

SECOND AMENDATORY AGREEMENT

THIS SECOND AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **MENTAL HEALTH CENTER OF DENVER**, a not-for-profit corporation whose address is 4141 East Dickinson Place, Denver, Colorado 80222 (“MHCD” or “Contractor”), collectively “the Parties”.

RECITALS:

A. The Parties entered into an Agreement dated January 9, 2017 and amended it on April 11, 2018 (together, the “Agreement”).

B. The Parties wish to amend the Agreement to modify the current scope of work and budget, Exhibit A-1, and decrease the Maximum Contract Amount.

NOW THEREFORE, the parties agree as follows:

1. All references to “Exhibit A and A-1” in the Agreement shall be amended to read “Exhibit A, A-1, and Exhibit A-2, as applicable”. Effective as of the date written below on the City’s signature page, the scope of work and budget set forth in Exhibit A-2, attached hereto and incorporated herein by this reference, will govern and control the work to be performed from January 1, 2018, until December 31, 2018. Exhibit A-2 hereby replaces and supersedes Exhibit A-1 in its entirety.

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

“d. Maximum Contract Amount:

(1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **One Million Three Hundred Thousand Dollars and Zero Cents (\$1,300,000.00)** (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 Contractor beyond that specifically described in Exhibits A, A-1, and A-2, as applicable. Any services performed beyond those in Exhibits A, A-1, and A-2, as applicable, are performed at Contractor’s risk and without authorization under the Agreement.”

3. Except as amended herein, the Agreement is affirmed and ratified in each and every particular.

4. This Second 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 Exhibit A-2 follow this page.

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-201631657-02

Contractor Name: MENTAL HEALTH CENTER OF DENVER

By: Carl Clark

Name: Carl Clark, M.D.
(please print)

Title: President & Chief Executive Officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Services between Denver Human Services (DHS) and Mental Health Center of Denver. DHS is working with community partners that provide services for Denver's homeless populations. This Contract establishes the Street to Home project that will provide vital services to Denver's homeless and help meet the goals of Denver's Road Home plan to end homelessness.

A. This agreement is intended to fund:

1. services to persons not eligible for Medicaid or other third-party payment ("ineligible persons"); and,
2. services not covered by Medicaid or other third-party payers ("non-covered services").

II. Services

MHCD and Colorado Coalition for the Homeless (CCH) (a Subcontractor) will provide the services as described below for 75 chronic homeless individuals. Sixty-five individuals will be managed by MHCD and ten individuals will be served by CCH.

A. MHCD Services

The MHCD Supportive Housing team will manage 65 housing slots for this project including Homeless Management Information System data entry. Services will be provided to 65 homeless individuals with co-occurring mental health and substance use disorders within a comprehensive program of Assertive Community Treatment (ACT) services that are funded by other funding sources such as Medicaid and Medicare. ACT case managers will coordinate participants' housing selection with the housing coordinator. The case manager will assist in moving and furnishing and will provide wrap-around services on-site in the participants' homes. The ACT program offers services to manage psychiatric symptoms, housing, finance, employment, medical care, substance use, family life and activities of daily living and include the following:

1. 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.
2. Within the ACT services, Integrated Dual Disorders Treatment (IDDT) offers treatment to program participants by giving them access to substance abuse and mental health services in one setting at the same time.
3. 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.
4. Motivational Interviewing (MI) provides a very client centered and goal driven interview style that helps change behaviors.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

5. 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.
6. Dialectical Behavior Therapy (DBT) was developed at the University of Washington. DBT is an empirically based cognitive behavioral treatment for borderline personality disorder. It has efficacy in consumers with chronic suicidal or self-harming behaviors.
7. 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.

B. CCH Services

The Subcontractor, Colorado Coalition for the Homeless (CCH) will serve approximately ten 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 IDDT and will be assigned a primary case manager. The services afforded each client include:

1. ACT services which includes 1:1 alcohol and drug counseling and education, psychotherapy, psychotropic medication management, benefits acquisition assistance, assertive outreach, linkage to comprehensive medical care including dental and vision, educational/ vocational support, assistance in activities of daily living, and payee services.
2. Access to The Clubhouse at Civic Center Apartment (CCA) which is open six 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.
3. Daily Accudetox an acupuncture protocol to treat post-acute withdrawal symptoms.
4. Over 15 treatment groups per week including: DBT, Relapse Prevention, Come as You Are (sobriety not required), Women's Recovery, Alcohol and Drug Education, and Seeking Safety.
5. Program participants will be given basic furnishings and supplies at move in that include at a minimum, bedding, cooking supplies and paper products.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

6. Upon admission to the program, the ten 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.

7. Clients will have access to the following housing options depending upon individual need and choice: CCH owned Civic Center Apartment (CCA) which includes the clean and sober “Durkin Wing”, other Single Room Occupancy (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.

