

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

RECITALS:

A. The Parties entered into an Agreement dated February 7, 2017, and amended it on March 13, 2018 (together, the “Agreement”).

B. The Parties wish to amend the Agreement to extend its term, amend the scope of work and budget, increase the Maximum Contract Amount, and modify certain other terms as set forth below.

NOW THEREFORE, the parties agree as follows:

1. All references to “Exhibit A and A-1” in the existing Agreement shall be amended to read: “Exhibits A, A-1, and A-2, as applicable”. The scope of work and budget marked as Exhibit A-2 is attached and incorporated by reference. Effective as of January 1, 2019, Exhibit A-2 will govern and control the services to be provided from January 1, 2019, until December 31, 2019.

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

“**3. TERM:** The term of this Agreement will commence on January 1, 2017, and will expire unless sooner terminated, on December 31, 2019. 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 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 Three Million Five Hundred Seventy-Six Thousand Dollars and Zero Cents (\$3,576,000.00) (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. Except as amended herein, the Agreement is affirmed and ratified in each and every particular.

5. 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-201631776-02

Contractor Name: THE COLORADO COALITION FOR THE HOMELESS

By:  1/15/19

Name: Lisa Thompson
(please print)

Title: Chief operating officer
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)





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I. Purpose of Agreement

The purpose of the contract is to establish an agreement and Scope of Services between Denver Human Services (DHS) and The Colorado Coalition for the Homeless (CCH) to work with community partners that provide services for Denver's homeless populations. CCH will be the lead agency for the Denver Street Outreach Collaborative (DSOC) and the Behavioral Health Navigator (BHN) program.

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

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

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

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

1. CCH will perform the role of being fiscal steward for DRH funding to administer the DSOC and BHN programs.
 - a. CCH will work within the set budget and expend funds according to the contract. This includes payroll, check disbursement, administration of funds, invoicing/billing, budget reconciliation and financial reports.
 - b. Prepare and provide monthly financial reports to DRH and/or its designees. Provide verification of expenditures.
 - c. Work with DRH regarding any audits. Keep in their original form all records and documents for a minimum of three (3) years from the expiration date of the contract.

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- d. DRH Funds contracted for the DSOC and BHN programs are to be used for staffing positions, operational costs, client services and Indirect Costs.

- C. The central premise of the homeless outreach and housing placement program is to move people living/sleeping on the streets or public places into shelters and/or other appropriate housing. Many of these individuals are the most chronic and vulnerable of Denver's homeless population, who may have severe and persistent mental illness and/or substance abuse disorders. They may be found on the streets, staying in shelters for extended periods of time, in bus/train stations, under bridges, in abandoned buildings and in parks. It is known that support services will be necessary to maintain housing which is the most important outcome for clients. The ultimate goal of the homeless outreach and housing placement program is a decrease in the number of homeless persons who are currently unsheltered and not housed.

- D. The goals and outcomes of this contract will utilize an outcome and performance-based model to achieve the city of Denver's goals to reach a 75% reduction in chronic homelessness. This will help to ensure identified populations remain at the forefront of this program.

- E. DSOC outreach workers perform their jobs by locating, engaging, and cultivating relationships with hard-to-reach homeless individuals. Face-to-face contact is made, crisis intervention provided, needs are assessed, connections with appropriate services are made and one-on-one assistance is delivered recognizing and defining personal service needs. DSOC outreach workers meet emergency needs directly and when necessary, provide transportation assistance to service sites. Throughout this engagement process, outreach workers identify obstacles that limit or prevent each homeless individual from accessing available services, including housing. DSOC staff members will adhere to the homeless encampment protocol developed by the contractor and DHS in August 2005 and will work closely with the Denver Police Department and coordinate with the night outreach team to provide outreach to the identified camps as outlined in protocol.

- F. The BHN will be trained in delivering trauma informed care interventions, have knowledge of motivational interviewing, crisis intervention, and solution focused interaction. Each BHN will have knowledge of homeless issues and empathy for people experiencing homelessness. BHN staff will be a credentialed licensed clinical social worker (LCSW) or a licensed professional counselor (LPC) or be candidates for licensure who are comfortable working as a member of a multi-disciplinary team.

- G. BHN's will be members of an integrated healthcare team at the Stout Street Health Center. This connection will provide quick, facilitated access to integrated healthcare for outreach clients navigated to the Stout Street Health Center by DSOC's behavioral health navigators.

