

## 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 **WARREN VILLAGE INC.**, a not-for-profit corporation whose address is 1323 Gilpin St., Denver, CO 80218 (“Contractor”), collectively “the Parties”.

### RECITALS:

**A.** The Parties entered into an Agreement dated February 20, 2018, and a Revival and Amendatory Agreement dated April 9, 2019, (collectively the “Agreement”).

**B.** The Parties wish to amend the Agreement to extend its term, amend the scope of work and budget, and increase the Maximum Contract Amount.

**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 and budget marked as Exhibit A-2 is attached and incorporated by reference. Effective as of January 1, 2020, Exhibit A-2 will govern and control the services to be provided from January 1, 2020, until December 31, 2020.

**2.** Article 3 of the Agreement, entitled “**TERM**”, is amended by deleting and replacing it with the following:

“**3. TERM:** The Agreement will commence on **January 1, 2018**, and will expire unless sooner terminated, on **December 31, 2020**. 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 by deleting and replacing it with the following:

“**d. Maximum Contract Amount:**

**(1)** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed **Six Hundred Thousand Dollars and Zero Cents (\$600,000.00)** (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. Any services performed beyond those in Exhibits A, A-1 and A-2 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:** SOCSV-201952860-02  
**Contractor Name:** ALFRESCO-201738671-02  
WARREN VILLAGE INC.

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

SOCSV-201952860-02  
ALFRESCO-201738671-02  
WARREN VILLAGE INC.

By: DocuSigned by:  
*Ethan Hemming*  
75CF5F00E7BB4A0... \_\_\_\_\_

Name: Ethan Hemming  
(please print)

Title: CEO  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

**I. Purpose of Agreement**

The purpose of the contract is to establish an agreement and Scope of Work between Department of Housing Stability (HOST) and Warren Village Inc. (WVI). The partnership offers housing and supportive services to homeless persons in the City and County of Denver. HOST is working with qualified housing providers to offer housing units to homeless families with incomes between 0 to 30% Area Median Incomes (AMI).

This contract will assist Warren Village to continue its First Step Program, a project funded by Denver's Road Home since 2007, providing 11 units of transitional housing and intensive support services for homeless women with children.

**II. Services**

**A. In addition to any other services set forth in the Agreement and its exhibits, the Contractor shall:**

1. Continue to maintain the collection, security, maintenance and reporting to the City's required documentation. All data will be entered in a timely manner on a weekly basis, and the information will be entered in the Homeless Management Information System (HMIS). The Contractor will continue to fully cooperate with the City's point-in-time survey efforts.
2. In order to promote client participation in the development of programs and services for the homeless, maintain an advisory board that shall include at least one (1) homeless person receiving services under this Agreement.
3. Abide by Fair Housing Laws.
4. Maintain all tenant records in an organized and confidential manner and provide reasonable access to HOST as requested.
5. Coordinate through the HOST Public Information Office via the HOST Project Manager any media interview requests regarding the specific program and/or topics directly related to this program or its tenants.
6. Provide the identified supportive services for the City under the support of HOST using best practices and other methods to effectively manage the funds and programs by fostering a sense of collaboration and communication. Supportive services will include the following:
  - a. Case Management;
  - b. Assistance with income enhancement, i.e. public benefits and job acquisition;
  - c. Emergency financial assistance;
  - d. Assistance with household setup, furniture and supplies;
  - e. Emergency assistance, i.e. food, medical and transportation needs;
  - f. Assistance and referral with family issues, i.e. children's schooling and parenting support, substance abuse, and domestic violence.
7. Assess families within four (4) weeks of program enrollment. Assess families' progress toward stabilization at least once per quarter.
8. Assist HOST in maintaining 100% occupancy in designated units.

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

**III. Roles and Responsibilities for both parties**

- A. Contractor will work with City to host any city-designated sensitivity training on an annual basis.
- B. Contractor will provide any online modular sensitivity training developed and provided by the City to all new direct-service staff within 15 days of hire date.
- C. Contractor will assure direct-service staff complete training refresher on a biennial basis.
- D. The City will provide signage that includes information about the City and County of Denver's Anti-Discrimination Office.

