

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **MENTAL HEALTH CENTER OF DENVER**, a Colorado nonprofit corporation, doing business at 4141 East Dickenson Place, Denver, CO 80222 (the “Contractor”) collectively, the “Parties”.

RECITALS:

A. The Parties entered into an Agreement dated March 17, 2014 and amended the Agreement on October 9, 2014 (together, the “Agreement”), to provide support services to the chronically homeless.

B. The Parties wish to amend the Agreement to revise the scope of work, extend the term and increase the maximum amount of compensation to be paid compensation to the Contractor.

Now, therefore, the Parties agree as follows:

1. All references to “...Exhibits A and A-1...” in the existing Agreement shall be amended to read: “...Exhibits A, A-1 and A-2 as applicable...” The scope of work and budget marked as Exhibit A-2, attached to this Second Amendatory Agreement are incorporated by reference. Effective as of January 1, 2015, Exhibit A-2 will supersede and replace Exhibit A-1 and Exhibit A-2 will govern and control all services and payment under the Agreement from and after January 1, 2015.

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

“3. **TERM**: The Agreement will commence on January 1, 2014, and will expire on December 31, 2015 (the “Term”).”

3. Article 4. a. of the Agreement, entitled “**Fees/Budget**”, is amended to read as follows:

“4. **COMPENSATION AND PAYMENT**:

a. **Fees/Budget**: The City shall pay and the Contractor shall accept as the sole compensation for all fees and budget items for services rendered and costs incurred under the Agreement an amount not to exceed **ONE MILLION SIX HUNDRED SIXTY THOUSAND DOLLARS AND 16/100 CENTS (\$1,660,000.16)**(the “Maximum Contract Amount”). Amounts billed may not exceed the budget set forth in **Exhibit A, A-1, or A-2, as applicable.**”

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

EXHIBIT LIST:

EXHIBIT A-2 – SCOPE OF WORK

[SIGNATURE PAGES FOLLOW]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: SOCSV-201314438-02

Contractor Name: MENTAL HEALTH CENTER OF DENVER MHCD

By: Carl Clark MD

Name: Carl Clark, MD
(please print)

Title: President & Chief Executive Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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I. Purpose of Agreement

Denver Department of Human Services is working with community partners that provide services for Denver’s homeless populations. This Contract will help provide these vital services to Denver’s homeless and help meet the goals of Denver’s Road Home plan to end homelessness.

II. Outcome and Process Measures

Goal(s) Addressed	<ol style="list-style-type: none"> 1. Permanent & Transitional Housing 2. Treatment Services
Service, Activity or Intervention to be Provided	<ul style="list-style-type: none"> • Supportive housing services to engage and maintain 75 chronically homeless individuals as they transition to project-based housing. • Assertive Community Treatment, Integrated Dual Disorders Treatment and benefits acquisition/retention services to 75 chronically homeless individuals
Outcome (Annually)	<ul style="list-style-type: none"> • Provide integrated supportive housing and ACT services to 75 chronically homeless individuals with co-occurring serious mental illness and substance use disorders.
Indicator (#) (Annually)	<ul style="list-style-type: none"> • 60% of enrolled clients will report an improvement in psychiatric symptoms within twelve months of enrollment. • 40% of enrolled clients will report that they have no substance abuse/dependence within 12 months of enrollment • 100% of enrolled clients will have access to permanent project-based housing throughout their enrollment • 75% of enrolled clients will transition into permanent project-based housing within one year of enrollment • Average length of stay in project based housing over 3 months (participants in the program at least 3 months or more) • Decrease in use of: <ul style="list-style-type: none"> • Detox • Jail • ER visits
Measurement Tool(s)	<ol style="list-style-type: none"> 1. Track using HMIS 2. The Contractor’s Recovery Markers Instrument 3. Drug Testing
Data Source and Collection	Information collected from consumers by the Contractor’s clinical staff
Frequency of Data Collection	At enrollment, every two months thereafter and at discharge.

