

FIFTH AMENDATORY AGREEMENT

THIS FIFTH 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 **VOLUNTEERS OF AMERICA, COLORADO BRANCH**, aka, Volunteers of America, a not-for-profit corporation whose address is 2660 Larimer Street, Denver, CO 80205 ("Contractor"), collectively “the parties”.

RECITALS

1. The City and the Contractor entered into an Agreement dated April 3, 2013, as amended by an Amendatory Agreement dated February 24, 2014, a Second Amendatory Agreement dated February 12, 2015, a Third Amendatory Agreement dated March 2, 2016, and a Fourth Amendatory Agreement dated January 9, 2017 (together, the “Agreement”) to provide temporary and housing support services to the homeless people in the City and County of Denver pursuant to the Homeless Veterans Comprehensive Assistance Act of 2001, as codified at 38 U.S.C. 101, *et seq.*, as may be amended from time to time.

2. The Parties wish to further amend the Agreement to increase the maximum amount of compensation to be paid to the Contractor under the Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Effective April 1, 2017, all references to Exhibits A, A-2, and A-3, in the existing Agreement shall be amended to read Exhibit A, A-1, A-2, A-3, and A-4, as applicable. Exhibit A-4 is attached to this Fifth Amendatory Agreement and will be in effect from April 1, 2017, until March 31, 2017.

2. Subparagraph 3.e. (1) of Paragraph 4 of the Agreement, entitled “Maximum Contract Amount”, is amended by deleting and replacing it with the following:

“e. **Maximum Contract Amount:** (1) Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Six Hundred Ten Thousand Seven Hundred Eighty Six Dollars and Fifty Cents (\$610,786.50) (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, A-2, A-3, or A-4, as applicable. Any services performed beyond those in Exhibit A, A-1, A-2, A-3, or A-4 are performed at Contractor’s risk and without

authorization under the Agreement.”

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

4. This Fifth Amendatory Agreement will not be 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-4 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-201309649-05

Contractor Name: VOLUNTEERS OF AMERICA OF COLORADO
BRANCH

By: Dianna L. Kunz

Name: Dianna L. Kunz
(please print)

Title: President and CEO
(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 Work between the Denver Department of Human Services (DDHS) and Volunteers of America (VOA) to work with Denver's homeless veteran women population to achieve the goals of improved residential stability, increased income and self-determination as the veterans successfully complete the Home Again program.

II. Services:

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

Denver Home Again Program

A. Eligibility

1. Eligible veterans will meet the following criteria:
 - a) The veteran is female and homeless.
 - b) The veteran has a valid Department of Defense DD Form 214 confirming a discharge from active military service under other than dishonorable conditions. VA staff will help veterans confirm their status. VA will expedite DD 214 through immediate electronic verification by name and social security number and process the paperwork so as to receive an initial response within 7-10 days.

B. Residential Stability

ACTION STEPS: PRE-PROGRAM ENROLLMENT

1. The Contractor shall seek to identify emergency housing for referred Veteran households and:
 - a) Provision of food, shelter, and clothing;
 - b) Confirmation of status as a veteran and assessment of eligibility for VA services and benefits;
 - c) At intake, or within 24 hours, meeting with a case manager to begin crisis counseling and help identify immediate additional needs, such as medical care, mental health or substance abuse treatment;
 - d) Referral for any emergency medical needs.

ACTION STEPS: POST-PROGRAM ENROLLMENT

1. The Contractor shall provide;
 - a) Meeting with case manager to begin personal goal setting process. Participants will establish a residential stability goal and partner

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with the case managers to identify the most appropriate location and type of residence (independent or supportive).

- b) Referral to the Veterans Affairs Medical Center (VAMC) for veterans who are eligible for VA services and benefits for any indicated medical, mental health or substance abuse assessment.
- c) Referral to Stout Street Clinic, Denver Health, Arapahoe House, Mental Health Center of Denver (MHCD) or other appropriate providers for veterans who are ineligible for VA services and benefits for any indicated medical, mental health or substance abuse assessment and treatment.

C. Increased income

ACTION STEPS

- 1. The contractor shall provide the following services;
 - a) Assess each participant's eligibility for VA and public benefits at entry to the program;
 - b) Help participants apply for all benefits for which they are eligible, including any Medicaid benefits for dependent children;
 - c) Screen participants for eligibility to participate in Homeless Veterans Reintegration Program (HVRP);
 - d) Help participants who are able to work develop education and job-search strategies that will lead to jobs paying a living wage
 - e) Help participants who are unable to work locate affordable, subsidized housing.
 - f) Provide financial literacy and work with participants to establish money management and savings goals. Goal plans will include savings objectives for the purpose of having funds to pay for rental deposit and/or first month's rent when they are ready to move into permanent housing.

D. Self Determination

ACTION STEPS

- 1. The Contractor shall provide the following;
 - a) Case managers and participants review and celebrate progress toward goal objectives and benchmarks weekly.
 - b) Case managers monitor participant's adherence to her treatment plan goals closely so as to intervene quickly if client shows signs of relapsing or dropping out.
 - c) Case managers work with women to identify a support group (family members or friends) who will support her to overcome barriers to self-determination throughout her treatment and after her exit from the program.

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- d) Case managers maintain contact with women who have successfully completed their treatment plans and moved into permanent housing through quarterly reunions and focus group meetings with women who agree to participate.

