's will be members of an integrated healthcare team at the Stout Street Health Center. This connection will provide quick, facilitated access to integrated healthcare for outreach clients navigated to the Stout Street Health Center by DSOC's behavioral health navigators.
- H.** The BHN will provide services in various areas of Denver by locating, engaging and cultivating relationships with hard-to-reach persons experiencing homelessness. Encouragement and support will be consistently provided to outreach clients, including conducting street outreach on foot and in vehicles. A high level of coordination will



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be maintained with street outreach workers to deliver the best possible support to clients.

- I. BHN's will provide face-to-face contact with people in public places, under bridges, abandoned buildings, vacant lots, other outdoor and some indoor settings. Needs will be identified and assessed, crisis intervention will be provided, emergency needs will be directly met; behavioral health services will be delivered wherever people who need them are located. Throughout this engagement process, obstacles will be identified that limit or prevent accessing available behavioral health and other needed services. Once these barriers are identified, efforts will be made to overcome them. Connections with appropriate services, including integrated behavioral health and other health care services, will be made as clients are willing. When necessary transportation and accompaniment will be provided to access needed services.
 - J. The BHN will facilitate quick access to integrated care at CCH Stout Street Health Center. Integrated health care delivered to outreach clients who are navigated to Stout Street Health Center by DSOC's BHN's will consist of individually determined combinations of needed services. Care provided by each of stout street health center's integrated care teams may include:
 - 1. Behavioral health care (one on-one and group therapy for mental health and substance use issues)
 - 2. Psychiatric services
 - 3. Medical care
 - 4. Dental services, vision services
 - 5. Medical respite
 - 6. Case management
 - K. BHN's will facilitate emergency shelter placement or, depending on circumstances, may provide hotel or motel voucher. The BHN will also work on an as needed basis with respite programs to directly deliver behavioral health services in respite settings.
 - L. BHN's will ensure:
 - 1. HMIS and coordinated entry—assure that all individuals engaged have been entered into HMIS, and the Vulnerability Index Service Prioritization Decision Assistance Tool (VISPDAT) when applicable.
 - 2. Evaluation in cooperation with DSOC, provide quarterly outcome data on significant and meaningful evaluation metrics.
- III. Roles and Responsibilities for both parties**
- A. Contractor will work with City to host any city-designated sensitivity training on an annual basis.
 - B. Contractor will provide any online modular sensitivity training developed and provided by the City to all new direct-service staff within 15 days of hire date.



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- C. Contractor will assure direct-service staff complete training refresher on a biennial basis.
- D. The City will provide signage that includes information about the City and County of Denver's Anti-Discrimination Office.

IV. Outcome and Process Measures

A. Households contacted

- 1. 6,500 duplicated households contacted
 - a. Data source: HMIS and non-HMIS reports
 - b. Measures: number of unique households encountered by street outreach within each reporting period; total number of outreach encounters within each reporting period; number of unique households encountered by street outreach year to date

B. Housing Attainment Outcomes

- 1. 265 households will be permanently housed (includes reunification outcomes) (100-150 will be identified as chronically homeless, 25 will be identified as vulnerable as identified from the VI and the VI SPDAT)
 - a. Data source: Housing tracking form completed by individual outreach workers on a monthly basis and
 - b. Measure: Number and percent of exiting households by destination at exit. Destinations at exit will be grouped into permanent housing, other stable housing outcomes, and outcomes to other locations (e.g., nightly shelter, street, jail, or unknown destinations).

C. Service Outputs

- 1. Provide 100% of households contacted with services
 - a. Data source: HMIS and non-HMIS reports
 - b. Measure: Number of unique households provided this service within the reporting period; total number of services provided during the reporting period; number of unique households provided this service year to date for the following service types:
 - i. Assistance with benefits
 - ii. Mental health, physical health or substance use services
 - iii. Connection to emergency shelter
 - iv. Assistance with vital records and identifying documents
 - v. Assistance with basic needs
 - vi. Legal services and Outreach Court assistance
 - vii. Connection to employment or vocational services



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D. Household Characteristics

1. Households served:
 - a. Data source: HMIS
 - b. Measures:
 - i. Number of households served each reporting period and deduplicated count of households served to date
 - ii. Number of households that exited the program within the reporting period and year to date
 - c. Household characteristics:
 - i. Data source: HMIS
 - ii. Measures:
 1. Number and percent of heads of household by race, ethnicity, and income level at entry (if reported in HMIS for program type)

E. Data quality

1. In order to determine the accuracy and comprehensiveness of the reporting on the above outcomes measures, HOST will also collect an HMIS Data Quality Report on the program for each reporting period.
 - a. Data source: HMIS

F. Program narrative reports

1. For each reporting period, the contractor will provide a narrative update on program successes and challenges.

V. Performance Management and Reporting

A. Performance Management

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

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



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invoicing documents for the satisfaction of the HOST Financial Services Team. HOST will review the quality of the submitted invoice monthly.