III. Services

The Contractor and Colorado Coalition for the Homeless (a Subcontractor) will provide a comprehensive service system for 75 chronic homeless individuals:

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The Contractor will serve 65 homeless individuals with co-occurring mental health and substance abuse disorders using Assertive Community Treatment (ACT), used extensively in the Goebel and Denver's Road Home programs. Support Services for these individuals will include: supportive housing, benefits acquisition, intensive case management, medication evaluation, medication monitoring, referral and coordination with primary care, therapeutic groups, and substance abuse treatment.

MHCD Services

- Assertive Community Treatment. Mental health policy experts' call ACT the most well-defined, evaluated and influential treatment in the field of community mental health care. ACT is the fundamental method of delivering high intensity case management services at MHCD. ACT is for those who experience the most severe symptoms of mental illness and have problems taking care of even their most basic needs, typically experience homelessness, substance abuse and legal system involvement. ACT offers services to manage psychiatric symptoms, housing, finances, employment, medical care, substance abuse, family life and activities of daily living.
- Supportive Housing; The MHCD housing department will manage 65 housing slots for this project, including billing and HMIS data entry. ACT case managers will coordinate participants' housing selection with the housing coordinator. The case manager will assist in moving and furnishing, and will provide services such as assistance with daily living skills on-site in the consumers' homes.
- Integrated Dual Disorders Treatment (IDDT) Within the ACT services, IDDT offers treatment to program participants by giving them access to substance abuse and mental health services in one setting at the same time.
- Trauma Recovery and Empowerment Model (TREM) provides services that address issues of physical, sexual, and/or emotional abuse in a population of women with histories of trauma, and for whom trauma-informed treatment and recovery services have been unavailable or ineffective.
- Motivational Interviewing -- Motivational interviewing (MI) This will provide a very client centered and goal driven interview style that helps change behaviors.
- Benefit Acquisition; Enrolled participants will also receive assistance from MHCD's Benefits Acquisition and Management Team (BAMT). The team uses an approach that consists of a Benefits Management Specialist assisted by three Benefits Assistants who are also consumers of mental health services. Clients who are brought off the street and into the program will be assessed to determine what kind of treatment and medication plan will be necessary for them. During this time, clients will be assisted by BAMT to apply for all eligible benefit programs. Once a benefit program has been established for the client, DHS will no longer reimburse MHCD for expenses, I.E. Medications/Treatment Services covered through Medicaid.

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- Dialectical Behavior Therapy (DBT); DBT was developed at the University of Washington. DBT is an empirically based cognitive behavioral treatment for borderline personality disorder. It has particular efficacy in consumers with chronic suicidal or self-harming behaviors.
- Access to Medical Care; Program participants will be linked to primary health care service in the community through existing resources that include Medicare, Medicaid and indigent providers including MHCD's Recovery Center and CCH's Stout Street Clinic.

CCH Services

The Subcontractor, Colorado Coalition for the Homeless (CCH) will serve 10 homeless individuals with primary substance abuse disorders in their Substance Treatment Services (STS) Program. Homeless individuals referred to the STS program through the Street to Home Project will be assessed through a comprehensive bio/psycho/social history to help determine the best housing placement for stabilization and overall long term housing stability. Eligible homeless individuals will have immediate access to a time unlimited Integrated Dual Disorder Treatment Team (IDDT), and assigned a primary case manager. The services afforded each client include

- Intensive Case Management services which includes, 1:1 alcohol and drug counseling and education, psychotherapy, including psychotropic medication management; benefits acquisition assistance, assertive outreach, linkage to comprehensive medical care including dental and vision; educational/vocational support, assistance in ADLs, payee services.
- Access to The Clubhouse at Civic Center Apartment (CCA) which is open 6 days/week, and is client run. The Clubhouse offers a clean and sober environment for socialization, computer access, group therapy, weekly community lunch, and resources sharing.
- Daily Accudetox: A NIAH Approved acupuncture protocol to treat post-acute withdrawal symptoms.
- Over 15 treatment groups per week, which include: Dialectic Behavioral Therapy (DBT); Relapse prevention; Come as You Are (sobriety not required), women's recovery, Alcohol and Drug Education, and Seeking Safety.
- Program participants will be given basic furnishings and supplies at move in that include at a minimum, bedding, cooking supplies and paper products.
- Upon admission to the program, the 10 clients served by CCH will have immediate access to temporary housing at the Gateway Motel, operated by CCH. If a room is not available, the client will be given a voucher for a local motel until permanent housing is secured.
- Clients will have access to the following housing options depending upon individual need and choice:

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CCH owned Civic Center Apartment (CCA) which includes the clean and sober "Durkin Wing", other SRO units at Civic Center Apartments, or independent apartments in the Denver Community. Clients will have access to current properties utilized by CCH, as well as given assistance in identifying privately managed apartments suitable to the individual client need.

