

REVIVAL AND AMENDATORY AGREEMENT

THIS REVIVAL AND 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 **VOLUNTEERS OF AMERICA COLORADO BRANCH**, a Colorado nonprofit, whose address is 2660 Larimer Street, Denver, CO 80205 (the “Contractor”), jointly “the Parties” and individually a “Party.”

WHEREAS, the City and the Contractor entered into an Agreement dated June 24, 2020, to provide necessary motel rooms and staffing support for people experiencing homelessness to be used primarily for activated respite to place high risk individuals in safe conditions out of congregate shelter or unsheltered conditions in response to the COVID-19 public health crisis (the “Agreement”); and

WHEREAS, the Agreement expired by its terms on June 30, 2020, 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.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor incorporate the recitals set forth above and agree as follows:

1. Effective upon execution, all references to Exhibit A in the existing Agreement shall be amended to read Exhibits A and A-1, as applicable. Exhibit A-1 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 Agreement will commence on March 1, 2020, and will expire, unless sooner terminated, on December 31, 2020 (the “Term”).”

3. Section 4.4.1 of the Agreement, under the title “**Maximum Contract Amount**,” is amended by deleting and replacing it with the following:

“**4.4.1.** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Six Hundred Eighty-Six Thousand Four Hundred Seventy-Eight Dollars (\$686,478.00) (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**

and **A-1**. Any services performed beyond those in **Exhibits A** and **A-1** 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 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-1

Contract Control Number: HOST-202055725-01/HOST 202054654-01
Contractor Name: VOLUNTEERS OF AMERICA COLORADO BRANCH

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

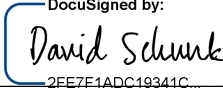
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By:

By:

Contract Control Number:
Contractor Name:

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VOLUNTEERS OF AMERICA COLORADO BRANCH

By:  _____
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Name: David Schunk
(please print)

Title: President and CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



DENVER
HOUSING STABILITY

Volunteers of America Colorado Branch

SCOPE OF WORK

Activated Respite & COVID Shelter Operations

HOST 202055725-01

I. Purpose of Agreement

The purpose of this contract agreement is to provide an award for \$686,478.00 through the Department of Housing Stability (“HOST”). These funds will be provided to Volunteers of America (“VOA”) to provide motel rooms and staffing support for people experiencing homelessness in response to the COVID-19 public health crisis. Such hotel and/or motel rooms will be used primarily for activated respite as defined by this scope of work and some protective action to place high risk individuals in safe conditions out of congregate shelter or unsheltered conditions.

II. Services SCOPE OF WORK A – Activated Respite & Protective Action

A. The City, the State of Colorado (“State”), VOA and other partners are working together to identify hotel/motel facilities that can be used to serve people experiencing homelessness. VOA has operated the Family Motel located at 4855 W. Colfax Avenue, Denver Colorado 80204 since 2001. For the purposes of this contract, the VOA will make available 20 rooms, in the building on the east side of their property.

1. **Provide Activated Respite Rooms:** Provide a safe hotel/motel facility for people experiencing homelessness who are medically referred for isolation or quarantine related to COVID-19 Activated Respite Rooms. Activated Respite Rooms will be the primary focus on this scope of work.
2. **Provide Staffing Support for Activated Respite and Protective Action Rooms:** Provide housekeeping and sanitation services, and other staffing support for people experiencing homelessness who have low to moderate acuity level of care needs in Activated Respite Rooms.
3. **The term of Scope Section A is 3/1/20-6/30/20, with facility costs for rooms only being a covered expense through 5/22/20.**

B. Eligible program participants for Activated Respite Rooms include people experiencing homelessness who:

1. Individuals that are COVID-19 symptomatic that have been determined to need testing by a health care professional, and are awaiting that testing
2. Individuals awaiting the results of a COVID-19 screening test
3. Individuals that have been in close, direct contact with someone who is COVID-19 positive, and are deemed to be “presumptive positive” by a health care professional and in need of quarantine
4. Individuals that have tested positive for COVID-19 and need quarantine until they receive clearance from a health care professional.

C. HOST support includes facility costs including, but not limited to, the cost of rooms, ongoing housekeeping, maintenance, and program staffing and services. HOST support will include one-time costs associated with providing amenities and furnishings to support 24-hour quarantine by participants utilizing the Activate Response Rooms, such as telephones and television.



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D. HOST will pay for 20 rooms per night at a flat rate of \$50.00 for each room. The 20 rooms will be paid for, if occupied and/or unoccupied due to the use of the facility for activated respite where guests may be carriers of the virus. It is critical for public health purposes to limit exposure to general public and high-risk individuals.