**IV. Process and Outcome Measures**

**A. Income Acquisition Benchmarks:**

- 1. **For Current Participants** (those participants actively enrolled in your program on the last day of the quarter/reporting period).
  - a. PSH - 20% of **current** program participants will have obtained income from employment; TH – 50% of **current** program participants will have obtained income from employment.
    - i. Data source: HMIS
    - ii. Measure: Number and percentage of currently participating households who increased earned income from program entry to most recent assessment
  - b. 40% of **current** program participants will have obtained mainstream financial benefits (i.e. SSI, SSDI, TANF, AND), or a steady source of income. This will be measured as the percentage of households who increase total income from program entry to most recent assessment.
    - i. Data source: HMIS
    - ii. Measures:
      - 1. Number and percentage of currently participating households who increased total income from program entry to most recent assessment
      - 2. Average and median income at program entry and at most recent assessment for currently participating households
      - 3. Number and percentage of currently participating households who had each benefit type at program entry compared to at the most recent assessment.
- 2. **For Exiting Participants** (anyone who exited the program during the quarter/reporting period – broken down into Successful & Unsuccessful groups of exiting participants).
  - a. PSH - 20% of **exited** program participants will have obtained income from employment **at the point of exit**; TH - 50% of **exited** program participants will have obtained income from employment **at the point of exit**.
    - i. Data source: HMIS
    - ii. Measure: Number and percentage of exited households who increased earned income from program entry to program exit

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

- b. 50% of **exited** program participants will have obtained mainstream financial benefits (i.e. SSI, SSDI, TANF, AND), or a steady source of income **at the point of exit**. This will be measured as the percentage of exited households who increase total income from program entry to program exit.
  - i. Data source: HMIS
  - ii. Measures:
    - 1. Number and percentage of exited households who increased total income from program entry to program exit
    - 2. Number and percentage of exited households who maintained total income from program entry to program exit
    - 3. Number and percentage of exited households who reduced total income from program entry to program exit
    - 4. Average and median income for exiting households at program entry and program exit.
    - 5. Number and percentage of exited households who had each benefit at program entry compared to program exit

**B. Program Retention and Housing Attainment Benchmarks:**

- 1. **Data For Current Participants** (those participants actively enrolled in your program on the last day of the quarter/reporting period).
  - a. Data source: HMIS
  - b. Measures:
    - i. Average and median length of program enrollment
    - ii. Number at percentage of currently participating households enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months
    - iii. Note: program enrollment period is defined as the time between the household's program enrollment date and the last day of the reporting period.
- 2. **For Exiting Participants** (anyone who exited the program during the quarter/reporting period).
  - a. 70% of program participants will exit the program into a permanent housing outcome.
    - i. Data source: HMIS
    - ii. Measures:
      - 1. Number and percent of exiting households by destination at exit. Destinations at exit will be grouped into permanent housing, other stable housing outcomes, and outcomes to other locations (e.g., nightly shelter, street, jail, or unknown destinations).
  - b. Length of stay for exiting households
    - i. Data source: HMIS
    - ii. Measures:
      - 1. Average and median length of program enrollment

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

2. Number at percentage of currently participating households enrolled in the program for: less than 3 months, 3 to 12 months, and longer than 12 months

**C. Household Characteristics**

1. Households served:
  - a. Data source: HMIS
  - b. Measures:
    - i. Number of households served each reporting period and deduplicated count of households served to date
    - ii. Number of households that exited the program within the reporting period and year to date
2. Household characteristics:
  - a. Data source: HMIS
  - b. Measures:
    - i. Number and percent of heads of household by race, ethnicity, and income level at entry (if reported in HMIS for program type)

**D. Data quality**

1. In order to determine the accuracy and comprehensiveness of the reporting on the above outcomes measures, HOST will also collect an HMIS Data Quality Report on the program for each reporting period.
  - a. Data source: HMIS

**E. Program Narrative Reports**

1. For each reporting period, the contractor will provide a narrative update on program successes and challenges. This narrative will include information on the extent to which participating households are connected to health and treatment services.

**V. Performance Management and Reporting**

**A. Performance Management**

Monitoring will be performed by the program area and other designated City staff throughout the term of the agreement. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract Monitoring:** Review and analysis of current program information to determine the extent to which contractors are achieving established contractual goals. Financial Services, in conjunction with the program area and other designated City staff, will provide performance monitoring and reporting reviews. City staff will manage any performance issues and will develop interventions to resolve concerns.

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

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.

<b>Report</b>	<b>Description</b>	<b>Frequency</b>	<b>Reports to be sent to</b>
Case Study Narratives of a successful program	Narratives of guest(s) participating and/or completing program. Must include guest's completed Release of Information	Quarterly- Due on 15 <sup>th</sup> of month following each quarter	Program Manager
Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section IV.	Quarterly- Due on 15 <sup>th</sup> of month following each quarter	Program Manager
Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount spent, and an explanation as to unspent funds, etc.	Within 30 days after Term End Date of this contract agreement	Program Manager

**VI. Budget**

Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month following the month services were rendered 100% of the time. Contractor shall use HOST's preferred invoice template, if requested. Invoicing supporting documents must meet HOST requirements.