IV. Performance Management and Reporting

A. Performance Management

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

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.
3. **Compliance Monitoring:** Monitoring to ensure that the requirements of the contract document, Federal, State and City and County regulations, and DDHS policies are being met.

B. Reporting

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

Report # and Name	Description	Frequency	Reports to be sent to:
1. Monthly Reports	HMIS data entered into the HMIS data base and reporting on monthly service goals. Activity report for clients that details the monthly hours spent in each activity. Detail on missing clients. Locations of all clients including transitional housing.	Due Monthly	Jon Luper
2. Quarterly Reports	This report shall include cumulative data for the	Due Quarterly	Jon Luper

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	contract year and a narrative that addresses program outcomes. Report will also detail client's activities in groups and the progress they are making in the program.		
3. Monthly Invoices	Monthly invoices with required backup documentation for payment. Where applicable, this includes time sheets that allocate an individual's time if he/she works less than 100% of time on this grant.	Due 45 days after the end of each month 100% of the time	Jon Luper
4. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	Jon Luper


V. Budget Requirements

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



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B. BUDGET

BUDGET (Fee for Service)			
 DENVER <small>THE MILE HIGH CITY</small>		Department of Human Services	
Accredited by Child Welfare League of America Since 1949		Contracting Services - Business Management Division 1200 Federal Boulevard, Fourth Floor Denver, Colorado 80204-3221 Phone: 720-944-2233 FAX Phone: 720- 944-2224 Email: DHS_Contracting_Services@denvergov.orgs	
Partnering with our community to protect those in harm's way and help all people in need.			
Contractor Name: MENTAL HEALTH CENTER OF DENVER			
Contract No.: SOCSV201314438 (2)			
Contract Term: January 1, 2015 to December 31, 2015			
Program Name: 2015 Housing and Treatment Services Program			
Unit of Service	Total	Budget Narrative	
High Intensity Treatment- DHS HIT	\$600,878.00	Housing Intensity Treatment to be billed at \$21.95 per unit not to exceed \$600,878.00	
	-		
Housing- DHS	\$229,122.00	Housing to be billed at cost not to exceed \$229,122.00	
	-		
TOTAL BUDGET	\$830,000.00		

VI. Other Requirements

A. Homeless Management Information System (HMIS)

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



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

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

Security

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

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

HUD Continuum of Care Data Standards

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

MDHI HMIS User Group Meetings

The Contractor should attend at least three HMIS user group meetings during the contract year. User Group offers valuable and informative information on HMIS and is a forum to ask questions and address issues related to HMIS. Typically, MDHI’s HMIS User Group meets at Mile High United Way on Thursdays and the Balance of the State user group meets via webinar every other month the Colorado HMIS team sends out meeting reminders. The meeting schedule for 2014-2015 is:
 MDHI:

2014 Dates	2015 Dates
July 17	Jan 15
Sept 18	Mar 19
Nov 20	May 21

Data Quality Standards

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

Staff Changes:

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

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VII. Business Associate Terms – HIPAA/HITECH

1. GENERAL PROVISIONS AND RECITALS

1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.

1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.

1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.

1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.

1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.

1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

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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 this these terms additional 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:

- a. 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.
- b. 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.
- c. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

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- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.

2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.

2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.

2.10 "Immediately" where used here shall mean within 24 hours of discovery.

2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.

2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

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2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.

2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.

2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.

2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on

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behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

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

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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, or an Individual as directed by CITY, and in a timely and manner to be determined by CITY, that information collected in accordance with the Agreement, in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, 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 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

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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 known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

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

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

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

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

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

- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
- b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address,

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account number, diagnosis, disability code, or other types of information were involved);

- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.

5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.

5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.

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5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.

6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.

6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.



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7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

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

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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



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CONTRACTOR maintains the PHI.

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