III. Outcome and Process Measures

- A. Please refer to the Outcome Evaluation Plan located in Section VI for all measures and outcomes related to this contract.

IV. Performance Management and Reporting

A. Performance Management

Monitoring will be performed by the program area, Contracting Services, and Financial 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 Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Contracting Services will provide performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions 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 Financial Services. Financial Services will review the quality of the submitted invoice monthly. Financial Services will manage invoicing issues through site visits and review of invoicing procedures.

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. Quarterly Reports	This report shall include cumulative data for the 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.	Due Quarterly	Program Manager & dhs_contracting_services_documents@denvergov.org



SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

V. Budget Requirements

- A. The parties understand that DHS/DRH is a payer of last resort. Its funds may only be used to pay for “non-covered services” and services to “ineligible persons”. Other sources (Medicaid, Medicare, and other benefit plans and programs, etc.) should cover all or a portion of the costs. MHCD is responsible for collecting from those other sources.
- B. MHCD will invoice DHS/DRH for budgeted items on a cost reimbursement basis. Invoices will include all documentation necessary to support payment for “noncovered services” and “ineligible persons”. MHCD will identify all persons served and the services provided to them. Charges for “non-covered services” and “ineligible persons” will be identified by MHCD and only those amounts will be paid.
- C. Invoices and reports shall be completed and submitted on or before the 22nd of each month following the month services were rendered. Contractor shall use DHS’ preferred invoice template, if requested.
- D. Invoices shall be submitted to: DHS_Contractor_Invoices@denvergov.org or by US Mail to:

Attn: Financial Services
Denver Human Services
1200 Federal Boulevard
Denver, Colorado 80204



**SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02**

E. BUDGET

Contractor: Mental Health Center of Denver		
Fiscal Term: 1/1/18 - 12/31/18		
Contract Number: SOCSV 2016-31657-02		
Program: Street to Home		
Budget Categories	Budgeted Amount	Narrative
Direct Costs		
Salaries *		
Client Support Costs	\$41,473	Including but not limited to: prescriptions, labs, co-pays, bus passes/tickets, moving expenses, ID cards, group activities and rec. center passes, food for emergency or groups, clothing for emergencies or job interviews. Reimbursement is based upon items distributed to clients. Reimbursed by documented invoices and itemized receipts for actual costs.
Client Housing	\$233,768	Support for rental assistance, deposits, motels, utilities, and other housing assistance payments. Reimbursed by documented invoices and proof of payment for actual costs.
Total Client Support Costs	\$275,241	
Sub-contracted Services	\$133,850	Colorado Coalition for the Homeless-Services include High Intensity Assertive Community Treatment and Housing.
Total Direct Costs	\$409,091	
Indirect Costs		
Indirect Costs	\$40,909	To be calculated at 10% of direct costs being reimbursed.
Total Costs	\$450,000	

**VI. Outcome Evaluation Plan Template: Denver Road Home
Program: Street to Home**

Goals	Objectives	Measurement	Time frame for Data Collection	Outcomes
1. Street to Home will provide permanent and transitional housing for individuals experiencing homelessness.	1. Street to Home will provide transitional housing (including Master Leased units, motels, short-term residential facilities) for 90 individuals over the course of	Housing status will be measured by Recovery Marker Inventory, and by progress notes if further specification is needed.	Recovery Marker Inventory is completed upon program entrance, at quarterly intervals, and we will do at program exit as well.	81 of enrolled clients will be placed in transitional housing.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

	2018 for 6 months or longer, or for the balance of the calendar year if housing secured after July 1 st .			
	2. Street to Home will move 15 individuals into permanent housing (including HUD 202 units, apartments with Section 8, long-term residential facilities, and assisted living facilities) during 2018.	Housing status will be measured by Recovery Marker Inventory, and by progress notes if further specification is needed.	Recovery Marker Inventory is completed upon program entrance, at quarterly intervals, and we will do at program exit as well.	15 individuals will be housed in permanent settings.
2. Street to Home to provide treatment services to individuals experiencing homelessness.	1. Street to Home will help 90 individuals have an improvement in psychiatric symptoms within 12 months of enrollment, and stabilized psychiatric symptoms after that.	Psychiatric symptom managements to be measured by Recovery Marker Inventory.	Recovery Marker Inventory is completed upon program entrance, at quarterly intervals, and we will do at program exit as well.	54 enrolled clients will have an improvement in psychiatric symptoms within 12 months of enrollment and show at least stabilization after that.
	2. Street to Home will help 35 individuals have no substance abuse/dependence within 12 months of enrollment and ongoing after that.	Substance abuse status and stage of change to be measured by Recovery Marker Inventory.	Recovery Marker Inventory is completed upon program entrance, at quarterly intervals, and we will do at program exit as well.	35 enrolled clients will have no substance abuse/dependence within 12 months of enrollment and continued stabilization after that.
	3. Street to Home will help 72 individuals have access to a PCP within 6 months of enrollment.	PCP information will be checked on consumers' face sheets.	Face Sheets will be updated with new PCP at least quarterly.	72 enrolled clients will have an identified Primary Care Provider.
	4. Street to Home will help up to 72 individuals have access to an income (work or benefits) within 6 months of enrollment.	Income will be measured on HMIS intake, update and exit forms.	HMIS data recorded upon program entry, at quarterly updates, and at program exit.	72 enrolled clients will have an income within 6 months of enrollment.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