III. 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.
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. Process and Outcome Measures

Process Measures

1. The Contractor will measure the success of the program in moving residents toward residential stability by monitoring the number of clients who move into independent or supportive permanent housing upon exiting the program;
2. The Contractor will measure the success of the program in moving residents toward increased income and/or skill level by monitoring the number of women who spend at least 90 days in the program who will have increased their income.
3. The Contractor will measure the success of the program in assisting residents to move toward self-determination by monitoring the number of women who successfully remain in the program for 60 days and will apply for benefits for which they are eligible.
4. Contractor will submit accurate and timely invoices in accordance to the requirements of this Agreement.

Outcome Measures

1. 50% of all participants will move into independent or supportive permanent housing upon program exit.

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2. 75% of all women who participate in the program for six months or longer will move into independent or supportive permanent housing.
3. 80% of women who spend at least 90 days in the program will have increased income.
4. 75% of all participants who successfully remain in the program for 60 days will apply for benefits for which they are eligible, including Veterans Administration (VA) benefits, Temporary Assistance to Needy Families (TANF), Aid to the Needy and Disabled (AND), and Social Security (SSDI/SSI), Food Stamps, Medicaid and Old Age Pension (OAP) during that 60 day time period.
5. 50% of all participants who are able to work either will have part-time or full-time employment, including employment with Veterans Industries (VI) or through HVRP, or will be enrolled in a vocational training program within six months of enrollment
6. 50% of all participants who entered the program with substance abuse issues and who undergo treatment plans will achieve sobriety or demonstrate a reduction in their usage of alcohol and/or drugs.
7. 40% of participants who remain in the program for 60 days and are eligible for HVRP will successfully enroll in the HVRP program.
8. 60% of all participants who enroll in the Home Again program will make progress in regard to overcoming barriers identified at entry.
9. 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.

C. 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. Funds Assurance Letter and Standard Form 424A	The Contractor will be responsible for assisting DHS in submitting a Funds Assurance Letter and Standard Form 424A to Veterans Administration. These forms will be required to set the beginning per diem rate and	TBD	Veterans Administration

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	must be submitted when DHS and the Contractor would like to adjust the rate in the future.		
2. Quarterly Report	<p>Quarterly reports must be submitted with invoices <u>30 days following the end of the quarter.</u> Quarterly reports must address the Goals and Outcome Objectives listed in this scope of work. The reports must be submitted with the invoice for the quarter <u>30 days following the end of the quarter</u> March 15th, June 15th, September 15th, and December 15th.</p>	Quarterly	Jon Luper dhs_contracing_services@denvergov.org
3. OMB Standard Form 425	The Contractor will be responsible for submitting a completed OMB Standard Form 425 to DHS within 30 days of the end of the calendar year.	End of Calendar Year	DHS Grants Accountants

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4. Other reports as reasonably requested by the City.	To be determined (TBD)	TBD	
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IV. Budget / Compensation

A. Reimbursable costs will be based on the approved Federal Veterans Per Diem Rate less administrative expenses as follows. The approved Per Diem Rate is \$41.90 per bed per day. The reimbursement to the contractor will be 90% of the approved Veterans Per Diem Rate. The rate of reimbursement under the Agreement may be modified by Denver Human Services through an amendment to this Agreement. Denver Human Services will reimburse the Contractor for up to a maximum of 10 beds per day. All Invoices must include the contractors “Detailed Daily Census Report” of Veterans served each month and the “VA Homeless Providers Per Diem Payment Voucher”.

B. This amendment will add \$90,000 to the existing contract which will be eligible for use between the dates of 4/1/2017 – 9/30/2017.

C. Invoicing Procedures

1. On the first business day of the month, the Contractor will send an Invoice that includes the Detailed Daily Census Report (“CENSUS”) and the VA Homeless Providers Per Diem Payment Voucher (“VOUCHER”) for prior month Per Diem reimbursement to the Veteran’s Administration (VA) for review and approval.
2. The VA will review the CENSUS and the VOUCHER for accuracy, and return these to the Contractor with corrections/questions or with no comments and APPROVAL.
3. The Contractor will send the approved Invoice that included the CENSUS and VOUCHER to Denver Human Services (DHS) Financial Services Division (FSD) by the 5th of the month.
4. DHS Financial Services Division will review the approved Invoice that includes the CENSUS and VOUCHER and obtain the required program signature approval. Once approved a payment request for 90% of the Invoice total will be issued for the Per Diem contact to be sent to the Contractor.

VI. Other Requirements

Homeless Management Information System (HMIS):

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 govern the Homeless Management

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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: SHP (a.k.a. S+C), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA). This is a requirement for recipients of City homeless funding.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care and the Balance of State 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 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

C. HUD Continuum of Care Data Standards:

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 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.

D. 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.

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Information may be found on the Metro Denver Homeless Initiative web page - <http://mdhi.org> and the meeting schedule may be found their page at - <http://mdhi.org/calendar/>.

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 (5) 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 Contractor'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 Contractor's programs in HMIS.
- *CCH* 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 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 MDHI Continuum of Care.*

E. 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.

VII. Business Associate Terms – HIPAA/HITECH

➤ **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.

➤ **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

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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 respect to PHI.

(2) DEFINITIONS.

2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection of that information.

2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

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

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

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

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

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

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

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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.

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.

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2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.

2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

(3) OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.

3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.

3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.

3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.

3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.

3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.

3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.

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

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agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.

3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.

3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.

3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).

3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.

(4) SECURITY RULE.

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

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

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described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

(5) BREACH DISCOVERY AND NOTIFICATION.

5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.

5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.

5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.

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

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

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

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

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);

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- c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
- d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
- e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

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

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

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

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

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

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

(6) PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

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

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

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

6.03.1 The Disclosure is required by law; or

6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.

6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.

6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

(7) OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

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(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.

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