

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 **COLORADO COALITION FOR THE HOMELESS**, a not-for-profit organization, doing business at 2111 Champa Street, Denver, Colorado 80205 (the “Contractor”), jointly “the Parties”.

RECITALS

A. The Parties entered into an Agreement dated March 17, 2014 and amended it by an Amendatory Agreement dated February 10, 2015, (together, the “Agreement”), to provide housing placement and treatment services to homeless adults in Denver.

B. The Parties wish to amend the Agreement to extend its term for another year and increase the maximum amount of compensation to be paid to the Contractor for such extended term.

Now, therefore, the Parties agree as follows:

1. All references to “...Exhibits A and A-1 as applicable...” in the existing Agreement shall be amended to read: “...Exhibits A, A-1, and A-2 as applicable...” The scope of work marked as Exhibit A-2 is attached and incorporated by reference. Effective January 1, 2016, Exhibit A-2 will govern and control all services provided on and after January 1, 2016.

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

“**3. TERM**: The term of this Agreement shall commence on **January 1, 2014**, and expire, unless sooner terminated, on **December 31, 2016**. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.”

3. Article 4.d.(1) of the Agreement, entitled “**Maximum Contract Amount**”, is 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 **Nine Hundred Seventy Five Thousand Dollars and Zero Cents (\$975,000.00)** (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 Exhibit A, A-1, or A-2, as applicable. Any services performed beyond those in Exhibit A, A-1, or A-2, as applicable, are performed at Contractor’s risk and without authorization under the Agreement.”

4. A new Article numbered 36, entitled “**CONFIDENTIAL INFORMATION; OPEN RECORDS**”, is added to the Agreement reading as follows:

“**36. CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. Confidential Information: The Contractor acknowledges and accepts that, in the performance of all work under the terms of this Agreement, the Contractor will or may have access to the following types of information: (1) City Proprietary Data or confidential information that may be owned or controlled by the City (“City Proprietary Data”); (2) confidential information pertaining to persons receiving services from the Agency (“Client Data”), or (3) confidential proprietary information owned by third parties (“Third Party Proprietary Data”). For purposes of this Agreement, City Proprietary Data, Client Data, and Third Party Proprietary Data shall be referred to collectively as “Confidential Information”. The Contractor agrees that all Confidential Information provided or otherwise disclosed by the City to the Contractor or as otherwise acquired by the Contractor during its performance under this Agreement shall be held in confidence and used only in the performance of its obligations under this Agreement. The Contractor shall limit access to any and all Confidential Information to only those employees who have a need to know such information in order to provide services under this Agreement. The Contractor shall exercise the same standard of care to protect any and all Confidential Information as a reasonably prudent contractor or Contractor would to protect its own proprietary or confidential data. Contractor acknowledges that Confidential Information may be in hardcopy, printed, digital or electronic format. The City reserves the right to restrict at any time Contractor’s access to electronic Confidential Information to “read-only” access or “limited” access as such terms are designated by the Executive Director.

The Contractor agrees to comply with all applicable state and federal laws protecting the privacy or confidentiality of any and all information, including protected health information, and to comply with all requirements contained in the attached Exhibit A.

(1) **Use of Confidential Information:** Except as expressly provided by the terms of this Agreement, the Contractor agrees that it shall not disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available any Confidential Information or any part thereof to any other person, party or entity in any form or media for any purpose other than performing its obligations under this Agreement. The Contractor further acknowledges that by providing access to Confidential Information, the City is not granting to the Contractor any right or license to use such data except as provided in this Agreement. The Contractor further agrees not to reveal, publish, disclose, or distribute to any other party, in whole or in part, in any way whatsoever, any Confidential Information without prior written authorization from the Executive Director.

(2) **City Methods:** The Contractor agrees that any ideas, concepts, know-how, computer programs, or data processing techniques developed by the Contractor or provided by the City in connection with this Agreement shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to Confidential Information, that: (a) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the Executive Director; (b) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data; (c) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or work products incorporating such data or information to the City.

(3) **Employees and Subcontractors:** The requirements of this provision shall be binding on the Contractor's employees, agents, officers and assigns. The Contractor warrants that all of its employees, agents, and officers who designated to provide services under this Agreement will be advised of this provision. All requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement.