B. Reporting

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

Report	Description	Frequency	Reports to be sent to
Case Study Narratives of a successful program	Narratives of guest(s) participating and/or completing program. Include guest's completed Release of Information when applicable.	Quarterly- Due on 15 th of month following each quarter	Program Manager
Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section IV.	Quarterly- Due on 15 th of month following each quarter	Program Manager
Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Within 30 days after Term End Date of this contract agreement	Program Manager

VI. Budget

Invoices and reports shall be completed and submitted on or before the 15th of each month following the month services were rendered 100% of the time. Contractor shall use HOST's preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

Invoices shall be submitted to HOST at hostap@denvergov.org or by US Mail to:

Attn: Department of Housing Stability
Fiscal Management Unit
201 W. Colfax Ave.
Denver CO 80202



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Contractor: THE COLORADO COALITION FOR THE HOMELESS		
Term: 1/1/20 - 12/31/20		
Contract Number: SOCSV 2016-31776-03		
Program: Denver Street Outreach Collaborative		
Budget Categories	Budgeted Amount	Narrative
DIRECT COSTS		
Salaries		
Outreach	\$225,892.00	Multiple Staff working a portion of their time. Salary and wages will be reimbursed at cost. Bonuses and severances or payouts of leave when an employee separates from their job will not be reimbursed.
Case Manager	\$48,247.00	Salary and wages will be reimbursed at cost. Bonuses and severances or payouts of leave when an employee separates from their job will not be reimbursed.
Outreach Behavioral Health Navigators	\$40,580.00	Salary and wages will be reimbursed at cost. Bonuses and severances or payouts of leave when an employee separates from their job will not be reimbursed.
Program Director	\$36,344.00	Working a portion of their time. Salary and wages will be reimbursed at cost. Bonuses and severances or payouts when an employee separates from their job will not be reimbursed
Program Manager	\$60,634.00	Salary and wages will be reimbursed at cost. Bonuses and severances or payouts of leave when an employee separates from their job will not be reimbursed
Taxes & Fringe Benefits	\$110,773.00	Fringe benefits and payroll taxes will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment); insurance (medical, dental, vision, disability, accident & life



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		insurance, and workers' compensation); and pension or retirement plans.
Total Salaries and Fringe	\$522,470.00	
OTHER DIRECT COSTS		
Staff Transportation	\$5,000.00	Options may include mileage (Not to exceed the rate approved by the IRS at the time the expense is incurred), parking, or rideshares
Client Support Costs	\$25,164.00	Items given to clients which may include but not limited to bus fare (tickets/passes), gas, birth certificates, ID's, clinical co-pays, move in fees, first month's rent, renters' insurance, personal care items, clothing, food, utilities, deposits, phone costs and emergency motel vouchers.
Other Program Costs	\$11,300.00	Program-related supplies that are not given directly to a client. At the end of the contract unused supplies inventory will be given to funding agency. Expenses must be directly related to the service provided in the contract and be readily identifiable. Items are identified as those items necessary for the program to function.
Subcontractor The St. Francis Center	\$338,009.00	Subcontractor will work in collaboration with community partners to administer the DSOC and BHN program to provide coordinated outreach services to youth and adults who are homeless in Denver.
Subcontractor Urban Peak Denver	\$244,800.00	Subcontractor will work in collaboration with community partners to administer the DSOC and BHN program to provide coordinated outreach services to youth and adults who are homeless in Denver.
Total Other Direct Costs	\$624,273.00	
SUM OF DIRECT COSTS:	\$1,146,743.00	



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INDIRECT COST RATE	\$65,257.00	Indirect Cost Rate 12.49% of Direct salaries, wages and fringe benefits costs
TOTAL CCH COSTS:	\$1,212,000	

VII. Other Requirements

Use of Homeless Management Information System (HMIS) and Reporting

It is the Department of Housing Stability's policy, in alignment with adopted plans, to require the use of the Homeless Management Information System (HMIS) and the Coordinated Entry System (OneHome) for all federally and locally funded programs addressing the needs of residents experiencing homelessness.

The Contractor agrees to fully comply with the rules and regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the HMIS¹.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC). These are outlined in the COHMIS Policies and Procedures², and the COHMIS Security, Privacy and Data Quality Plan³.

Metro Denver Homeless Initiative (MDHI) is the implementing organization for the (HMIS). The HMIS software is called Clarity.

Contractor's aggregate HMIS performance data for projects may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI and/or HOST will monitor contractor compliance and performance on an annual basis through a site visit.

Technical assistance and training resources for HMIS are available to the Contractor via the COHMIS Helpdesk.⁴

HMIS data will be used to monitor performance under this contract in addition to quarterly program narratives. HMIS outcome reports may be sent to HOST directly from MDHI. Contractor will also have access to all outcome reports generated for this contract. Narrative reports will be due to HOST two weeks after each HMIS outcome report is generated and sent to HOST to allow the Contractor the opportunity to address any issues they observe in their outcomes report in that narrative. Outcomes measures

¹ <https://www.hudexchange.info/programs/hmis/hmis-data-and-technical-standards/>

² <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

³ <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

⁴ <https://cohmis.zendesk.com>



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and other required reporting as well as the data source for each reporting element are detailed below.

HOST may request aggregate data from MDHI for City related reporting needs.

VIII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

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



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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;



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- 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.



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

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

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



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- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.



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- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
 - 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
 - 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.



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5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.

5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.

5.03 CONTRACTOR'S notification shall include, to the extent possible:

5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.



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- 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



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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



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CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

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

9 SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.