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- H. The BHN will provide services in various areas of Denver by locating, engaging and cultivating relationships with hard-to-reach homeless people. Encouragement and support will be consistently provided to outreach clients, including conducting street outreach on foot and in vehicles. A high level of coordination will be maintained with street outreach workers to deliver the best possible support to clients.
 - I. BHN's will provide face-to-face contact with people in public places, under bridges, abandoned buildings, vacant lots, other outdoor and some indoor settings. Needs will be identified and assessed, crisis intervention will be provided, emergency needs will be directly met; behavioral health services will be delivered wherever people who need them are located. Throughout this engagement process, obstacles will be identified that limit or prevent accessing available behavioral health and other needed services. Once these barriers are identified, efforts will be made to overcome them. Connections with appropriate services, including integrated behavioral health and other health care services, will be made as clients are willing. When necessary transportation and accompaniment will be provided to access needed services.
 - J. The BHN will facilitate quick access to integrated care at CCH Stout Street Health Center. Integrated health care delivered to outreach clients who are navigated to Stout Street Health Center by DSOC's BHN's will consist of individually determined combinations of needed services. Care provided by each of stout street health center's integrated care teams may include:
 - 1. Behavioral health care (one on-one and group therapy for mental health and substance use issues)
 - 2. Psychiatric services
 - 3. Medical care
 - 4. Dental services, vision services
 - 5. Medical respite
 - 6. Case management
 - K. BHN's will facilitate emergency shelter placement or, depending on circumstances, may provide hotel or motel voucher. The BHN will also work on an as needed basis with respite programs to directly deliver behavioral health services in respite settings.
 - L. BHN's will ensure:
 - 1. HMIS and coordinated entry—assure that all individuals engaged have been entered into HMIS, and the VISPDAT, when applicable.
 - 2. Evaluation in cooperation with DSOC, provide quarterly outcome data on significant and meaningful evaluation metrics.
- III. Outcome and Process Measures**
- A. Please refer to the Outcome Evaluation Plan Template for all measures and outcomes related to this contract.

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Outcome Evaluation Plan Template: Denver's Road home

Goals	Objectives	Measurement	Time frame for Data Collection	Outcomes
Engage homeless individuals on the streets	Assist 265 youth and adults into permanent housing in 2019	Housing tracking form completed by individual outreach workers on a monthly basis	Collected on a monthly basis from Jan 2019- Dec 2019	265 adults will be housed or reunified in 2019 (100-150 will be identified as chronically homeless, 25 will be identified as vulnerable as identified from the VI and the VI SPDAT)
Make 6,500 unduplicated contacts per contract year with homeless individuals (with specific focus on those who are chronically homeless)	Provide services to 100% of these individuals that will cultivate relationships and address personal service needs	HMIS data collection no a monthly basis	Report generated on a monthly basis from Jan 2019-Dec 2019	The DSOC will connect with 6,500 homeless individuals to provide crisis management, relationship building, and services based on individual need.
Maintain suggested hours of operation for the DSOC	Maintain outreach coverage Mondays-Saturdays: 7am- 9pm	DSOC coordinated schedule	Schedule coordinated on a monthly basis with review when staff changes.	Hours of operation will be Mondays-Saturdays: 7am-9pm (holidays excluded). DSOC will be available for the Sit and Lie and UCB for DPD calls.
There will be a coordinated response by Outreach teams to all inquiries related to homelessness from City Council, concerned citizens, and members of the community.	DSOC coordinator will provide a response to DRH within 48 hours of initial inquiry if initial inquiry came through DRH.	DSOC coordinator will maintain a log of all outreach requests and the responses for inquiries coming through DRH.	Collected on a monthly basis from Jan 2019- Dec 2019	The community will be provided with a coordinated response to inquiries about people experiencing homelessness within 48 hours of initial inquiry.