III. Services – SCOPE OF WORK B – COVID Shelter Operations

A. The City, the State of Colorado (“State”), VOA and other partners are working together to identify hotel/motel facilities that can be used to serve people experiencing homelessness. VOA has operated the Family Motel located at 4855 W. Colfax Avenue, Denver Colorado 80204 since 2001. For the purposes of this contract, the VOA will make available at least 30 units to serve as non-congregant shelter for families experiencing homelessness.

B. Provide Staffing Support for Shelter guests, in accordance with increased public health and safety measures for COVID 19: Provide housekeeping and sanitation services, and other staffing support for people experiencing homelessness who are guests of the Family Motel non-congregant shelter

C. The term of SCOPE of WORK B is 7/1/20-12/31/20

D. HOST support includes facility costs including, but not limited to, ongoing housekeeping, maintenance, and program staffing and services. HOST support will include one-time costs associated with providing amenities and furnishings to support 24-hour quarantine by participants who test positive for COVID-19, such as telephones and television.

IV. Roles and Responsibilities for both parties

A. Contractor Roles:

1. Contractor will provide for the use of hotel and/or motel facilities for Activated Respite Rooms for the duration of the federal COVID-19 emergency declaration.
2. Contractor will provide staffing in accordance with this scope of work for Activated Respite Rooms for the duration of the federal emergency.
3. Contractor will partner with the City, the City’s Emergency Operation Center (“EOC”) branches and other appropriate organizations such as the Metro Denver Homelessness Initiative to develop and implement protocols for referrals to Activated Respite Rooms.
4. Contractor will utilize the Homeless Management Information System (HMIS) for reporting on the use of Activated Respite Rooms in accordance with the requirements of this scope of work.
5. Contractor will provide HOST staff and EOC branches with accessibility information for hotel/motel facilities for individuals with a disabling condition,



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identifying rooms within the facility that meet current Americans with Disabilities Act (“ADA”) and City Building Code requirements.

6. Contractor will work with City to host any city-designated sensitivity training on an annual basis.
7. 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.
8. Contractor will assure direct-service staff complete training refresher on a biennial basis.
9. The City will provide signage that includes information about the City and County of Denver’s Anti-Discrimination Office.

B. City Roles:

1. HOST will coordinate between VOA and EOC.
2. HOST will partner with VOA and other appropriate organizations and EOC branches to develop protocols for referrals to Activated Respite Rooms.
3. City and other organizational partners will serve as dispatch between medical providers, existing shelters and referrals to Activated Respite Rooms.
4. City and other organizational partners will provide transportation between medical provider, existing shelter and Activated Respite Rooms.
5. City and other organizational partners will provide meals to guests in Activated Respite Rooms and Protective Action Rooms.

V. Process and Outcome Measures SCOPE OF WORK A

- A. At the point of execution of this contract, the City of Denver is providing a Denver Human Services (“DHS”) Shelter Manager staff to help facilitate data tracking and reporting for this program, in partnership with the Metro Denver Homeless Initiative Homeless Management Information System (MDHI HMIS) team. The HOST Program Officer will communicate the need to shift or adjust this reporting process due to changes in available staff assistance from DHS shelter manager and/or HMIS team to provide data entry and tracking.
- B. While the DHS shelter manager is currently tracking the following data items, the contractor is responsible for daily communication with the DHS shelter manager to ensure complete, timely and accurate information
- C. Daily census reporting
 1. Total number of rooms available for activated respite
 - a. Number occupied each night
 - b. Number vacant and open for referral
 - c. Number of Americans with Disabilities Act (ADA) accessible rooms (number occupied and number vacant)



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2. Daily Program intake data
 - a. Assist DHS shelter manager with completion of spreadsheet including client name, clarity identification (ID) (if available), if clarity ID is unavailable, Date-of-Birth and last four digits of Social-Security Number.
3. Daily Program Stay and Duration Information
 - a. Assist DHS shelter manager with completion of spreadsheet including client information for intake date, departure date and departure reason

VI. 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 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.



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Report	Description	Frequency	Reports to be sent to
Daily Report	Report shall demonstrate achievement of Outcome measures in Section IV. DHS shelter manager submits to HOST. In the event DHS Shelter Manager is no longer supporting this program, the VOA staff would be responsible to send report information daily	Daily – Due by 7:30am each day	HOST: Jennifer.Biess@denvergov.org
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	HOST Program Officer Angie Nelson at angela.nelson@denvergov.org