(4) **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing Confidential Information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including, but not in any manner limited to, fitness, merchantability, accuracy and completeness of the Confidential Information. The Contractor acknowledges and understands that Confidential Information may not be completely free of errors. The City assumes no liability for any errors or omissions in any Confidential Information. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

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

6. 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-201314439-02

Contractor Name: THE COLORADO COALITION FOR THE HOMELESS

By: *Louise O. Boris*

Name: LOUISE O. BORIS
(please print)

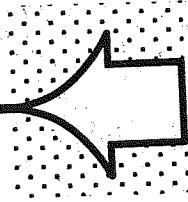
Title: CHIEF PROGRAM OFFICER
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



SCOPE OF WORK
THE COLORADO COALITION FOR THE HOMELESS
16th Street Housing First
2013-14439-02

I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Work between Denver Department of Human Services (DDHS) and Colorado Coalition for the Homeless (CCH). This Contract will provide housing placement and treatment services to 60 chronically homeless adults in Denver.

II. Services

The contractor will provide services in three different phases:

Phase 1

Assist with benefit acquisition and retention, accessing primary health and mental health providers, as well as assist in obtaining and maintaining affordable, permanent housing.

Phase 2

Provide support in healing from trauma, addiction, mental health issues and homelessness providing individual and group therapy.

Phase 3

Ensure maintaining recovery and learning how to use personal strengths and assets to obtain and maintain healthy social connections.

III. Process and Outcome Measures

1. Please refer to the Outcome Evaluation Plan located in Section VI for all measures and outcomes related to this contract.
2. Contractor shall submit accurate and timely invoices in accordance to the requirements of this Agreement. Invoices and reports shall be completed and submitted on or before the 15th of each month 100% of the time. Contractor shall use DHS' preferred invoice template, if requested.

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.

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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. Quarterly Reports	Report shall demonstrate the achievements of Process and Outcome Measures in Section III. The report shall provide data on the number and percentage of participants that are housed, that maintain permanent and supportive housing for 1 year or more, that receive new intakes, and that reduce substance abuse, improve health, and/or improve mental health status.	Due Quarterly – 15 days after the end of the quarter	DRH Program Manager
a. Outcome Evaluation Plan (template will be provided by DDHS)	Plan shall provide information on goals, objectives, measurements, timeframes for data collection, and outcomes.	Completed evaluation plan due in Spring 2016	DRH Program Manager
2. Annual Summary Report	Report shall demonstrate the achievements of Goals 1, 2, and 3. The report shall provide information on participants that are housed and/or engage in intensive services, participants receiving housing and case management services, and participants maintaining housing for 1 year or more; and decreased problems associated with substance abuse, improvement in health, and mental health.	Contract End, within 15 days after Term End.	DRH Program Manager
3. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	

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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.

B. BUDGET

THE COLORADO COALITION FOR THE HOMELESS		
Contact Name: Lisa Thompson, DNP, PMHNP-BC		
Program Name: 16th Street Housing First		
Contract Number: 2013-14439-02		
Term: 1/1/2016 – 12/31/2016		
COSTS:	Budget	Narrative
PERSONNEL		
Program Assistant 1 at 0.25 FTE	\$13,000.00	Supports team in running client clearances for housing, order office supplies, manages RTD contract for client transportation, shop's for program and maintains vehicles and office equipment. Annual Salary @ \$52,000/FTE
Program Manager 1 at 0.5 FTE	\$28,200.00	Supervises Housing First team to ensure the best quality services are provided for clients and maintaining budgets. Annual salary @ \$56,400/FTE
Case Manager 1 at 1.0 FTE	\$63,000.00	Engagement services and benefit acquisition, locating and obtaining housing, mediating with landlords and connecting clients with community resources. Annual salary @ \$63,000/FTE
Clinical Case Manager 1 at 1.0 FTE	\$47,500.00	Provides crisis intervention, individual and group therapy to address issues related to homelessness, trauma, addiction, mental health. Annual salary @ \$47,500/FTE
Housing Counselor 1 at 0.25 FTE	\$0.00	Provides the housing orientation and lease signings, initial and annual inspections of units to ensure compliance with HUD guidelines. Annual salary @ \$40,000/FTE
Peer Mentor 1 at 1.0 FTE	\$12,705.00	Provides on-going supports for clients from a peer's point of view, having experienced homelessness themselves. Annual salary @ \$12,705/FTE
Benefits Acquisition/Payee Representative 1 at 0.2 FTE	\$11,800.00	Provides on-going support to aid participants in benefits acquisition and retention, and serves as representative payee for participants receiving Social Security benefits. Annual Salary @ \$59,000/FTE
Clinical Nurse Specialist 1 at 0.1 FTE	\$12,346.00	Provides psychiatric intakes and assessments and ongoing medication prescriptions and supervision. Annual salary @ \$123,460/FTE
Psychiatrist MD 1 at 0.14 FTE	\$0.00	At a medical level, provides psychiatric intakes and assessments and ongoing medication prescriptions and supervision. Annual salary @ \$178,844
Security Guard 1 at	\$16,000.00	Ensure the safety of all clients and staff in the office