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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 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 Name	Description	Frequency	Reports sent to
1.Monthly Reports	Report will detail contacts (duplicated and unduplicated); (to be in conjunction with housing placement services); referrals for substance treatment, referrals for mental health and/or physical health care; access to emergency shelter; assistance with obtaining needed identification; referrals to Homeless Court; and numbers housed (broken out between housed and reunified)	Once a month – Due the third Tuesday of each month	Program Manager & dhs_contracting_services_documents@denvergov.org
2.Quarterly Reports	Quarterly reports will be submitted in order to measure the progress being made against the process measures and outcomes detailed in Section VI	Each Quarter	Program Manager & dhs_contracting_services_documents@denvergov.org

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V. Budget

- A. Contractor shall provide the identified services for the City under the support of the Denver Human Services using best practices and other methods for fostering a sense of collaboration and communication.
- B. The Maximum Contract Amount of \$3,576,000.00 for the term January 1, 2017 to December 31, 2019 shall be distributed on a reimbursement basis.
- C. Summary of contract amounts
1. Base contract \$1,182,000.00
 2. Amendment 1-\$1,182,000.00
 3. Amendment 2-\$1,212,000.00
 4. Total \$3,576,000.00
- D. Invoices submitted for payment must be accompanied by adequate documentation of services and must be received by the City on or before the 15th working day of each month of the term hereof. All Invoices shall be sent directly to:

DHS_Contractor_Invoices@denvergov.org or by US Mail to:

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

E. Budget

Contractor: THE COLORADO COALITION FOR THE HOMELESS		
Term: 1/1/19 - 12/31/19		
Contract Number: SOCSV 2016-31776-02		
Program: Denver Street Outreach Collaborative		
Budget Categories	Budgeted Amount	Narrative
DIRECT COSTS		
Salaries		
Outreach	\$225,892.00	Full-time employment- 5 Staff
Case Manager	\$48,247.00	Full-time employment- 1 Staff
Outreach Behavioral Health Navigators	\$40,580.00	Full-time employment- 1 Staff
Program Director	\$36,344.00	Employee working up to a portion of their time to be reimbursed at cost
Program Manager	\$60,634.00	Full-time employee

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Taxes & Fringe Benefits	\$110,773.00	Actual taxes and fringe benefits reimbursement at cost
Total Salaries and Fringe	\$522,470.00	
OTHER DIRECT COSTS		
Direct Facilities	\$24,160.00	Facilities costs are directly related to the DSOC project and can be readily identified as such with documentation. It is where DSOC staff operate and where clients of this program receive direct services including actual costs for rent or space allocation, utilities, maintenance, repair.
Staff Training and Development	\$1,500.00	Program related staff training, materials and fees
Staff Conference and Training	500.00	Program-related conference and training expenses including, but not limited to, registration fees, travel, transportation, lodging, and meals
Staff Transportation	\$5,000.00	Options may include mileage (Not to exceed the rate approved by the IRS at the time the expense is incurred), parking, or rideshares
Client Support Costs	\$25,164.00	Items given to clients which may include but not limited to bus fare (tickets/passes), birth certificates, ID's, clinical co-pays, move in fees, first month's rent, renters' insurance, personal care items, clothing, food, utilities, deposits, phone costs and emergency motel vouchers.
Other Program Costs	\$11,300.00	Program-related materials and equipment including, but not limited to, electronic devices and accessories, office supplies, office equipment, shredding services and marketing
Subcontractor The St. Francis Center	\$338,009.00	SFC will work in collaboration with community partners to administer the DSOC and BHN program to provide coordinated outreach services to youth and adults who are homeless in Denver.
Subcontractor Urban Peak Denver	\$244,800.00	Urban Peak will work in collaboration with community partners to administer the DSOC and BHN program to provide coordinated

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		outreach services to youth and adults who are homeless in Denver.
Total Other Direct Costs	\$650,433.00	
SUM OF DIRECT COSTS:	\$1,172,903.00	
INDIRECT COST RATE	\$39,097.00	Indirect Cost Rate 3.333354% of Direct Costs
TOTAL CCH COSTS:	\$1,212,000	

VI. 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.

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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
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.

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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.

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.
- 1.02 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.

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- 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:

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,

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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.

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.

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- 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 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.

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- 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.

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

5. BREACH DISCOVERY AND NOTIFICATION.

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

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

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

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

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

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

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

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

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

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required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.

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

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

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

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

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

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

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

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

6.03.1 The Disclosure is required by law; or

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

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confidentiality of the information has been breached.

- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.
- 6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

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

8. BUSINESS ASSOCIATE TERMINATION.

- 8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:
 - 8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or
 - 8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.
- 8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to 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.

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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.