VII. 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
Financial Services Team
201 W. Colfax Ave.
Denver CO 80202



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Contractor Name:	Volunteers of America Colorado Branch	
Contract Number:	HOST 202054654-01	
Term	3/1/2020 -06/30/2020	
Program:	Supplemental Active Respite Rooms (ARR) – SCOPE & BUDGET A	
Direct Costs	Budget Amount	Budget Narrative Justification
Facilities fee	\$107,000.00	Flat rate of \$50.00 per night per room. for 20 rooms. Expense of 20 rooms at \$50/room/night for contract duration beginning 3/16/20-5/22/20
Salaries and Fringe		
Salary includes COVID-19 Hazard Pay	\$32,688.00	Multiple staff working full-time with additional \$0.50 of regular rate to be reimbursed at cost. Includes 24/7 coverage. Onsite maintenance staff paid only for work at Family Motel. These additional amounts exclude regular staff salaries at the VOA family motel. Hours must be coded as ARR on the invoice.
Additional Managerial Duties Dedicated to Motel	\$8,872.00	Based on actual additional hours worked on ARR and will be reimbursed at cost. Excludes salaries associated with regular business at the VOA family motel. Hours must be coded as ARR on the invoice.
Additional Case Managers and Crisis Staff	\$56,000.00	If needed, multiple staff working portion of time to be reimbursed at cost. This is to ensure ARR -duration double coverage at time and half, shift differentials for overnight shifts, and multiple day shifts
Fringe Benefits	\$20,634.00	fringe benefits based on the above criteria @ 21.15% - includes Retirement, unemployment, W.C. and FICA.
Total Salaries and Fringe	\$118,194.00	
Other Direct Costs		
Additional Personal Protective Equipment	\$2,000.00	Disinfectant, gloves, masks, other PPE, supplies for extra cleaning



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(PPE) and Cleaning Supplies		
Housekeeping	\$160,000.00	\$250 per room for additional contaminant cleaning for up to 40 rooms per week
Program Supplies and Minor Equipment for Guests	\$4,761.00	Supplies for ARR, includes cots, phones, cell phones, microwaves and mini refrigerators.
Total Other Direct Costs	\$166,761.00	
Total Direct Costs	\$391,955.00	
Indirect costs	\$28,495.00	Calculated at 10% of Direct Costs excluding Facilities Fee
TOTAL BUDGET	\$420,450.00	

Contractor Name:	Volunteers of America Colorado Branch	
Contract Number:	HOST 202054654-01	
Term	7/1/2020-12/31/2020	
Program:	COVID Shelter Operations – SCOPE & BUDGET B	
Direct Costs	Budget Amount	Budget Narrative Justification
Salaries and Fringe		
Salary includes COVID-19 Hazard Pay	\$145,188	Staffing needs related to any issues that arise due to COVID-19 related items, including double staff coverage and hazard pay. Multiple staff working full-time with additional half-time of regular rate to be reimbursed at cost. Onsite maintenance staff paid only for work at Family Motel. These additional amounts exclude regular staff salaries at the VOA family motel. Hours must be coded as ARR on the invoice.
Additional Managerial and Professional Duties Dedicated to Motel	\$14,424	Based on actual additional hours worked related to COVID-19 and will be reimbursed at cost. To include time necessary for planning, consultation, quality assurance, staff training, coverage, and crisis intervention, etc. Excludes salaries associated with



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		regular business at the VOA family motel. Hours must be coded as ARR on the invoice.
Fringe Benefits	\$31,364	fringe benefits based on the above criteria @ 19.65% - includes Retirement, health insurance, unemployment, W.C. and FICA on the above salaries
Total Salaries and Fringe	\$190,976	
Other Direct Costs		
Program Supplies	\$50,868	PPE for staff and guests (including Tyvek suits, masks, gloves, etc.), additional disinfectant cleaning supplies, electrostatic spraying (guest rooms, offices, common areas, kitchen, etc.), additional housekeeping, extra items rooms for quarantine/isolation such as telephones and televisions, etc. necessary to operate facility related to COVID-19
Total Other Direct Costs	\$50,868	
Total Direct Costs	\$241,844	
Indirect costs	\$24,184	Calculated at 10% of Direct Costs
TOTAL BUDGET	\$266,028	

VIII. Other

For the purposes of this contract, responsibility for data entry into HMIS currently sits with Metro Denver Homeless Initiative. Contractor will work with MDHI as needed to ensure HMIS is able to be updated with relevant information. 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.



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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 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.

VII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

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

¹ <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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- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information (“PHI”) as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.
- 2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.
- 2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:



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1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

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

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

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

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

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

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



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- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.



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- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.
- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.



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- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.



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- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

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



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- a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.
- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.



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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.

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.



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- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

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

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

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

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

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

8.02.2 CONTRACTOR shall retain no copies of the PHI.

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

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

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

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