Invoices shall be submitted to HOST at [hostap@denvergov.org](mailto:hostap@denvergov.org) or by US Mail to:

Attn: Department of Housing Stability  
 Fiscal Management Unit  
 201 W. Colfax Ave.  
 Denver CO 80202

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

<b>Contractor Name: Warren Village</b>		
<b>Contract Number: SOCSV 2017-38671-02</b>		
<b>Term: 1/1/2020-12/31/2020</b>		
<b>Program Name: First Step Program</b>		
<b>Budget Categories</b>	<b>Budgeted Amount</b>	<b>NARRATIVE</b>
<b>DIRECT COSTS</b>		
<b>Salaries &amp; Fringe Benefits</b>		
Manager	\$43,363.00	Full-time salary will be reimbursed at cost not to exceed \$43,363.00. Bonuses, severances or payouts of leave if employee separates from their job will not be reimbursed.
Advocate	\$30,559.00	Full-time salary will be reimbursed at cost not to exceed \$30,559.00. Bonuses, severances or payouts of leave if employee separates from their job will not be reimbursed.
Fringe Benefits	\$22,177.00	Fringe benefits and payroll taxes (Fringe) will be reimbursed at cost. Fringe includes employer portion of the following items: payroll taxes (Social Security, Medicare, Federal unemployment, and state unemployment), insurance (medical, dental, vision, disability, and workers comp) and pension or retirement plans. This list is not all inclusive and any Fringe not included on this list would require written preapproval from the Program Manager.
<b>TOTAL SALARIES &amp; FRINGE BENEFITS</b>	<b>\$96,099.00</b>	
<b>Other Direct Costs</b>		
Housing Subsidy Costs – Rental Assistance	\$88,440.00	Total Housing subsidy is \$695.00 per unit per month. Each tenant pays portion of rent of \$25 per month. Reimbursement for housing subsidy for 11 units is \$670.00 per unit per month. \$670.00 x 11=\$7,370.00 per month. \$7,370.00 x 12 months=\$88,440.00
<b>TOTAL OTHER DIRECT SERVICES</b>	<b>\$88,440.00</b>	
<b>Total Direct Services</b>	<b>\$184,539.00</b>	
<b>Total Indirect Costs</b>	<b>\$15,461.00</b>	Indirect Rate calculated at 8.378%
<b>Total Budget</b>	<b>\$200,000.00</b>	

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

**Contract Summary of Amounts**

<b>Contract Version</b>	<b>Term</b>	<b>Previous Amount</b>	<b>Additional Amount</b>	<b>New Contract Total</b>
<b>Base</b>	1/1/2018- 12/31/2018	0	\$200,000.00	\$200,000.00
<b>1<sup>st</sup> Amendment</b>	1/1/2019- 12/31/2019	\$200,000.00	\$200,000.00	\$400,000.00
<b>2<sup>nd</sup> Amendment</b>	1/1/2020- 12/31/2020	\$400,000.00	\$200,000.00	\$600,000.00

**VII. Other Requirements**

**Use of Homeless Management Information System (HMIS) and Reporting**

It is the Department of Housing Stability's policy, in alignment with adopted plans, to require the use of the Homeless Management Information System (HMIS) and the Coordinated Entry System (OneHome) for all federally and locally funded programs addressing the needs of residents experiencing homelessness.

The Contractor agrees to fully comply with the rules and regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the HMIS<sup>1</sup>.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies and procedures established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC). These are outlined in the COHMIS Policies and Procedures<sup>2</sup>, and the COHMIS Security, Privacy and Data Quality Plan<sup>3</sup>.

Metro Denver Homeless Initiative (MDHI) is the implementing organization for the (HMIS). The HMIS software is called Clarity.

Contractor's aggregate HMIS performance data for projects may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI and/or HOST will monitor contractor compliance and performance on an annual basis through a site visit.

Technical assistance and training resources for HMIS are available to the Contractor via the COHMIS Helpdesk.<sup>4</sup>

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<sup>1</sup> <https://www.hudexchange.info/programs/hmis/hmis-data-and-technical-standards/>

<sup>2</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>3</sup> <https://cohmis.zendesk.com/hc/en-us/articles/360013991371-Policy-Procedures>

<sup>4</sup> <https://cohmis.zendesk.com>

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

HMIS data will be used to monitor performance under this contract in addition to quarterly program narratives. HMIS outcome reports may be sent to HOST directly from MDHI. Contractor will also have access to all outcome reports generated for this contract. Narrative reports will be due to HOST two weeks after each HMIS outcome report is generated and sent to HOST to allow the Contractor the opportunity to address any issues they observe in their outcomes report in that narrative. Outcomes measures and other required reporting as well as the data source for each reporting element are detailed below. HOST may request aggregate data from MDHI for City related reporting needs.

**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

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

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, 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;

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.

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

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

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

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

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

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

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

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

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

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

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

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

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

- 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.
- 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.

**Warren Village Inc.**  
**Scope of Work**  
**SOCSV 2017-38671-02**

- 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.
- 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

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

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 HOST Executive Director or other designee.

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

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

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

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

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

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

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:
  - 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.

**Warren Village Inc.  
Scope of Work  
SOCSV 2017-38671-02**

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.