VII. Other Requirements

A. Homeless Management Information System:

The Contractor agrees to fully comply with the Rules and Regulations required by the U.S. Dept. of Housing and Urban Development (HUD) which governs the Homeless Management Information System (HMIS). HUD requires recipients and sub recipients 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 but are not limited to: Continuum of Care (CoC), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA). Project types include, but are not limited to: Emergency Shelter, Transitional Housing, Rapid Rehousing, Diversion, Permanent Housing, Supportive Services, and Street Outreach. Participation in HMIS is a requirement for recipients of City of Denver homeless funding.

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.

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

B. Security

The Contractor must conform to the HMIS Security, Privacy, and Data Quality Plan. 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:

1. All HMIS workstations must be placed in secure locations or must be manned at all times if they are in publicly accessible locations. (This includes non-HMIS computers if they are networked with HMIS computers).
2. All printers used to print hard copies from the HMIS are in secure locations.
3. All HMIS workstations must use password protected lock screens after five minutes of inactivity.
4. All HMIS workstations must have a password protected log on for the workstation itself.
5. All HMIS end user computer screens must be placed in a manner where it is difficult for others to see the contents or must have a blackout filter.
6. Passwords must be memorized, not written down in a publicly accessible location, and must never be shared.
7. Confidential data CANNOT be stored on ANY unencrypted mobile device.
8. Confidential data CANNOT be transmitted via unencrypted wireless devices or unsecured public lines.
9. Internet browser must be compatible with 128-bit encryption.
10. Internet browser must be a current/most up-to-date version
11. HMIS must not be accessed via unsecured wi-fi or other unsecured internet connection

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

12. Any email containing confidential data must utilize at least 128-bit encryption.
13. All HMIS workstations must have an active firewall turned on.
14. All HMIS equipment must have approved anti-virus software installed and configured to automatically download current signature file.
15. Antivirus software must be set to scan emails and file downloads in real time.
16. HMIS agencies must have their entire network behind a firewall and must routinely monitor for intrusion attempts.
17. All Windows-based computing equipment must have Microsoft updates set to automatically download and install any critical update.
18. All HMIS workstations must be running a current operating system and internet browser security.
19. Systems must be scanned at minimum of weekly for viruses and malware.
20. End Users who have not logged onto the system in the previous 90 days will be flagged as inactive.
21. Under no circumstances shall Contractor demand that an end user hand over his or her username and password.

C. HUD Continuum of Care Data Standards:

Contractor is required to collect data based on the most recent HUD Data Standards. For the MDHI Continuum of Care (CoC), 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.

D. Data Quality Standards:

Data quality standards ensure the completeness, accuracy, timeliness, and consistency of the data in HMIS. The Contractor must conform to the HMIS Security, Privacy, and Data Quality Plan.

1. The Contractor must enter HMIS data (program enrollments and services) into the system within seven (7) calendar days of the actual enrollment or service provided date.
2. MDHI reserves the right to request Data Quality reports from Colorado HMIS for Contractor's programs on a monthly basis.
3. MDHI reserves the right to participate in on-site HMIS audits.
4. MDHI reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Contractor's programs in HMIS.
5. MDHI reserves the right to 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 for HUD and MDHI requirements. The Contractor's APR data will be consolidated with other Contractor's and MDHI data to fulfill HUD annual reporting requirements.

E. Participation

Contractor is required to identify a Data Partner Agency Liaison (DPAL) to work with MDHI and the City of Denver on overseeing data quality and compliance. Additionally, DPAL will be required to conduct internal monitoring of HMIS workflow at Contractor organization and participate in HMIS related meetings.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

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.

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.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

2.03.1 Breach excludes:

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

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

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

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

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

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

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

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

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

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

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

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

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

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

4. SECURITY RULE.

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

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
- 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
- 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.
- 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:
- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

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

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

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

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

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

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

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

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

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
- 6.03.1 The Disclosure is required by law; or
- 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

- 7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.
- 7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.
- 7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

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

SCOPE OF WORK
Mental Health Center of Denver (MHCD)
SOCSV 2016-31657-02

- 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.