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0.5 FTE		space and club house. Annual salary @ \$32,000
<i>Taxes and Benefits</i>	\$59,320.00	@29% of personnel costs
Subtotal Personnel:	\$263,871.00	
TRAVEL		
Mileage	\$2,323.00	For staff assisting clients to and from appointments, housing searches, and ongoing case management in the community, @ \$0.45/mile
Subtotal Travel Expense:	\$2,323.00	
SUPPLIES		
Office Supplies	\$3,650.00	Ordinary office supplies including pens, calculators, pencils, note paper, sticky notes, etc.
Subtotal Supplies:	\$3,650.00	
OTHER EXPENSES:		
Phones	\$3,875.00	Cell Phones, land lines/internet charges
Staff Clearances	\$155.00	Background checks for new staff.
Client Clearances	\$150.00	Background checks and credit checks as required for housing.
Staff Development	\$3,860.00	On-going education and training to ensure staff competence on evidenced-based practices. Includes travel and expenses associated with training (travel, meals, lodging)
Client Emergency Needs	\$13,379.00	Apartment applications, rent or deposit assistance, utility assistance, apartment furnishings, professional clothing and work related accessories, transportation including bus tickets and passes as well as co-pay for medical and prescription assistance. Additionally when necessary hotel vouchers.
Occupancy (i.e. Office Rent)	\$7,350.00	2100 Broadway
Subtotal Other Expenses:	\$28,769.00	
ADMINISTRATIVE		
	\$26,387.00	10% of direct salaries & wages as indicated on attached Indirect Cost Negotiation
Subtotal Administrative	\$26,387.00	
Total Budget	\$325,000.00	

VI. Outcome Evaluation Plan Template: Denver Road Home

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Program: Colorado Coalition for the Homeless 16th Street Housing First Program

Goals	Objectives	Measurement	Time frame for Data Collection	Outcomes
#1 To provide access to Integrated health, mental health, and substance treatment services for program participants through the Stout Street Health Center.	#1: Enroll at least 30 clients (50%) in integrated health services at the Stout Street Health Center in 2016.	Clinical encounter for all integrated health services will be documented for each client in the electronic medical record.	Quarterly	30 clients enrolled in Stout Street Health Center
Targeted efforts will be made to enroll program participants into Medicaid or other health related benefits.	#1: Assist 54 clients (90%) of program participants to obtain health related benefits (i.e. Medicaid/Medicare) Center in 2016.	Medicaid and health insurance status will be obtained through the WebPortal System.	At program entry and quarterly	54 clients obtained health related benefits
Targeted efforts will be made to assist clients in obtaining financial benefits (i.e. SSI/SSDI/OAP/AND) and/or other sources of income.	#1: Assist at least 36 clients (60%) to obtain financial benefits and/or other sources of income in 2016.	Income status is monitored and recorded in the HMIS database.	At program entry and quarterly	36 clients obtained financial benefits
Increase permanent housing options and/or maintain housing stability for people who are chronically homeless	#1: House 60 adults per year at any point in time who are chronically homeless in 2016.	Housing status and placement into permanent supportive housing is entered into the HMIS database and updated on an annual basis and/or as housing status changes occur.	Quarterly	60 adults housed
	#2: 54 clients	Housing status	At program entry	54 clients

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	(90%) will maintain permanent, supportive housing for one year or more in 2016.	and placement into permanent housing is entered into the HMIS database upon intake and updated on an annual basis and/or as housing status changes occur.	and quarterly.	obtained permanent supportive housing
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VII. 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.

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



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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 2015-2016 is:

MDHI:

2015 Dates	2016 Dates
July 17	Jan 15
Sept 18	Mar 19
Nov 20	May 21

Data Quality Standards

- 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.

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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.

VIII. 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

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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 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

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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.

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

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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.

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

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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 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

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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, 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

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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 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 CONTRACTOR maintains the PHI.



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